Neutral Citation Number [2024] EWHC 1151 (SCCO)

Case No: SC-2022-BTP-000973

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 14/05/2024

Before:

COSTS JUDGE LEONARD

- -

Between:

Clare Griffin	**Claimant**
- and -	
Kleyman & Co Solicitors Ltd	**Defendant**

- -
- -

Robin Dunne (instructed by **Thomas Legal Costs Limited**) for the **Claimant**
Jerome Silva (instructed by **Kleyman & Co Solicitors Ltd**) for the **Defendant**

Hearing dates: 23 January 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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COSTS JUDGE LEONARD

Costs Judge Leonard:

1. The Defendant solicitors advised and represented the Claimant between early March 2020 and June 2021 in connection with proceedings for financial provision in divorce ("ancillary relief"). This is an assessment under section 70 of the Solicitors Act 1974 of the bills rendered by the Defendant to the Claimant for the ancillary relief work undertaken over that period.

2. This judgment addresses a preliminary issue in the assessment. It is whether the costs payable by the Claimant to the Defendant should be limited by reference to estimates given (or not given) during the period over which the Defendant acted for the Claimant. It follows a day's hearing in which the Claimant, and Ms Stephanie Kleyman for the Defendant, were cross-examined on their written witness evidence.

3. There has been much detailed evidence to consider, and because it has some bearing on the decision I have to make, I have had to consider some of the Claimant's dealings with her previous solicitors as well as the Defendant. I am grateful to Mr Dunne, counsel for the Claimant and Mr Silva, counsel for the Defendant, for the focus brought to each party's case by their submissions.

4. I should mention that the directions for the hearing of this issue provided for the parties' witness evidence to be complete before the end of November 2023, and for an agreed bundle (the "core bundle") to be filed seven days before the hearing on 23 January 2024. About 10 days before the hearing, the Defendant produced a supplemental bundle of documents not referred to in the witness evidence. The Claimant's representatives, understandably, objected to that.

5. The compromise reached was that the supplemental bundle would not be referred to in oral evidence but that I could bear its contents in mind in the course of preparing my judgment, attaching such weight as seemed appropriate to documentation not referred to in witness evidence and not necessarily comprehensive.

6. Given that its contents were likely to be contentious, I had not reviewed the supplemental bundle before the hearing. Upon doing so, I found it to comprise an unwieldy collection of court documents and correspondence coming to some 1,676 pages, not all in date order and with elements of duplication, much too large to pick through in the hope of finding everything of evidential significance. Mr Silva did refer me to some specific documents in his written closing submissions, but the page references given by him do not seem to match the documents in my copy of the supplemental bundle.

7. In so far as I have been able to review the supplemental bundle, its contents have tended to support conclusions that I would in any event have reached from the witness statements and documents in the core bundle, as supplemented by the evidence of Ms Kleyman and the Claimant. I will identify such documents in the supplemental bundle as I have found to have some evidential value.

8. The bills the subject of this assessment are as follows:

Date	Invoice No	Total
30-Mar-20	9095	£ 3,654.00
28-Apr-20	9165	£ 1,302.00
19-May-20	9239	£ 5,754.00
29-Jun-20	9381	£ 11,938.80
31-Jul-20	9533	£ 10,998.20
24-Aug-20	9553	£ 26,118.40
08-Sep-20	9630	£ 64,522.94
30-Oct-20	9820	£ 22,530.00
27 Nov-20	9894	£ 2,013.00
31-Dec-20	9975	£ 849.00
29-Jan-21	10045	£ 1,659.00
26-Feb-21	10141	£ 4,947.00
30-Mar-21	10210	£ 1,263.00
30-Apr-21	10329	£ 13,143.00
28-May-21	10451	£ 11,262.30
TOTAL		**£181,954.64**

The Claimant's Divorce and Changes of Solicitor

9. In late 2018 the Claimant's then husband, Christopher ("Chris") Griffin, petitioned for divorce. It is the Claimant's belief that he had been planning to do so for some time before informing her, and that in the course of doing so he took steps to dissipate and/or conceal assets.

10. The Claimant (who lives in Cheltenham) instructed Tanners, a firm of solicitors based in Cirencester, to represent her. On 29 November 2018 Elizabeth Saunders of Tanners sent to the Claimant a letter of retainer offering a "very broad" estimate, given that there were "so many variables", of up to £20,000 for ancillary relief proceedings (and £6-8,000 for the divorce petition, if contested). A more detailed estimate was promised when Ms Saunders had seen Mr Griffin's Form E (a standard form of financial statement for ancillary relief proceedings).

11. Ms Saunders sent her first invoice to the Claimant on 30 November 2018. In her covering letter she said:

> "I appreciate that you are not in a position to pay me, but you need to know how costs are building up so that you can budget accordingly…
>
> I am hoping to negotiate that your husband will pay a lump sum to cover your costs. If he is not willing to do so, however, I will introduce you to a company called Novitas who should be willing to lend you the money so that you can fight your case subject, of course, to interest and administrative charges but the litigation loan will be recoverable as part of your capital needs in your case…
>
> I will be writing to you in due course with a detailed estimate…"

12. "Novitas" is Novitas Loans Limited, a company specialising in litigation loans.

13. Mr Griffin did not agree to cover the Claimant's ancillary relief costs. On 9 April 2019, Ms Saunders wrote to the Claimant offering an introduction to Novitas and adding:

> "As you will imagine, I am going to need you to clear costs sooner rather than later, please because it is affecting my firm's cash flow to have such big bills outstanding and I also need to pay third parties…"

14. Ms Saunders' letter incorporated a stage by stage estimate of the prospective costs of ancillary relief proceedings, in addition to what had already been billed. The estimate came to £56,892 inclusive of disbursements and VAT.

15. The core bundle includes an unsigned and undated copy of an application form, in the Claimant's name, for a Novitas loan of £70,000. The form, evidently prepared by Tanners, indicated that the Claimant should expect to receive at least 50% of the value of the available assets. The 50% share is valued at £2,500,000 to £3,000,000, and the application form mentions that Mr Griffin had, in December 2018, made an offer of £2,500,000 (which had, evidently, not been accepted).

16. On 13 May 2019, Ms Saunders wrote to the Claimant:

> I attach a copy of the Statement of Account that we discussed this morning showing a balance of £44,977.31 due from you.
>
> We have already discussed that costs could easily double and reach £100,000 in order to prepare for and attend the FDR listed on 23rd September 2019.
>
> We have also discussed that these costs only relate to the financial issues and further costs will be incurred in the event that arrangements for the children cannot be agreed.
>
> Chris has declined to make a contribution to your costs. I know that this is unfair because he is in control of the family's money but you must have a fighting fund to ensure that you have access to legal representation and that I, in turn, can employ third parties on your behalf like Barristers, Accountants etc.
>
> You could apply to the Court for a Legal Services Payment Order but this would be an application as a last resort and Court prefer, litigants to obtain funding on commercial terms, where available.
>
> You cannot ask any friends or family for help and do not have the means to pay me yourself. The Court would not expect you to sell either of your investment properties to pay me. Nor are you expected to deplete your modest fund of savings….

> I have suggested that you could pay using credit cards but you have told me that you are not credit-worthy because you already have credit cards. You could apply for a loan from any bank or lending institution but I appreciate that you have no existing relationship with a bank. If you would like me to approach Chris again then please provide me with written evidence of refusal by two commercial lenders and I will produce this as evidence to Chris and repeat my request for him to pay your costs.
>
> I have already introduced you to Novitas and you are considering the possibility of a litigation loan with them but it is offered at a high rate of interest but I have assured that any litigation loan will be taken into account as part of your capital needs in the case.
>
> As 1 explained when we met, I do need you to put something in place as a matter of urgency please, to cover my outstanding costs and the costs that I will be incurring as we move towards the September hearing. I am afraid that I am not going to be able to undertake significant further work until this is addressed. Please let me know how you want to proceed."

17. The Claimant avoided, for the time being, the option of an expensive (18% interest) Novitas loan. She says that instead she raised £60,000 by remortgaging a one-bedroom flat owned by her in her sole name.

18. The Claimant says in her written evidence that by the summer of 2019, she felt that Tanners were not making any inroads and that their fees were "extortionate". She decided instead to instruct Mr Adrian Bressington of AB Family Law in Gloucester, who she says also viewed Tanners' costs as "extortionate" and was unimpressed with the work they had done.

19. On 20 August 2019, Mr Bressington wrote to Tanners enclosing a notice of acting which had been filed at court, and seeking agreement to the handover of Tanners' files. Mr Bressington's letter took issue with Tanners' costs and included an observation to the effect that he had noted "some of your times estimates with total incredulity as to how they can possibly be justified."

20. Mr Bressington took over the application to Novitas and secured a loan facility of £70,000. In an email dated 29 November 2019 attaching Novitas' standard documentation, which said Mr Bressington "contains a lot of information as to how their loan works", advised the Claimant:

> "At this stage it is impossible to guess accurately how much fees will be needed for solicitors and Counsel pending a satisfactory outcome of this case. I believe that you should budget for somewhere between £50 - £75,000 in the event that this case goes to a full Trial next June. When I spoke to Novitas they advised that it is better to ask for too much, which is not used, than too little and then you find yourself short. I believe the figure 1have quoted makes sense on that basis…"

The Instruction of the Defendant

21. In January 2020, whilst Mr Bressington was still acting for her, the Claimant approached Ms Kleyman for advice on the ancillary relief proceedings. The reason, according to the Claimant's written witness evidence, was that she felt that everything was being dictated on Mr Griffin's terms and that she needed to get to the bottom of his financial position. Ms Kleyman had been recommended by a friend as a person who could achieve that.

22. The Claimant says that she made it clear to Ms Kleyman that she was very-cost conscious and did not want to run up unnecessary costs (the correspondence between the parties at the time appears to reflect that and records the Defendant's recognition that the Claimant was very concerned about accruing costs). Initially she instructed Ms Kleyman to assist her in instructing Mr Bressington in the run up to a Financial Dispute Resolution ("FDR") hearing listed in March 2020.

23. Ms Kleyman says that she started by advising and supporting the Claimant without charge, but reached the point where she felt that she would have to charge if the Claimant were to continue to seek her advice. This is consistent with the documentary record, which shows that Ms Kleyman was offering advice to the Claimant from January 2020, but that the charges rendered to the Claimant to the Defendant start on 9 March 2020, following the signature by the Claimant on 6 March 2020 of a letter of retainer.

24. The Defendant's letter of retainer is dated 3 March 2020. It incorporates the Defendant's standard terms of business and includes the following passages:

> "I will have responsibility for the day to day conduct of this matter. If it is appropriate for someone else in the company to deal with your work I will, of course, let you know. You will be kept informed of the progress of matters and if you have any queries, please let us know… Should you ever be dissatisfied with the service any of us is providing, please let me know straight away and we will provide you with a copy of our Complaints Procedure Policy.…
>
> … We have discussed the fees for this matter, and we have confirmed that I will charge an hourly rate of £350 plus VAT. Although I will be dealing with this matter on a day to day basis, if I delegate routine work to my colleagues to help keep the costs down, their time will be charged at an hourly rate of £250 plus VAT. We have agreed to start with a meeting at my office next Thursday which I will run with one of my colleagues, but I will only charge for my time. We will invoice you on a regular basis to help keep you up to date with fees and will keep you informed of developments.

> All hourly rates are exclusive of VAT and disbursements, which are expenses that I may incur on your behalf. It may be necessary for us to engage other professionals in relation to this project, such as a barrister. In that eventuality, I will discuss the appointment of any such professional and the payment of fees with you in advance. I further confirm that I will not exceed any maximum figure we have agreed unless there are any unforeseen complications with the respective transactions, in which case we will discuss the matter further before any additional work is undertaken. It is obviously difficult at this stage to give you any costs estimate, as we do not know how the matter is going to develop, or what steps you are likely to want to take. For this reason, I would suggest that we agree on the fees on a step by step basis.
>
> I propose to send you invoices for our fees incurred on this matter as soon as each agreed step has been concluded. Payment of our invoices should be made in full within 14 days of receipt…
>
> In the event that you have any concerns regarding my charges or the level of my fees, you are entitled to complain. Should you wish to complain, please ask for a copy of our Complaints Procedure Policy. If you are still dissatisfied with any steps we take to resolve the matter, you can complain to the Legal Ombudsman whose details are contained in the Complaints Procedure Policy. You also have the right to object to any invoice we render by applying to the Court for an assessment of the bill under Part III of the Solicitors Act 1974.
>
> Kleyman & Co is committed to high quality advice and client care. If you are unhappy about any aspect of the service you have received or about the bill, please do not hesitate to contact me by e-mail, post or phone. If you are not satisfied with our handling of your complaint you can ask the Legal Ombudsman… to consider the complaint.
>
> In the meantime, please do not hesitate to contact me if you require any further explanation or information concerning anything in this letter or the enclosed Terms and Conditions…"

25. The accompanying terms of business included these provisions:

> "… We charge fees which are fair and reasonable taking into account various factors such as the complexity of the matter, the time spent on it, the amount of money Involved, whether the transaction is completed, the skill required, and the responsibility taken. It is our normal practice to apply an hourly rate which reflects the general nature of the work and the time which the fee-earner spends on it. The time spent on a matter is calculated in units of 6 minutes. Time incurred on your affairs will include meetings with you and perhaps others; any time spent travelling; considering, preparing, and working on papers; correspondence; and making and receiving telephone calls. The resulting sum is then reviewed In light of the factors referred to above in order to arrive at an amount which is fair and reasonable.
>
> If your instructions require us to work outside normal office hours, or the case becomes more complex than expected, we reserve the right to increase our fees. Our charges are not contingent on the outcome of the case…

> Although we will always attempt to provide a realistic estimate of the range of our charges, unexpected additional work or other complications may arise and we reserve the right to revise our estimates and charge higher fees. Should it appear that we are likely to exceed the upper end of any estimate, we will notify you as soon as possible.
>
> Our bills will be rendered in arrears and will include all charges and out-of-pocket expenses incurred up to the date indicated on the bill. In all cases, our bills will dearly specify the period to which they relate and what services they cover…
>
> We request that our bills are paid no later than 14 days after the date they are issued. If in any particular case you anticipate payment will be delayed, please discuss this with us at the earliest opportunity…
>
> Sometimes we are able to work on a fixed fee basis. This might be for a specific part of a case, such as drafting a letter, or it might be for a whole project, such as buying a business. In all cases of fixed fee work, our Engagement Letter will confirm not only the fixed fee, but also our hourly rate for anything undertaken in addition to the work being covered by the fixed fee. If we are asked to do anything that is over and above the work included in the fixed fee, it will automatically be charged at the hourly rate quoted, and the next invoice will clearly set out what work is covered by the fixed fee, and what work is being charged on an hourly basis…
>
> We are happy to discuss reasonable arrangements in relation to costs at the outset of the retainer. We can, for example, provide you with estimates of costs in advance, or at regular intervals during the matter, or let you know when costs reach a certain level. This would need to be requested by you, in writing, at the time of instruction.
>
> We have prepared a briefing note on litigation and litigation costs, which is available on request…"

26. The Defendant continued in the rather idiosyncratic role of advising and assisting the Claimant on her instructions to Mr Bressington, until after a Pre-Trial Review ("PTR") in April 2020. On 1 May 2020, the Claimant notified Mr Bressington that the Defendant would take over from him: she would appear to have advised Ms Kleyman to that effect on 24 April.

27. It seems clear, from correspondence at the time and from the Claimant's evidence under cross-examination, that she had become dissatisfied with Mr Bressington's management of the case. As with Tanners before him, she did not believe that he was making sufficient progress, in particular toward uncovering what she believed to be Mr Griffin's concealment of assets, and she took the view that he had allowed Mr Griffin to dissipate matrimonial assets. An email sent by the Claimant to Mr Bressington on 4 May 2020 indicates that costs of the ancillary relief proceedings to date had mounted to £130,000, which she described as "hugely excessive" and disproportionate to whatever settlement she would receive. In the email the Claimant also complains that Mr Bressington should have attempted to freeze Mr Griffin's assets, or applied for maintenance (presumably a reference to an application for Maintenance Pending Suit, an early proposal from Ms Kleyman which she advised against once the Claimant's asset position was better understood).

28. What the Claimant now says, in her written evidence, is this:

> "On reflection, all three solicitors would make promises to me of most supporting things concerning my husband and their ability to get to the bottom of it, promise the most encouraging things with regards to the outcome of my divorce, and how much it would cost. At every stage the new firm of solicitors would complain how each other's fees were too much and how I had been overcharged. All three completely let me down. They simply did not deliver what was promised to me either in terms of outcome or cost."

29. There were immediate difficulties in obtaining the papers held by Mr Bressington. In an email sent to by Mr Bressington to the Claimant on 1 May 2020, Mr Bressington confirmed that he would release his lien over his own papers once Novitas, on the Claimant's authority, had released the funds needed to meet his outstanding fees and disbursements, but that he was not (contrary to what the Claimant evidently thought) free to release Tanners' files, which he continued to hold to their order. He observed that "With the previous solicitors' files and my own, Ms Kleyman will have a large amount of reading to do in order to come up to speed with your case".

30. According to the Claimant, Mr Bressington negotiated with Tanners an arrangement whereby they would release their papers to him in return for a payment of £40,000. She did pay that sum to them. It appears however that Mr Bressington continued to hold the papers to Tanners' order against an unpaid balance of £13,401.81.

31. Ms Kleyman recalls that Mr Bressington's files were made available in May or June 2020. Tanners' files never did become available: Ms Kleyman reconstructed them as best she could with the assistance of Katherine Dunseath, counsel who had been instructed by Mr Bressington and who continued to act for the Claimant through to the ancillary relief hearing in September 2020.

The Defendant's Estimates

32. On 4 May 2020, Ms Kleyman emailed the Claimant to say:

> "I'm working on getting you a costs estimate for the rest of the case and hope to update you asap."

33. On 22 May 2020 Kathryn Jones, a paralegal employed by the Defendant, wrote an email to the Claimant:

> "In order to keep you up to date on a budget going forward we have put together a brief estimate of fees. Obviously this is just an estimate so will be dependent on many factors as the matter progresses to the final hearing; including correspondence with Chris's solicitor and any application we may need to make for the lack of disclosure/unagreed points (as discussed previously). It also doesn't cover anything we need to deal with the children.
>
> I have also raised an invoice for the work we have undertaken in May up to last Friday, 15 May 2020, in order to update you more regularly than just monthly for the finances and children. Although we are only a few weeks in, we have managed to achieve a sizeable amount, and I hope you're pleased with the progress. In addition, once your statement is finalised, I am hopeful that there won't be a huge amount more to do for the moment. The main priority after the statement has been done will be to get all the information to Gavin for him to update his statement, and then we will be focusing on preparation for the hearing, but much of that has already been done In the run up to the last hearing.
>
> I have spoken to counsel who has given the following quote for fees…
>
> Fees for Reviewing the Section 25 statement will be on Katherine's hourly rate of £250 plus VAT, therefore the fee will be dependent on how long it will take to review but I'd hope It won't be much more than around 3-4 hours...
>
> Fees for the FH will be £7,500 - £10,000 plus VAT on the Brief fee and refreshers of £2,500 plus VAT. So if we run for four days as currently listed, the most it should be is £21,000…
>
> In terms of our time/fees going forward for preparation of documents/attendance at hearing, the things we know we are going to have to deal with include the following:
>
> Section 25 Witness statement- estimate of 10 hours…
>
> Review of doctors report once received - estimate of 1 hour…
>
> Review of information from Po-Zu Limited/Administrators of Secret Sales once received - estimate of 1-2 hours…
>
> Preliminary documents for hearing (chronology, statement of case etc.) - estimate of 1-2 hours…
>
> Updating disclosure - estimate of 1-2 hour…
>
> Obtaining an up to date report from Gavin…
>
> Brief to counsel - estimate of 1-2 hours…

> Preparation for hearing (bundle etc) - estimate of 4-5 hours (depending on the index)…
>
> In addition, I am assuming you will want Stephanie to attend at court with you for the final hearing, in which case there will be further fees, but we can discuss that a bit nearer the time.
>
> As you are aware, it is very difficult to predict what may come up and what correspondence we may need to have with a range of people e.g. other side, Mr B, counsel but the above gives you a guide of the outstanding matters..."

34. I will refer to this email as the "May 2020 estimate".

35. The Claimant, in her written evidence, interprets the May 2020 estimate as a "budget" of £56,000 plus VAT. In submissions Mr Dunne put the May 2020 estimate at between £42,210 and £57,138 including bills already rendered (and I accept that the estimate was intended to be additional to the bills already rendered). My own calculation suggests a slightly lower maximum figure, but I will work with Mr Dunne's.

36. The May 2020 estimate does not include a figure for "obtaining an up to date report from Gavin" (a reference to Mr Gavin Pearson of Quantuma, a forensic accountant whose instruction pre-dates that of the Defendant and whose advice appears to have informed applications for disclosure against Mr Griffin). Ms Kleyman has confirmed that any figure would have included, for example, any explanatory letter advising him on any additional information obtained, and formulating his instructions. As Ms Kleyman did not know at that stage what information was going to be found and what the significance of that information was going to be, she could, she says, not hazard a guess as to what figure to include, so it was left blank.

37. After AB Family Law's fees and disbursements had been paid, the Claimant says that £13,000 was left of the £70,000 facility that had been obtained from Novitas. On 3 July 2020 Ms Jones sent to the Claimant bill number 9381 for work undertaken between 17 May and 28 June 2020 (bringing the total billed to date to £22,648.80), indicating that the existing Novitas facility was "slightly short" of the outstanding costs and asking whether the Claimant had made any progress towards a previously discussed extension of the Novitas facility. The Claimant responded on 4 July 2020, stating that she had been expecting weekly invoices (the Defendant's policy appears to have been to produce monthly invoices, which would be more in line with common practice), expressing some confusion as to the extent to which costs were accruing, and concern that she had not been aware of it.

38. On 28 July 2020, Ms Jones sent an email to the Claimant ("the July 2020 estimate"):

> "… we have now applied for an extension on the Novitas Loan to cover all costs going forward.
>
> We have made an application for £60,000 based on the following estimations:
>
> Counsel's fees:
>
> 1 . Reviewing S25 - £1,800 (6 hours - could be more)

2. Final hearing - £21,000 (4 day hearing)

3. Conference £3,000

Stephanie's fees;

1 . Final hearing - £10,368 (based on 6 hours a day for 4 days)

2. Conference £864 (based on 2 hours)

Other fees:

1. S25 statement finalisation with you and counsel

2. Consideration of missing disclosure

3. Hearing preparation

4. Prelim docs preparation

5. Updating disclosure

6. Brief to counsel

7. General running of file until hearing

8. Expert evidence

Of course it is very difficult to estimate an exact figure and therefore we have based this on our knowledge of what else will need to be done and the quotes we have received from counsel. Obviously the fees for the general running of the file and any correspondence etc will all be based on how much needs to be done going forward and therefore this is very difficult to predict..."

39. The Claimant responded on 29 July:

"Oh my goodness Kathryn

I hope this is worth it.

I know I have no choice now. But it better be worth it.

I really don't understand how we are going to court with all this missing, he should be paying for all this, as we are where we are due to his lies…"

40. From internal correspondence disclosed by the Defendant, it would appear that Ms Jones was tasked with preparing the estimates upon which the loan application would be based. She first mooted a figure of £50,000 for costs from the beginning of July 2020, but Ms Kleyman, having discussed the figures with a co-director of the Defendant, suggested an additional £5,000 for expert evidence and £5,000 for disclosure. An email from Ms Kleyman to the Claimant dated 20 August 2020 confirms that Ms Kleyman had "budgeted for" experts' fees on applying for the Novitas loan. It follows the that at least some of the £5,000 earmarked for "expert evidence" was intended to cover the fees of experts, as opposed to the Defendant's own costs of dealing with experts. In fact, according to the breakdown of costs produced by the Defendant for this assessment, only a single fee from Mr Pearson of £750 plus VAT was billed to the Claimant by the Defendant as a disbursement.

41. The Claimant says that she paid Mr Pearson £6,000 direct, although according to the correspondence on the core bundle this fee was incurred by Mr Bressington, and was among the costs he required to be cleared before releasing his papers. According to papers filed by the Claimant at an earlier stage of the proceedings she also paid £4,462.50 to Mr Nick White, a second forensic accountant, although I have seen nothing to suggest that the Defendant should have factored Mr White's fees into any costs estimates.

Subsequent Developments and Correspondence

42. It took quite some time to secure the Novitas loan extension. As a result, the case went to trial in the Family Court in Birmingham, before His Honour Judge Williams, over four full days on 2, 3, 4, and 7 September 2020 without the Novitas facility in place. During that period very substantial costs and disbursements accrued.

43. To put in context the correspondence on costs to which I am going to refer, I should outline the course of events from trial, through judgment, to the implementation of the order made by HHJ Williams.

44. After four days of trial insufficient time was left for closing submissions, which were subsequently completed in writing: the Claimant's submissions appear to have been filed on 14 September 2020. Judgment was handed down on 6 October, which between the hearing and discussions with Counsel and the Claimant, is recorded as having taken some seven hours of Ms Kleyman's time and 1.5 hours of Ms Jones' time.

45. Mr Griffin had been arguing for a "needs-based" settlement, as reflected in an open offer of £750,000 with some limited maintenance. The Claimant's case was that there should be an even division of matrimonial assets, adjusted in the Claimant's favour to reflect the concealment of and dissipation of assets by Mr Griffin. HHJ Williams accepted the Claimant's case on an assets-based settlement, but did not accept that Mr Griffin had concealed assets or that the division of assets should be adjusted to any significant extent to reflect asset dissipation by Mr Griffin.

46. It took another month to settle the terms of the final order of HHJ Williams, which was produced on 6 November 2020. The order ascribed values to specific categories of assets with a total net value, after CGT, of £3,537,000. The family home, Skyview House ("Skyview") was given a gross value of £2,250,000 and the order provided that it be sold at a price to be agreed between the parties or, alternatively, to be determined by the court. The Claimant was to receive the sale proceeds up to the value of her share of the assets,

any surplus proceeds to be divided evenly between the parties.

47. The order also provided that the Claimant have first right to purchase Skyview, but only once an offer had been received from an arms-length purchaser; if she could match the offer and complete within a timeframe commensurate with the arms-length purchaser; and if she could show that she had the necessary funding in place. She would need to prove that she could meet those terms within 14 days of an offer being agreed or approved by the court.

48. The finalisation of HHJ Williams' order and its implementation did not proceed smoothly. The Claimant was convinced (and remains convinced) that she was entitled to a half share of assets worth between £7 and £7.5 million (rather more than stated in Tanners' draft Novitas application, but that is her evidence) and that Mr Griffin had concealed and/or dissipated assets to the value of about £4 million, achieving an unfair outcome at great expense to her. It would appear that she accepted neither the wording nor the substance of the order. HHJ Williams rejected an attempt to persuade him to amend the order in the Claimant's favour, based upon the proposition that CGT liabilities had not properly been taken into account: it would seem that Ms Dunseath thought that she had made an error in this respect, but that HHJ Williams did not agree, or at least did not agree that it mattered. Even the division of the contents of Skyview, according to the supplemental bundle, was fraught with conflict.

49. The most contentious matter was, however, the disposal of Skyview House in accordance with the terms of the order of HHJ Williams.

50. The Claimant, contrary to the advice of Ms Kleyman (who thought the proposition, as she puts it in her written evidence, to be "commercially imprudent, expensive and disproportionate") wanted to purchase Skyview herself. According to an account of the events given by Ms Kleyman (which I accept) the Claimant actively resisted purchase by anyone else. She made enquiries into obtaining the necessary funding with a view to being ready to match an offer when it was made.

51. At a point where no third party offers had been made on Skyview, the Claimant made an offer to Mr Griffin based on the value attributed to Skyview in the order of HHJ Williams. Mr Griffin initially indicated that he would be willing to agree to the Claimant purchasing Skyview subject to conditions.

52. The Claimant instructed the Defendant to deal with the conveyancing, which was undertaken for a fixed fee by a conveyancing solicitor, Mr Hassan. The retainer letter for the conveyancing work is dated 18 February 2021. It expressly limits the fixed fee to the conveyancing and, consistently with the retainer letter of March 2020, specifies an hourly rate of £290 for any additional work undertaken by Mr Hassan.

53. I am aware that the Claimant contends that most of the costs incurred in relation to the disposal of Skyview should be included within the fixed fee, but that issue has not been argued before me and could only be determined on full detailed assessment, when the nature of each task charged for outside the fixed fee can be considered. For the purposes of determining the estimates point, it is only necessary for me to consider the totality of the fees a billed in addition to the fixed fee.

54. I would only observe that from the evidence before me it seems clear that a great deal of

work had to be done that falls outside the definition of conveyancing work, and which would properly be characterised as concerned with the implementation of the order of HHJ Williams in the light of the Claimant's instructions, which were by no means always easy for Ms Kleyman and her team to manage. For example, the supplemental bundle shows that 4 January 2021, the Claimant was pressing Ms Kleyman to make representations to HHJ Williams regarding the marketing of Skyview, and Ms Kleyman was warning the Claimant about the cost of making an application prematurely and the danger of being penalised for doing so.

55. The figures for the purchase of Skyview had to be cross-referred to the provisions of HHJ Williams' order and agreed with Mr Griffin prior to completion, a process complicated by the fact that the Claimant delayed agreeing the figures, apparently due to uncertainties regarding funding.

56. Whilst Mr Griffin's conditions for the sale of Skyview House to the Claimant were being negotiated, a higher offer was made on Skyview by a third party. Shortly afterwards a further, higher offer was made by a different third party.

57. Mr Griffin's position was that Skyview should be sold for the highest price possible as this would provide both parties with additional funds. The Claimant did not agree. The Claimant refused, in fact, to believe that the third party offers were genuine. She believed (and judging by her evidence on cross-examination, still believes) that they were made by people connected to Mr Griffin, and that Mr Griffin was behind them. I find it difficult to understand why Mr Griffin would, presumably at his own expense, have engineered an arrangement which would increase the assets available to the Claimant. It would appear however that the Claimant believed that he was trying to get Skyview for himself. Ms Kleyman says that significant time was spent by the Defendant investigating this, but no evidence of collusion was found.

58. The Claimant's refusal to agree to a sale to either third party or to match their offers, as Ms Kleyman put it, "reignited" a pattern of highly contentious correspondence with Mr Griffin's representatives.

59. The 14-day deadline passed without the Claimant being able to provide the proof of funding required by HHJ Williams' order. She refused, nonetheless, to step away from the transaction or to accept the highest offer, with the inevitable result that Mr Griffin issued a further application to the court.

60. A hearing took place on 21 April 2021. Ms Kleyman represented the Claimant, because Ms Kleyman would not instruct counsel unless the Claimant could produce the money to cover counsel's fees, which at the time she could not. It was agreed between the parties that the Claimant would have 5 working days to match the best third party offer and provide proof of funding, and 28 days to exchange contracts, failing which Skyview would be sold to the third party. The Claimant was ordered to pay the costs of Mr Griffin's application, as a similar offer had been made by Mr Griffin, but not accepted by the Claimant, before the hearing took place.

61. Funding was still not in place as the deadline approached, which again, according to Ms Kleyman, entailed additional work. On 27 April 2021, shortly before 4 p.m., the Defendant received the loan particulars and mortgage deed from the lender's solicitor. They were immediately sent to Mr Griffin's solicitor. Mr Griffin then argued that the

documentation did not constitute proof of funding. In further correspondence and negotiation, the Defendant attempted to resolve the matter without returning the court. This did not succeed. A further application was made by Mr Griffin and a further hearing listed for 20 May 2021.

62. On the day of the hearing but before it started, contracts were exchanged on Skyview. The court ordered that the Claimant had until 28 May 2021 to complete on the purchase and made another costs order against her.

63. The purchase of Skyview was successfully completed on 28 May 2021, within a few minutes of the deadline. £87,318.82 of the outstanding £97,771.64 of the Defendant's bills were paid, leaving £10,452.82 outstanding. The Defendant was not, however, able to afford to live in Skyview. Documents on the supplemental bundle indicate that she obtained a "buy to let" mortgage.

Costs Correspondence from 9 September 2020

64. On 9 September 2020 Ms Jones sent an email to the Claimant:

> "Hi Clare
>
> I hope you are well.
>
> From tomorrow we can draw down the Novitas loan so we will be putting in the application first thing in the morning.
>
> Please see the 3 invoices attached that are outstanding on your matter.
>
> July invoice: £10,998.20
>
> August invoice: £26,118.40
>
> September invoice: £64,522.94
>
> These invoices include all disbursements (e.g. counsels fees/court fees etc) and the breakdown of all work done by the team.
>
> Please access the Novitas system In the morning in order to approve the draw down request.
>
> Please let me know if you have any questions…"

65. The Claimant replied:

66. "HI Kathryn

> "Wow thats hefty
>
> Is it really that much? is that it now?
>
> As I only have £60,000 with Novitas don't I?"

67. There is a conflict of evidence in relation to the timing of the 24 August 2020 bill. The Claimant says (citing in support Ms Jones' email of that date) that she did not receive it until 9 September, but her evidence on the point is not particularly consistent.

68. In her first written witness statement, dated 14 March 2022, the Claimant says rather that she received "an invoice" immediately after the final hearing. This is the Defendant's bill of 8 September.

69. In her second written witness statement, dated 8 November 2023, the Claimant says that she received the August and September bills together, "right in the middle of the most important part of the case". In fact the trial was over and counsel's written closing submissions were in the course of preparation, but I accept that this have been a stressful period for the Claimant, who took issue with the advice that she was receiving. The supplemental bundle records a determined and time-consuming refusal by the Claimant to accept either Ms Kleyman's or Ms Dunseath's advice as to the content of those submissions, and that upon producing a final redraft just before midnight on 13 September, Ms Dunseath felt obliged to state that she did not draft "in order to assist the other side" and that she had serious concerns about some of the content of the current version, which had been prepared on instructions and contrary to her own opinion.

70. Ms Kleyman, in contrast, states plainly that all bills were sent to the Claimant when they were raised, although she has not exhibited documentary evidence to that effect for the 24 August bill.

71. I appreciate that the question has some bearing upon the Claimant's awareness of and response to accruing costs, but it is clear from correspondence to which I have already referred and from correspondence to which I shall come, that the Claimant was always concerned about accruing costs, and it is equally clear that the size of the 8 September bill came as a shock to her. There was only a two-week gap between the August and September invoices in any case. I also bear in mind that the delivery of regular bills after work is done is not an adequate substitute for an appropriate estimate before the work is done.

72. As, however, the point is in issue, I will say that it seems to me more likely than not that like the July invoice, the 24 August invoice was delivered when it was raised. That is not just because that is what one would expect, as a matter of course. As I have observed, the Claimant's evidence in that respect is not consistent.

73. Further, for reasons I shall explain, where there is a conflict of evidence I prefer that of Ms Kleyman to that of the Claimant. It seems to me more likely than not that the Defendant's bills, in accordance with normal practice, were delivered when prepared; that the July and August bills were, accordingly, both sent when they were prepared; and that they were re-sent to the Claimant when the Novitas facility finally became available, in order to draw her attention to what was outstanding.

74. On 10 September Ms Jones responded to the Claimant:

> "Thank you for your email. Yes that is the total amount due with the breakdown from 3 invoices. The September invoice was raised at the end of the day on Monday, after the final day of the hearing. I have put the request in with Novitas, please access the system when you can approve this ".

75. The Claimant responded promptly on the same day:

> "So this includes everything and then we are done? I think Novitas will only do £60k won't they? And I did check with Stephanie about this Tanners bill as well, which I was told was included. I need to go through the bill. I know we are fast approaching the end of the week as well, in terms of the closing statement, do I do anything today?"

76. Ms Jones (in an email of the same date which I could not locate on the core bundle but which appears in the supplemental bundle) replied

> "This includes everything up until now (including counsel's fees and any additional costs). You should have an email from Novitas – please accept the draw down request once you have considered the invoices. The loan has £60,000 available and therefore there will be further fees outstanding".

77. On 15 September 2020, Ms Kleyman sent an email to Ms Jones:

> "We need you to chase this much more aggressively. I know Novitas are not the easiest company to deal with, and Clare is far from straight forward but we had an advantage over Clare due to the deadline yesterday and now we are a bit behind. I've got another deadline on Friday… if Clare stalls, I am not dealing with the other sides submissions over the weekend. Please can you chase both parties (phone, email, text etc) and give us an update by the end of today".

78. This communication is highlighted in the Claimant's Points of Dispute in support of the proposition that Ms Kleyman was taking advantage of the Claimant. To my mind, taken properly in context, it does no more than reflect Ms Kleyman's legitimate concern that, five days after being asked to do so, the Claimant had not authorised Novitas to pay that part of the Defendant's outstanding fees that matched the July 2020 estimate.

79. Evidently Ms Kleyman believed that the Claimant was more likely to do so if she knew that important work needed to be completed (this being the "advantage" referred to), and was disinclined to carry on working urgently on the Claimant's behalf, much less over a weekend, if the Claimant was not prepared to do so.

80. The Claimant (as both the core bundle and the supplemental bundle show) was by this point no more satisfied with the Defendant's efforts to unearth Mr Griffin's alleged hidden assets than she had been with those of her previous solicitors, and (rightly) believed that the September 2020 hearing had not gone the way that she had hoped. The supplemental bundle shows that Ms Kleyman's email immediately followed the struggle with the Claimant over counsel's written submissions to which I have already referred, and was sent in response to reports that neither Ms Jones nor Novitas had been able to contact the Claimant.

81. The Defendant had undertaken a substantial amount of work for the Claimant on the understanding that the Novitas facility would be available to meet £60,000 of its bills. I see no basis for criticising Ms Kleyman for her efforts to ensure that the Claimant would honour that understanding.

82. I would add that whilst the papers record concern and occasional exasperation on Ms Kleyman's part where she believed the Claimant's actions to be contrary to her best interests and wasteful of costs, they also show that when called upon to protect the Claimant's interests Ms Kleyman was both personally and professionally supportive. It is also evident that Ms Kleyman in particular put in a great deal of work for the Claimant, making herself available outside office hours (for example over the August bank holiday weekend in 2020), without invoking the Defendant's contractual right to charge a higher hourly rate for doing so. It would also appear, on the evidence, that some work was not charged for at all.

83. On 17 September 2020, Ms Kleyman sent an email to the Claimant:

> "Hope you are ok and have recovered from the stress of the trial.
>
> Thank you for your help in getting Novitas sorted the other day- they are very nice, but not very efficient and we've often found it hard to get through to them on the phone or get answers from them.
>
> Just to help you keep up to date, I'm attaching statements from both accounts showing what we've recovered from Novitas and so what is outstanding. Whilst we are obviously close to the end of the case, there will still be more work to be done, particularly as the case didn't finish on the time so there will be more work for KD and I to do than was originally budgeted for. We haven't yet had the invoice from Quantuma for their work, so that needs to be factored in too. I know you've previously talked about having some capacity on credit cards and the possibility of taking out a loan. Please could you have a think about this and let me have your proposals so that we can agree the way forward."

84. The Claimant replied:

> "… How are you, I really don't know what to say, I was of the opinion there was not more work to be done now? I have no more money I am afraid, it will have to wait until the 6th October. I just have no money Stephanie. The loan isn't going to come through until 6th October.
>
> "There should not be any more work now surely?
>
> Failing that, then Chris will have to pay for it. I am almost bankrupt, and none of this is my fault, I am pretty appalled… The man just won't stop...The fees will have to be paid on 6th from the settlement. He has £138,000 in the bank… (if the loan comes through before then, then I will put some of that towards it, but i need to rebuild my life with that money, as I am clearly going to be paid in assets… What would normally happen in this situation, where the wife has been made bankrupt by her husband?"

85. On 30 September 2020 Ms Jones emailed the Claimant:

> "Thank you for paying £1,000 last Monday and then £500 in the middle of the week … We also understood you were planning to pay £5,000 at some point last week, we have not yet received this so please can you come back to us as a

matter of urgency. In the meantime, Stephanie and I have still been doing the necessary pieces of work on your matter, such as corresponding with Katherine about the final submissions, and therefore some more fees have been inevitably been incurred. We will be sending you an invoice shortly of the fees to date, to keep you up to date with the outstanding amount."

Moving forward there will be some further work necessary to bring the matter to a close and the majority of further fees incurred will be in relation to the judgment on 6 October 2020 and anything that is required after … Once we have received the outcome, it is likely that we will need to give you some advice on this … (such as facilitating the transfer of assets, selling properties etc) or discussing further options such as appealing the judgement. We will of course try to keep fees to a minimum and keep you up to date as much as possible, however the amount of work that needs doing will depend on the circumstances and outcomes so we will discuss this as we go.

Even though there was a shortfall in the payment from Novitas, meaning there is still a balance outstanding, we will of course carry on representing you because you have confirmed to us that all the fees are agreed (you approved these for Novitas) and that you will arrange for payment of the balance of any additional fees to be paid promptly after the settlement has taken place. Part of the purpose of this email is to confirm that this is what we have agreed, and to give you a chance to discuss it with Stephanie if you have any queries.

I hope the above is clear but please let me know if I can do anything to help."

86. On the same day, the Claimant replied (references to "Tuesday" in the following correspondence are I believe to the handing down of judgment on Tuesday 6 October 2020):

"I have just left Stephanie a message. I have no money… I cannot afford to continue like this… Do not make me sell a house, please stop now if that is the case… I will have to go unrepresented on Tuesday or just with Katherine Dunseath, to save costs… There is no more work to be done, when I checked with Stephanie a couple of weeks ago she said there was no more to be done… Please stop spending money, I am terrified… I checked with Stephanie when I spoke to her last, and have not replied to her last email, due to costs. The case cannot continue like this. I cannot afford to appeal. Please stop spending money on this when we are merely waiting for the judge to decide my future… I have transferred another £1,000 this afternoon from my rental payment. And £2,000 from my Chelsea. I cannot get hold of any more money without paying interest. And I thought all fees were settled next Tuesday… This cannot continue, as I cannot sell any of my properties – not after all this. I am really unwell, and I have 2 kids with me full time … I thought Tuesday would be sorted, I will raise finance on one of the properties to pay you, not sell a house. Where is the justice in this case. No woman would accept any of what has gone on. and I keep being pushed back. And sent bills for doing so... I was of the opinion everything would draw to a close on Tuesday, as I have been hit hard by all this, All the money that has been unaccounted for I am told to just suck it up, yet a huge bill on top. Do not escalate any more, without letting me know what costs exactly please... Katherine Dunseath should not need anything

further?… NB Final Submissions needs to include large inaccuracies on Form E, and concealment."

87. Ms Kleyman replied:

"Clare thank you for your email. I did try to call you back and left you a VM, but as time is short and I am in meetings for most of the rest of today and a large part of tomorrow, I wanted to send you an email. … I need you to think about this very carefully and let me know clearly what it is that you want me to do. On the one hand you are saying that we are not to do anything else, but on the other hand you are asking us to more things. You've said below that there was no more work to be done but you know that that is not the case because of the number of emails and phone calls we have had doing more work.

I appreciate you are worried about costs, and if you tell me not to do anything more, then I will of course follow your instructions, but that will involve me coming off the record and not being involved in the judgment next week and as KD does not do direct access, she will not be able to continue for you either. I should add that the cost of her and my being involved next week is negligible compared to what has been spent so far, and it is a worthwhile investment to make sure you are protected on Tuesday from any costs applications that are made against you, but this is, as always, entirely a matter for you.

So I need you to carefully consider what we do next. Can I please have very brief answers to the following:

1. Do you want me to carry on and agree to be responsible for my fees, to be payable from whatever settlement you get or

2. Do you want me to stop, and KD and I will do nothing further and will not be present on Tuesday.

If you want us to continue, can you please give me clear instructions on what you want me to do, remembering that the final submissions have already been made and we cannot submit anything further at this stage.

I hope that helps and I look forward to hearing from you..."

88. The Claimant replied:

"Of course I need you and Katherine Dunseath for Tuesday.

I need to know at what cost, the impression I got from the email was that it would not stop there, as there will be further work afterwards. But no one will tell me what I should be expecting let alone what I was entitled to. The costs have escalated way out of control, due to lack of disclosure, and it will not be proportionate to what the settlement is. Someone needs to give me some reassurance Stephanie, either yourself or Katherine Dunseath.

This was a circa £7,000,000 "sharing· case" all day long, and I feel like I am being told to accept what I am given as I can't afford to fight it anymore. That is not "Fair and Just", what was fair was half of the above figure, now it looks like

it will be a great deal less than that due to Mr Griffin, and his barrister. The case has been based on Iles, and I am told I have to suck it up. I did just that.

How many women would be happy watching their Ex blowing £4,000,000 in 2 years, knowing he has plenty tucked away somewhere - I had to because I was told to trust the system, I did, now what?

I went through a great deal of Trauma with this man and I am told not to-mention it - so I did not.

Where is the justice?

You and Katherine are all I have to sort this out. I passed the case to you, as I believed you will do just that.

I kept Katherine, and hopefully the judge will think I am not a nightmare for changing solicitors, which i needed to do, as I stuck with Katherine.

My clear instructions are to get me what I am entitled to in view of what the man has done. - He has spent my share, despite being told not to, and he has destroyed my life. - yet I have been dignified right the way through.

Just because I was stressed and horribly intimidated in the witness box, should not affect what I am entitled to, and should not "damage my case", as I was beaten down, particularly in view of the history of our marriage, which the judge was not made aware of.

I am sure you have made the Judge aware there was concealment, errors, and deliberate inaccuracies (quite a few) on his Form E particularly in view of bank accounts, bank balances declared, and property values. If not what do we do?

I have been evidenced based and honest, and had to fight with one arm behind my back, all the way through this process, again this is not “fair and just".

What will it cost to conclude this?

Can we please come to an agreeable figure to conclude with everything I have paid so far, which is a substantial amount and not proportionate, to settlement…

The reason I came to you in the beginning was because I believe in you, but I have not got what was needed, which was full disclosure, which means the settlement is going to be based on his lies. If I get what I should be entitled to then I will be saying thank you, in more ways than one.

Novitas is considered a black debt and has to be paid before anything else. ie before settlement. (I am not sure Chris is aware of this, but that is a fact, the independent solicitor's I had to pay £250 for, in order to get Novitas agreed, told me this)…

The extra amount will hopefully be dealt with on Tuesday. Don't forget I have already contributed to Chris's costs as he has paid with marital funds which is

> the marital pot. I will make the decision if I want to appeal on the day. But let's hope it won't come to that, as it should not have to go to appeal."

89. Following HHJ Williams' judgment, there was discussion about an appeal. The supplemental bundle shows that counsel did think that there could be some merit in an appeal on at least one of HHJ Williams' findings, but that any appeal would carry substantial risks, including the possible reopening of other issues by Mr Griffin and the possibility of incurring the costs of a retrial.

90. On 21 October 2020 Ms Jones wrote to the Claimant giving an estimate of £36,000 for an appeal, and explaining that the Defendant, if the Claimant were to proceed with an appeal, would require an immediate payment of £10,000, the clearing of all outstanding fees (put at £42,000) by the end of November and payment of all appeal costs by 31 December. She also notified the Claimant that counsel would require seven days' notice to prepare the appeal, (which, as the Claimant says, meant that it was already too late to file an appeal notice on time).

91. The Claimant did not appeal. She says that she could not afford to do so, which is understandable, given the payment terms set out by the Defendant as a condition of acting on the appeal. It has been put to me that this is an indication that the Claimant was perfectly capable of making an informed choice, given adequate costs information, but on the evidence that there was no choice to be made. The Claimant simply did not, at the time, have the capacity to meet the payment terms set down by the Defendant as a condition of conducting an appeal. That was not the case with the ancillary relief proceedings.

The Law on Estimates

92. It is common ground that the Code of Conduct to which solicitors are required to adhere, requires (at paragraph 8.7) "that clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred."

93. Compliance with the Code of Conduct is not to be taken as an implied term of a solicitor's contract of retainer (see *Mastercigars No 1*, referred to below) but there are circumstances in which failure to provide a client with adequate costs information may limit the amount that the solicitor is entitled to be paid by a client.

94. Disputes over estimates of costs regularly come before costs judges, and I will restate now (with some tailoring for the facts of this case) principles to which I have previously referred in such cases.

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

96. The defendants raised that argument because, in accordance with the indemnity principle,

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

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

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

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

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

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

101. In *Mastercigars No 1* Morgan J considered, at paragraph 91, the appropriate application of the principles identified in *Garbutt v Edwards* and *Leigh v Michelin Tyre plc*:

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

102. He added, at paragraphs 97, 98 and 101:

> "Solicitors are entitled to reasonable remuneration for their services: see s 15 of the Supply of Goods and Services Act 1982. In considering what is reasonable remuneration, the court will want to know why particular items of work were carried out and ask whether it was reasonable for the solicitors to do that work and for the client to be expected to pay for it…
>
> The estimate is a useful yardstick by which the reasonableness of the costs may be measured. If there is a modest difference between the estimate and the final bill, because an estimate is not a fixed price for the work, one may be very little surprised by the modest difference. The greater the difference, the more it calls for an explanation. If there is a satisfactory explanation for the difference then the estimate may cease to be useful as a yardstick with which to measure reasonableness. Conversely, if there is no satisfactory explanation the estimate may remain a very useful yardstick with which to measure reasonableness...
>
> … (*Wong v Vizards* [1997] 2 Costs LR 46) …is an authority at first instance, prior to *Leigh v Michelin Tyre plc*, of a case where there was reliance by a client on his own solicitor's estimate. The judge in that case… indicated that 'regard should be had' to the level of costs the client had been led to believe he would have to pay. The question was then expressed as to whether it was reasonable for the client to pay much more than the estimated costs. In my judgment, the proper response to this decision is to hold that the court in that case was finding that, for the purpose of assessing reasonable remuneration payable to the solicitor, it is relevant as a matter of law to ask: 'what in all the circumstances it is reasonable for the client to be expected to pay?' Thus, even if the solicitor has spent a reasonable time on reasonable items of work and the charging rate is reasonable, the resulting figure may exceed what it is reasonable in all the circumstances to expect the client to pay, and to the extent that the figure does exceed what is reasonable to expect the client to pay, the excess is not recoverable."

103. Section 15 of the Supply of Goods and Services Act 1982 has been replaced by section 51 of the Consumer Rights Act 2015, but its effect, for present purposes, is the same.

104. In *Mastercigars No* 2 Morgan J (at paragraphs 47 and 54) considered the burden upon a

client to demonstrate that a solicitor's failure to provide adequate costs information had had adverse consequences:

> "…my formulation of what is required does not go so far as to require the client to prove on the balance of probabilities that he would have acted differently…the way in which the estimate should be reflected on the costs concerned was left to the good sense of the court… it is not necessary for the client to prove detriment in the sense of showing on the balance of probabilities that it would have acted in a different way, which would have turned out more advantageous to the client. In a case where the client satisfies the court that the inaccurate estimate deprived the client of an opportunity of acting differently, that is a relevant matter which can be assessed by the court when determining the regard which should be had to the estimate when assessing costs. Of course, if a client does prove the fact of detriment, and in particular substantial detriment, that will weigh more heavily with the court as compared with the case where the client contends that the inaccurate estimate deprived the client of an opportunity to act differently and where the matter is wholly speculative as to how the client might have acted...
>
> …In my judgment, the legal process involved in a case where a client contends that its reliance on an estimate should be taken into account in determining the figure which it is reasonable for the client to pay is as follows. The court should determine whether the client did rely on the estimate. The court should determine how the client relied on the estimate. The court should try to determine the above without conducting an elaborate and detailed investigation. The court should decide whether the costs claimed should be reduced by reason of its findings as to reliance and, if so, in what way and by how much.
>
> Whether there should be a reduction, and if so to what extent, is a matter of judgment. Specific deductions can be made from the costs otherwise recoverable to reflect the impact which an erroneous and uncorrected estimate had on the conduct of the client. Such an approach requires the court to form an assessment of the impact of the estimate on the conduct of the client. The court should consider the deductions which are needed in order to do justice between the parties. It is not the proper function of the court to punish the solicitor for providing a wrong estimate or for failing to keep it up to date as events unfolded. In terms of the sequence of the decisions to be made by the court, it has been suggested that the court should determine whether, and if so how, it will reflect the estimate in the detailed assessment before carrying out the detailed assessment. The suggestion as to the sequence of decision making may not always be appropriate. The suggestion is put forward as practical guidance rather than as a legal imperative. The ultimate question is as to the sum which it is reasonable for the client to pay, having regard to the estimate and any other relevant matter."

105. I would summarise the principles set out above, for present purposes, as follows.

106. If, on the assessment of costs between a solicitor and a client, it is found (a) that the

solicitor has never provided the client with an estimate of the costs that the client was likely to pay or (b) provided the client with an inadequate estimate of the costs that the client was likely to pay, it may be appropriate to limit the amount payable by the client to the solicitor to an amount that it is reasonable, in all the circumstances, to expect the client to pay. That may be less than would otherwise be payable for work reasonably done by the solicitor at a reasonable rate.

107. If no estimate was given, the assessing judge must consider to what extent the costs claimed would have been significantly lower if an estimate had been given when it should have been. If an estimate was given, the extent to which the estimate may offer a useful yardstick by reference to which a reasonable payment may be identified will depend first upon the extent to which the estimate has been exceeded, and second upon whether there is a satisfactory explanation for the extent to which the costs have exceeded the estimate.

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

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

110. As *Reynolds v Stone Rowe Brewer* [2008] EWHC 497 demonstrates, if an inadequate estimate is given at the outset, then the fact that the estimate was subsequently updated may not be sufficient to prevent the solicitor's costs from being limited by reference to the original. For instance, by the time the updated estimate is given it may be too late for the client to choose an alternative course of action.

The Claimant's Case

111. Before setting out the Claimant's case in detail I should address a tendency on the Claimant's part to elide the provision in the Defendant's contract of retainer to the effect that the Defendant's costs would not, other than in specified circumstances, "exceed any maximum figure we have agreed", with its provisions for estimates of costs. They are separate provisions. There is no basis for treating any of the Defendant's estimates as a maximum agreed figure. They were neither presented as maximum figures nor agreed as such. The Claimant is however right in saying that the Defendant agreed, should it appear that the upper end of any estimate was to be exceeded, to notify the Claimant's as soon as possible.

112. The Claimant says that the Defendant should, in accordance with its professional obligations, have provided her with an estimate of costs at the outset of the retainer. Having been advising her for some time, the Defendant had the requisite information, and should have borne in mind her limited funds and her serious concerns about accruing costs, both of which the Defendant was fully aware. A range of estimates could and should have been given to deal with any variables or contingencies.

113. The Claimant says in her written evidence that if Ms Kleyman had not given her

assurances, she would not have changed solicitors from Mr Bressington. The Claimant felt assured as to Ms Kleyman's abilities and skill set, and that Ms Kleyman was confident of her ability to change things for the good. It was because of the way Ms Kleyman and the Defendant said they would deal with the issues the Claimant was facing, including disclosure and trying to find out what had happened to Mr Griffin's finances and recognised my financial position, and their promises (as the Claimant puts it) over costs, that the Claimant decided to switch instruction to them. The Claimant was in considerable doubt about making the switch, but was persuaded. If Ms Kleyman and the Defendant had told the Claimant that they could not achieve what they set out to do, or that it would end up costing the Claimant over £180,000 to do so, the Claimant would never have instructed the Defendant in the first place.

114. The Claimant also says that at the outset, she made it clear to the Defendant that she wanted to retain the family home to live in with her three children, and to have in addition a couple of hundred thousand pounds to rebuild her life. The Defendant led her to believe that that was achievable. She would never, however, have agreed to the level of costs billed by the Defendant after the final hearing on 6 October 2020.

115. The Claimant says that she expected the May 2020 estimate to be accurate, and needed it to be accurate given the expense of funding the litigation. The Defendant had enough information by then (in fact the Defendant had enough information by March 2020, when the retainer was signed) to give an accurate estimate. The Claimant understood that both the May 2020 estimate and the July 2020 estimate were to cover her costs until the end of the case. Given that the Defendant knew that the Claimant was going to have to pay her costs from an expensive loan, taken out as a last resort, the Claimant's understanding was that £60,000 (which felt like a huge amount) would be the very most of that the Claimant would have to pay on top of what they had already received from the Claimant and Novitas to that point.

116. As for the increase in costs to September 2020, the Claimant was not in a position to deal with that, being "in the middle of things" and suffering severe stress. She did, however (as the correspondence referred to above illustrates) tell the Defendant that she had no more money and that they should not accrue further costs without letting the Claimant know exactly what they were. Ms Kleyman's response to the effect that the Defendant could come off the record left the Claimant in an impossible position, as she could not go to new solicitors at that stage.

117. Neither the May 2020 estimate nor the July 2020 estimate, says the Claimant, were time-limited (and the Claimant should not have been left to work out the total costs represented by the time-based May 2020 estimate: solicitors are under a duty to give information to a client in a way that is capable of being understood). The Defendant, on both occasions, should have been position to provide an accurate estimate, even if this included a range of figures depending upon contingencies. There was no explanation for the increase between the May 2020 estimate and the July 2020 estimate, and the Claimant was expressly shocked by the size of the July 2020 estimate. She should not have ended up paying three times as much.

118. The Claimant has produced the following table in order to illustrate the disparities between the estimates provided by the Defendant and the amounts ultimately billed by the Defendant:

	Relevant Date	**Estimate**	**Actual Costs (As per Breakdown)**	**Invoiced to Relevant Date**
Initial Work				
1st Estimate (Lower range)	22/05/2020	£31,500		
1st Estimate (Upper range)	22/05/2020	£46,428		£10,710.00
2nd Estimate	23/07/2020	£60,000		£22,648.80
End of evidence / closing submissions	14/09/2020		£134,902.73	£124,288.34
End of trial (judgment)	06/10/2020		£141,598.73	£146,218.34
End of instruction	28/05/2021		£182,728.43	£185,685.25

119. It seems to me that the pertinent figures, for present purposes, are those in the column headed "Actual Costs" in the above table. I say that because, for example, the bill total at the bottom right of the table is too high. Similarly, the figure of £146,218.34 represents costs billed at about the end of October 2020, which includes the Defendant's fees to 30 October and disbursements to 5 November. It does not represent costs billed to 6 October.

120. In summary, the Claimant says this. The estimates provided by the Defendant were inadequate. The Defendant failed properly to advise the Claimant as to the costs she would incur and this robbed her of any ability to make an informed choice as to whether to instruct the Defendant. Their failure to alert claimant to the need to revise their estimate robbed her of the chance to "take stock" of the amounts being spent.

121. There can be no excuse for the Defendant failing to provide an estimate at the outset or for failing to revise the estimate during the retainer. It was clearly wrong and unreasonable to deliver invoices to the Claimant during the trial which bore no relation to the estimates provided.

122. It is no explanation at all for the Defendant to argue that the Claimant's instructions and conduct meant that the estimates were ultimately inaccurate. That does not address why there was no initial estimate. Furthermore, it does not explain why, with the Claimant having been a client for many months before the first estimate, the first estimate was so inadequate. It also fails to explain why in July 2020, a mere three months before trial (and with the Claimant having been a client for six months) the second estimate was so inadequate.

123. Moreover, the Defendant had a duty to revise the estimates if they considered they were no longer adequate but they failed to do so.

124. The Claimant relied upon the estimates. The Defendant knew that she would do so because they were well aware of her concerns as to her limited funds and the issues she had with her previous solicitors. In all the circumstances it would not be reasonable for the Claimant to pay sums above the estimates.

125. The Claimant offers these alternative approaches to limiting the Defendant's recoverable costs.

126. The Claimant submits that it would be reasonable for her to pay the sum in the first estimate of 22nd May 2020 which, including incurred costs, would be £57,138. Alternatively, the Claimant argues that it would be reasonable for her to pay no more than the July 2020 estimate "for all costs going forward" which equates to £82,648.80, being the sum of that estimate and costs billed to date.

127. As a further alternative, the court could limit the Defendant to the May 2020 estimate or the July 2020 estimate plus incurred costs, plus no more than £6,000 including VAT for post-trial work (and in consideration of the paid fixed fee for the purchase of the family home) equating to £63,138 (if the May 2020 estimate is the reference point) or £88,648.80 (if the July 2020 estimate is the reference point). Either approach would entail treating each as an estimate of costs only to the end of trial, despite the use of the words (in advance of the May 2020 estimate) "the rest of the case" and (in the July 2020 estimate) "all costs going forward".

The Defendant's Case

128. The Defendant says that the Claimant was never short of resources. It was not that she did not ultimately have the means to meet the Defendant's fees: the problem was liquidity. Ultimately the Claimant succeeded in overcoming Mr Griffin's needs-based argument, as reflected by his offer of in the region of £750,000, and achieved an assets-based settlement well in excess of that.

129. The figure put by Ms Kleyman in oral evidence (which did not appear to be challenged) came to about £2,200,000, representing an equal division of matrimonial assets with a net value of £3,537,000 and the retention of personal assets worth around £500,000. I am not sure that it is right to count the Claimant's retention of her own property as part of the outcome achieved for her, but either way the Defendant's point is that these figures put the Claimant's expenditure on costs into perspective.

130. The Claimant, says the Defendant, had little choice but to see the ancillary relief proceedings through to their conclusion. Mr Griffin refused to settle for a reasonable sum (it would appear that the Defendant, which never received Tanners' files, had no knowledge of the offer of £2,500,000 apparently made by Mr Griffin and refused by the Claimant during Tanners' tenure).

131. Mr Griffin's litigation costs were similar to those of the Claimant: by the time of the final hearing (according to the evidence of Ms Kleyman) each had incurred costs in excess of £170,000. In fact the Claimant's costs exceeded Mr Griffin's by only about £19,000.

132. This was a fast-moving case that involved a vexatious opposing party, a difficult client in the Claimant (who did not follow advice and insisted on a range of unhelpful avenues being pursued), a whole range of unknowns and significant work to be done. The Claimant significantly increased costs with the time and attendances she demanded.

133. The requirement to provide the "best possible information" about the "likely overall costs of the matter and any costs incurred" is, on the wording of the code, triggered only "when appropriate and as their matter progresses". The logic of this wording and the timing of the obligations it imputes is that many solicitors will simply be unable to provide information as to the likely overall cost of a matter at the point of engagement or when litigation is in its nascent stage. There may be a nebulous range of variables, emanating both from the client and the opposing party. There may be a multitude of tactical decisions, issues of proportionality, evidence, disclosure, applications etc. yet to be made. The regulations allow for this in the wording "when appropriate" and "as the matter progresses".

134. It is wrong for the Claimant to assert both that an estimate should have been given at the time the Claimant first engaged the Defendant, or in the first few months after engagement. That disregards the qualifying words "best possible information", "when appropriate" and "as the matter progresses". The Defendant's retainer documentation covers the time of engagement, and the regular invoicing covered the position as the matter progressed.

135. It was simply not possible to have given more information either on engagement or during the litigation. To attempt would have been a breach of regulation 8.7 as it would not have been "the best possible information". It would have been guesswork, and on that basis alone would have been irresponsible.

136. Ms Kleyman was right to suspect there were a range of imponderables and many unknowns. She was right to be guarded as to what the litigation might cost and she correctly exercised caution, with the result that reliance could not sensibly have been placed upon them. That was to Ms Kleyman's credit. She and her associates at the firm worked incredibly hard for a difficult and understandably distressed client against a formidable opposite party and achieved an excellent result.

137. Neither the May 2020 nor the July 2020 estimates made any claim to precision. The febrile circumstances of the Relief proceedings were such that they could not and did not purport to include a range of possibilities, dependent upon instructions given by the Claimant and steps potentially to be taken by her ex-husband.

138. The May 2020 and July 2020 estimates did not suggest that reliance can be placed upon them. They do not incorporate an upper limit or suggest that they represent a worst-case scenario, in contrast to the figures offered to clients in *Wong v Vizards* and *Kenton v Slee Blackwell* [2023] EWHC 2613 (SCCO). They were deliberately and responsibly inconclusive. The Claimant cannot demonstrate reliance on the Defendant's estimates, let alone reliance to any detriment. She says that she relied upon the estimates, but not how or in what way.

139. The Defendant invoiced the Claimant every month (at times more frequently). Whilst this does not render estimates otiose, it does demonstrate that the Claimant was fully aware of her costs liability. Her response to those invoices demonstrates that reliance (or continued

reliance) could not have been placed on the estimates.

140. The invoices are themselves forensic and detailed. They contain a precise account of exactly what work was carried out and how each piece of work was billed. The Claimant was fully appraised as to her ongoing liability.

141. Even in early October 2020, there was no judgment or order. It was only at the point of receiving an order that there was any sense of what then needed to be done. Even at that stage it was not clear what would have to be done regarding enforcement, and to what extent there would be compliance with the order by the other party.

142. The Claimant, against Ms Kleyman's advice, then decided that she would purchase Skyview. This was a major undertaking given her lack of financial liquidity. The purchase only went through hours from expiry of the deadline. Ms Kleyman was instructed to do everything she possibly could to ensure the purchase went ahead, and she did so.

143. There is, says the Defendant, no fair basis for limiting the Defendant's recoverable costs by reference to estimates. The Claimant is still afforded all of the protections of a detailed assessment to ensure that she pays only those costs that were reasonably incurred and reasonable in amount.

Reasons for Departure from Estimate: Ms Kleyman's evidence

144. Ms Kleyman says that it was clear from the outset that if the Defendant were to be instructed to take full conduct of the file at any point, it was going to require a large amount of work. Certain facts were unknown and there were a lot of outstanding points to be dealt with, meaning an estimate of the overall fees was not going to be possible. Instead, as stated in the retainer documentation, the Defendant dealt with fees on a step by step basis and regularly invoiced for the work that had been done, so that the Claimant was kept up to date with the fees that were being incurred. Ms Kleyman also used her best endeavours to advise the Claimant of the fee implications of taking certain steps.

145. As the Proceedings were so contentious, a significant amount of additional work was undertaken. There were multiple applications for disclosure and financial information, continuous correspondence with the opposing solicitor and two determined parties who were unwilling to agree on any matters of fact.

146. Ms Kleyman advised the Claimant on a regular basis that she was incurring additional fees by pursuing points beyond what was advisable, but the Claimant was always very persistent with her instructions to proceed. The litigation conduct of both parties exacerbated the time spent on the matter by both parties' advisers, the cost of which was the subject of judicial comment throughout the Proceedings. HHJ Williams reiterated at the final hearing how the conduct of the parties had led to an unnecessary increase in costs for both sides.

147. HHJ Williams advised both parties to try to discontinue any other proceedings and to avoid any further litigation in the future regarding one another. This was advice that the Claimant did not take.

148. Due to the Claimant's litigation conduct throughout the case, she had several costs orders

made against her by the court, one of which was made prior to the Defendant's instruction. Ms Kleyman often advised the Claimant that she was at risk of such orders being made against her, but she persisted in such conduct until the end of the retainer.

149. The Claimant's method of giving instructions also, says Ms Kleyman, incurred substantial unnecessary costs. The Claimant would often make unnecessary and lengthy changes to draft documents and letters, against Ms Kleyman's advice and instructions; would spend substantial amounts of time discussing the same points with different members of Ms Claimant's team; would try to engage other employees of the Defendant in the case by asking them questions when they answered the office phone to her, even though they were not dealing with the case; would delay giving instructions until the last minute, giving the Defendant tight time frames to work within and making completed work redundant; would send multiple versions of amended documents and emails, meaning they had to be cross-referenced to identify the amendments and differences; would pursue matters against the Defendant's advice, necessitating extensive additional correspondence with Mr Griffin's solicitors; would give instructions to make further applications, often against Ms Kleyman's advice; would refuse to negotiate when appropriate; would fail to provide documentation and information within the required timeframes, meaning that deadlines were missed and additional work necessary to compensate; would provide information and lengthy documentation which had not been requested, which would then have to be reviewed for relevance; would pursue points in relation to Mr Griffin's conduct, business relationships and assets based upon her suspicions rather than on fact, again contrary to the Defendant's advice; and would repeatedly change her instructions.

150. As an example of unexpected changes of instructions, Ms Kleyman says that the Defendant spent much time with the Claimant discussing and agreeing the Claimant's future financial needs on the basis that she was not well enough to work. Medical evidence was obtained in order to support that position. On giving evidence at the September 2020 hearing, however, the Claimant confirmed not only that she could work but that she had a job offer, something of which she had never informed the Defendant. The time spent on establishing that the Claimant could not work had been entirely wasted, and her credibility as a witness was severely undermined.

151. As an example of unnecessary costs, Ms Kleyman refers to the Claimant's section 25 statement (a statement setting out her case in relation to the criteria listed in section 25 of the Matrimonial Causes Act). The Claimant was directed to file a section 25 statement Limited to 15 pages, in readiness for the final hearing. Ms Kleyman's team had prepared a draft of the statement, based on instructions and the known facts of the case and excluding superfluous material incorporated in an earlier draft by the Claimant. It was sent to the Claimant at 15 pages. Ms Kleyman asked the Claimant to reframe the document in her own words, to add any missing information, and to let Ms Kleyman know if there was anything else she thought should be included. Ms Kleyman reminded the Claimant of the page limit, but the Claimant nonetheless returned an amended version of the statement at 25 pages, adding back a lot of the superfluous material that the Defendant had removed from her earlier draft.

152. Ms Kleyman telephoned and emailed the Claimant and advised her that this was not what the Defendant had asked her for and that it was going to take a huge amount of time to go through to filter out the necessary information. The Claimant was insistent that the information was necessary and therefore the Defendant went through the Claimant's lengthy comments and amendments to make any necessary changes, inevitably incurring

additional fees.

153. Further additional costs were incurred, says Ms Kleyman, in relation to an application by Mr Griffin based upon alleged misuse of documents by the Claimant in breach of the principles set down in *Tchenguiz & Ors v Imerman* [20101 EWCA Civ 908; as a result of counsel contracting Covid -19 and having to attend the September 2020 hearing remotely, so that Ms Kleyman required additional support at the trial; from the overrun of the trial itself, and the need to prepare written closing submissions, with which the Claimant took issue; from the wrangling over the terms of the final order; from other applications, before and after the final hearing, which could not have been predicted; and from the Claimant's determination to purchase Skyview herself and keep it, as she perceived it, from Mr Griffin's underhand efforts to get Skyview for himself.

The Relative Strength of the Parties' Evidence

154. I will state now that I entirely accept that the Claimant, from the very beginning of her working relationship with the Defendant, was already very concerned about accruing costs, and that she made that clear. It is equally clear that the speed at which the Defendant's costs accrued to the conclusion of the hearing before HHJ Williams, to a level well beyond anything that had been estimated, came as a shock to the Claimant. She was already under the huge stress of fiercely contested ancillary relief proceedings, and costs at such an unanticipated level can only have made things worse. I do not doubt that the speed and scale at which costs accrued caused her a great deal of anxiety and concern, both before and after the September 2020 hearing.

155. The question of whether the Defendant's costs should be limited by reference to estimates turns, however, upon the wider criteria to which I have referred. It is with those criteria in mind that I am obliged to say that I do not find the Claimant's factual evidence generally to be entirely reliable. That undermines her case, particularly on her understanding of, and response to, such costs information as was or should have been given by the Defendant.

156. I will explain that conclusion, but first I must emphasise that I do not mean that the Claimant has been deliberately untruthful. It is rather that she is so disappointed at the outcome of the ancillary relief proceedings, and holds so strongly to her own convictions, that she can lose all perspective and make assertions that are entirely unsupported by credible evidence, or that are demonstrably at odds with credible evidence.

157. The Claimant can also be inconsistent to the point of self-contradiction, as demonstrated by her remarkable U-turn, in the course of the September 2020 hearing, with regard to her capacity to work.

158. The Claimant believes that all three firms of solicitors who acted for her failed her, because they did not expose the concealment and dissipation of assets to the value of about £4 million by Mr Griffin. It is not an overstatement to say that this is at the core of her evidence. She offers nothing of substance, however, to support the proposition that the Defendant's (or any of the Claimant's solicitors') work was in itself inadequate.

159. The possibility that HHJ Williams was right, or at least that it might not have been possible for the conscientious efforts of three firms of solicitors and two forensic accountants to find any evidence of substantial dissipation or concealment of assets by Mr Griffin, is not acknowledged by the Claimant.

160. The Claimant's dissatisfaction at her solicitors' performance is inextricably bound up with her dissatisfaction at the costs she had to pay them. Hence her complaint that none of her solicitors delivered what was promised to her, either in terms of outcome or cost. Cost is one thing, outcome another entirely. I have seen nothing to support the suggestion that any of her solicitors guaranteed that the ancillary relief proceedings would procure for her a half share in assets of between £7 and £7.5 million, or for that matter any other particular outcome. No remotely competent family litigation solicitor would have been foolish enough to do so. Certainly the Defendant made no such promise, and made a point, in the retainer documentation, of stating that the payment was not contingent upon outcome. The Claimant's sense of grievance against all of her solicitors is, nonetheless, so strong that it has in my view distorted her evidence, to the extent that she habitually overstates her case. I will offer some examples.

161. At the very outset of these proceedings, in her CPR Part 8 application form for an order for detailed assessment of the Defendant's bills, the Claimant stated (in support of the proposition that "special circumstances" existed justifying an order for assessment) that the Defendant's retainer documentation did not give her any notice of her right to apply for assessment. This assertion was supported by a statement of truth, but it is not true. As the extracts which I have reproduced above make clear, the retainer letter of 6 March 2020 provided clear notice of that right, as well as the Claimant's right to make a complaint and to refer matters to the Legal Ombudsman. This information (which included contact details for the Legal Ombudsman) was set out prominently in the letter itself and not, for example, in a more obscure position within the Defendant's terms of business.

162. In her first witness statement, the Claimant says that Ms Dunseath "said I should appeal" from the judgment of HHJ Williams (her inability to fund an appeal effectively being blamed upon the Defendant). I have already referred to Mr Dunseath's cautious advice, which was relayed to the Claimant by Ms Kleyman. The Claimant's description of it is not accurate. Nor did Ms Dunseith say what the Claimant "should" do.

163. I have already mentioned the change in the Claimant's evidence from saying that she received the Defendant's 8 September 2020 bill immediately after the September 2020 hearing, to saying that she received the August and September bills together immediately after the September 2020n hearing. In her first witness statement she describes the 8 September bill as invoice of £64,522.94 "for 11 working days' work".

164. This description is misleading. The 8 September bill includes counsel's brief and refresher fees: the Claimant's time charges are £35,102.50. As the accompanying time summary shows, that represents work undertaken over 14 days, not 11 days. That includes the last weekend in August, the August bank holiday and the first weekend in September, over which, according to the Defendants' bill breakdown, various fee earners undertook just under 20 hours' work. The Claimant should be aware of the weekend work, because much of it involved communications with the Claimant herself. According to the supplementary bundle, it included multiple phone calls and emails between the Claimant and Ms Kleyman over the August bank holiday weekend, including much information which Ms Kleyman advised the Claimant was irrelevant and wasteful of the time needed to prepare for the forthcoming hearing.

165. The Claimant says in her first witness statement that all three firms of solicitors who acted for her in the ancillary relief proceedings had told her that "I faced little ultimate

risk as my husband would pay"; that she had been told by Tanners that Mr Griffin would "pay for the divorce proceedings", by which she evidently means the ancillary relief proceedings; and that she was told by Mr Bressington that she would not have to repay the capital of the Novitas loan "for the reason that my former husband was using his matrimonial assets to pay for his solicitor so it was only fair that the matrimonial assets were used to pay my legal fees… ". That last statement she describes as "false", a term which necessarily implies incompetence or worse on Mr Bressington's part.

166. In other words, the Claimant says that all three of her solicitors (with remarkable unanimity, given the obviously erroneous nature of such advice) advised her that Mr Griffin would ultimately bear the burden of her ancillary relief costs. I am quite unable to reconcile that with the Claimant's own concerns about accruing costs; her complaint, on 4 May 2020, that she was already bearing a costs burden "disproportionate" to whatever settlement she would receive; or to the advice from Tanners and Mr Bressington to which I have already referred.

167. It is also quite clear from the Claimant's own evidence that Mr Bressington arranged for the Claimant to obtain independent advice before taking out the Novitas facility, and that the Claimant understood from that advice that the Novitas facility would have to be repaid, as she herself put it, "before anything else". It is difficult to see how the Claimant could ever have thought that she would not have to repay the capital of the Novitas loan, or that the burden would somehow shift to Mr Griffin.

168. The Claimant's evidence to the effect that she wanted only to retain Skyview, with about another £200,000 to allow her to move on with her life, is also at odds with the documentary evidence.

169. In an email to Ms Kleyman dated 28 January 2020, the Claimant did say:

> "I have just asked for the family home (which is worth 2,000,000) and couple of hundred to rebuild my life… he has told me to get lost".

170. It is not possible however to take that statement at face value, given that the Claimant, during Tanners' tenure of the case (and unknown to the Defendant) had already refused an offer of £2,500,000. That aside, her instructions to the Defendant (for example, on 30 September 2020) made it clear that what she actually wanted was a half share in matrimonial assets which she put, and continues to put, at between £7 million and £7.5 million. It was in the hope of achieving that outcome that she instructed the Defendant in place of Mr Bressington. If anything, the Claimant's email of 28 January 2020 supports Ms Kleyman's evidence to the effect that the Claimant's instructions tended to be inconsistent, necessarily adding to the costs of representing her.

171. The Claimant has also attempted, in her evidence, to pass to Ms Kleyman responsibility for the fact that the Claimant attempted to extend her draft section 25 statement, as prepared for her by the Defendant, to 10 pages beyond the permitted limit. She attributes this to advice on the part of Ms Kleyman that the statement should refer to issues of conduct. I do not find this convincing. The advice in question was given 29 April 2020, as general advice on the usual content of such statements, before the Defendant obtained the papers from Mr Bressington and when Ms Kleyman was not in a position to know that an order had been made to the effect that the parties' statements should not raise conduct issues.

172. By 28 July 2020, when she attempted to extend a draft statement from the permitted 15 pages to 25 pages, in the process (as Ms Kleyman explained to her) causing substantial unnecessary costs to be incurred, the Claimant would not have been under any illusions as to the permitted length or content of her statement.

173. With regard to the September 2020 hearing, the Claimant's evidence tends to support Ms Kleyman's assertion that whilst the Claimant was genuinely anxious to minimise costs, she conducted herself in a way that defeated that aim.

174. On 31 August Ms Dunseath advised Ms Kleyman that she had developed symptoms of Covid-19. She was obliged to self-isolate and to attend the September 2020 hearing remotely. The Claimant complains, by reference to an email sent by Ms Kleyman to counsel on 31 August ("I'm not going to tell Clare at the moment as it will only add to her stress at the moment") that she was not told of Ms Dunseath's illness until two days before the September 2020 hearing, but 31 August was two days before the September 2020 hearing.

175. The Claimant complains that because Ms Dunseath was not physically present, she was left alone and felt isolated, especially when subjected to cross-examination. She suggests that, had she somehow been informed of the problem earlier, a "replacement" could have been found for Ms Dunseath, or an adjournment sought. That, given the likely adverse cost consequences for the Claimant of either course of action, is not consistent with a desire to minimise costs.

176. Nor do I understand why the Claimant felt left alone or isolated when Ms Kleyman was present, along with some support from her team (necessitated, on the evidence, by Ms Dunseath's inability to attend physically: Ms Kleyman had planned to attend alone).

177. I need also to refer to the Claimant's general response to cross-examination in this court. Mr Dunne's written closing submissions for the Claimant state that she found the process extremely difficult and stressful. Whilst I am prepared to accept that, I have to say that the Claimant did not appear to be remotely intimidated by the process. On the contrary, the most striking feature of her oral evidence was her determination to say what she wished to say, regardless of whether it had to do with the questions she was being asked. This does tend to support Ms Kleyman's evidence to the effect that the Defendant has real difficulty in working economically and focusing on what is relevant.

178. Turning to Ms Kleyman's evidence, it tends to descend into argument, which is not appropriate in a witness statement. Nor, for reasons I shall give, am I entirely convinced by her evidence on the difficulties of providing the Claimant with reliable estimates.

179. Whilst Ms Kleyman's factual evidence was generally frank and clear, there are some points of detail that I cannot accept. Ms Kleyman's original proposal, in the March 2020 letter of retainer, to agree on costs on a "step-by-step" basis was not met, as she asserts in her written evidence, by the Defendant's regular billing. The proposal reads as a reference to agreement in advance, not to billing in arrears. Under cross-examination, Ms Kleyman readily agreed that she did not deal with costs on a step-by-step basis and explained that this was an arrangement mooted at an early stage, when she did not have sufficient information to do more.

180. That seems to me to be more realistic: in context, the reference to agreement on a step-by-

step basis reads as a suggestion for managing matters at a point where it is not yet possible to give an estimate. It does not, in my view, stand to be read as a contractual term, and it is understandable that any such arrangement would have been regarded as superseded once Ms Kleyman was in a position to give what she thought to be a realistic estimate.

181. Ms Kleyman also says that Ms Dunseath advised that an appeal by the Claimant from the judgment of HHJ Williams did not have prospects of success. Whilst that better describes the tone of Ms Dunseath's advice than the evidence of the Claimant, it still does not seem to me to be entirely accurate.

182. I also have some difficulty with Ms Kleyman's evidence to the effect that, at the time of the September 2020 hearing, both parties had spent in excess of £170,000 on their legal costs, and that the Claimant's costs were about £19,000 in excess of her husband's. That is quite a significant detail, because it might support the conclusion that the Claimant's costs would have accrued to the level they did regardless of any estimate, or of the Claimant's response to it.

183. I cannot, however, find a solid basis for concluding that the Claimant's accrued costs were in the region of £170,000 at the end of the September 2020 hearing. Whilst I do not understand the basis for the Claimant's reference, on 29 April 2020, to accrued costs £130,000, I understand that the Claimant paid Tanners £40,000, and that AB Family Law had received all but £13,000 of an initial Novitas facility of £70,000. It would follow that the Claimant had already incurred at least £97,000 before the Defendant was instructed.

184. The Defendant's billed costs to 8 September 2020 came to £124,288.34, which, adding the figures already paid to Tanners and AB Family Law, would put the Claimant's total costs of that date to in excess of £221,000. The proposition that Mr Griffin's total accrued costs, by the conclusion of the September 2020 hearing, were at a similar level does not seem to be challenged, but given that the figure of £170,000 does not seem to add up, I am unable to attach a great deal of weight to it.

185. Generally, however, Ms Kleyman's evidence is rooted in the realities of the ancillary relief proceedings, whereas the evidence of the Claimant is not. It also tends to be supported by the documentary evidence, whereas the Claimant's does not. In consequence, where there is a conflict of factual evidence, I prefer that of Ms Kleyman.

The Defendant's Professional Obligations

186. The professional obligations of a solicitor in relation to estimates of future costs, under the Code of Conduct, are necessarily flexible enough to cover all kinds of situations. A solicitor's obligation is to give the best possible costs information, both when the solicitor is engaged and as a matter proceeds. In practice many solicitors will at the outset of a retainer be unable to offer anything more than a tentative and highly qualified figure. Depending upon the circumstances, it may not be possible to give a meaningful estimate at that stage.

187. Ms Kleyman, under cross-examination, said that it would have been irresponsible to produce an estimate when the information available to the Defendant was so inadequate that it would be more speculative than real (I paraphrase, but that is the essence of it). That seems to me, in principle, to be consistent with her professional obligations.

188. Nor am I aware of any authority to the effect that it is incumbent upon a solicitor (whether at the outset of retainer or at any other stage) to offer a range of estimates to cover various contingencies. There is nothing in the Code of Conduct to support that proposition. *Mastercigars* requires consideration of whether there is an explanation for the extent to which costs have exceeded an estimate. If a solicitor's duty were to provide an estimate for every contingency, there could never be an explanation. In my view, the obligation is only to give the client a realistic indication of the likely cost of a matter, based on what is known at the time.

189. I would add that any initial estimate must necessarily be founded on two premises. The first is that the client will (subject to any client's right reasonably to query and discuss it) accept the advice of solicitors and counsel, rather than resisting, overruling or ignoring it. The second is that the client will behave in a way that is reasonable and conducive to the cost-effective conduct of the case in hand.

190. If, after the estimate is given, the client refuses to accept reasonable advice, and chooses to behave in a way that is not reasonable and not conducive to the cost-effective conduct of the case, then it does not lie with the client to visit the financial consequences of that conduct upon the solicitor. The authorities to which I have referred do not support the conclusion that a solicitor must go unpaid for unnecessary or excessive work undertaken in consequence of a client's own unreasonable conduct, merely because that conduct has made nonsense of a previous estimate.

191. I appreciate that it may be incumbent upon a solicitor to provide or to update an estimate at a point when it has become apparent that the client's conduct is, persistently, such as unnecessarily to increase costs. Any solicitor would have an obligation to warn such a client against wasting time and costs, but I do not believe that the obligation could extend to providing an estimate of future costs based upon the assumption that the client will continue to behave unreasonably. Even assuming that it would be possible to give a reliable estimate based on that assumption, the responsibility for such conduct is that of the client, not the solicitor. The most the solicitor could be expected to do is provide a realistic estimate within normal parameters and warn the client that if he or she persists in unreasonable conduct, the final figure may be much higher.

192. In a position statement, prepared for the purposes of the hearing of this preliminary issue, the Claimant says that an inadequate estimate can rob a client of conducting a considered cost/benefit analysis of instructing a particular firm, and this that this is such a case.

193. I agree with the first part of that statement. As for the second, I have to determine whether the Defendant offered estimates and updated estimates in good time; whether there is an explanation for the extent to which costs have accrued in excess of such estimates as were given; whether it is right (bearing that in mind) to conclude that the costs information given was inadequate; how any such inadequacy affected the Claimant's position, bearing in mind any reliance upon the figures given and the alternative options open to the Claimant; and, in the light of my conclusions on those matters, whether the Defendant's recoverable costs should be limited by reference to estimates given or not given.

The Timing and Adequacy of the Defendant's Costs Estimates

194. When the parties entered into a contract of retainer on 6 March 2020, the Defendant was

not instructed to conduct the ancillary relief proceedings. In consequence, the Defendant was under no obligation to an offer an estimate for doing so. Any estimate given in March 2020, based upon what the Defendant had actually been asked to do at that stage, would quickly have been rendered meaningless by subsequent events. Any such estimate, or any failure to give one, could have no bearing upon this assessment.

195. That aside, I accept the evidence of Ms Kleyman to the effect that, as at March 2020, the scope of the Defendant's instructions was still unclear. She did not yet know exactly what the Claimant wanted the Defendant to do. To give any kind of realistic, reliable estimate in those circumstances would have been impossible.

196. It was put to Ms Kleyman on cross-examination that by March 2020 or at least by 24 April, when the Defendant was first instructed to take over from Mr Bressington, the Defendant already had enough information to provide the Claimant with a reliable estimate of costs. Ms Kleyman says that such was not the case.

197. I accept the evidence of Ms Kleyman in that respect. It is consistent with the documentary evidence showing that the beginning of May 2020, the Claimant was still attempting to put together a comprehensive set of papers, including Tanners' files (which the Claimant had led Ms Kleyman to believe would be available to her, but which were not). She did not, for example, know exactly what had been ordered at the PTR. Ms Kleyman needed to form her own independent view upon the likely cost of the work she was being asked to undertake. She needed a full set of papers for that, and she did not have one. On the contrary, the information provided by the Claimant at the time appears to have been partial and not entirely accurate.

198. The Defendant's May 2020 estimate seems to me to have been offered as soon as was reasonably possible. I also accept that it was of necessity very heavily qualified, for the reasons given by the Defendant at the time, and could not be entirely complete, for the reasons given by Ms Kleyman now. I do not think that it particularly matters that it was mostly put in terms of hours rather than currency: any numerate client would have had an idea what it meant, and could have asked for any necessary clarification. It was rightly characterised by the Claimant, in her oral evidence, to be a "rough guide" and it was effectively superseded by the July 2020 estimate.

199. When the July 2020 estimate was given, the May 2020 estimate had not been exceeded but it had evidently become apparent that it was not adequate, so in accordance with the terms of the defendant's retainer it was incumbent upon the Defendant to update it. The July 2020 estimate, albeit put together for the purposes of obtaining funding from Novitas, was effective as an update and accepted by the Claimant as such.

200. My conclusion is, accordingly, that for present purposes the July 2020 estimate, rather than the May 2020 estimate, is the pertinent one. I do not entirely accept the Defendant's case on the necessary limitations of the July 2020 estimate. It was the foundation for the Claimant's Novitas loan extension. Whilst I accept that it was not and cannot sensibly be read as a "maximum" figure, it was evidently intended to ensure that the Claimant would have sufficient funds to pay the Defendant's fees to trial, so it must have been intended (as the Defendant's internal communications at the time show) to be reasonably reliable.

201. The next question is whether the July 2020 estimate stands to be read as an estimate of all costs to the complete resolution of the proceedings, as the Claimant says, or as the

Defendant says, only of costs to the end of trial. The phrase "all costs going forward", as employed by Ms Jones in July 2020, favours the former interpretation. As Ms Kleyman points out, however, it is not difficult to understand that an estimate broken down into stages concluding with the end of a trial, as an estimate of costs only to the end of that trial.

202. It seems to me that the July 2020 estimate fits both descriptions. As it is presented as a figure for costs to the end of trial, and also "all costs going forward", the necessary implication is that it was intended to be sufficient to cover post-trial costs without further adjustment.

203. It would have been better to at least to mention that there must be post-trial costs, but in July 2020 it would not have been possible to give any reliable forecast of such costs, dependent as the figure would be on the outcome of the proceedings. It would also have been reasonable to expect that such costs would be quite limited, being incidental to the implementation of whatever order the court should make. In the meantime the focus, understandably, was upon obtaining funding; getting the right order; putting the Claimant's case to the trial judge as effectively as possible; and obtaining an equal division of assets which would hopefully be commensurate with findings to the effect that Mr Griffin had indeed dissipated or concealed assets.

Whether and When Updated Estimates Should Have Been Given

204. The July 2020 estimate was effectively a total of £82,648.80 including costs billed to the end of June 2020. It extended to the anticipated end of the September 2020 hearing (7 September) and incorporated the assumption that there would be insufficient post-trial costs to merit any significant adjustment.

205. According to the Defendant's breakdown, costs, disbursements and VAT to the end of August 2020 came to just short of £80,000. That did not include any of counsel's brief fees, estimated at £21,000. It should have been obvious, at least by then, that the estimate given just over a month earlier was going to be substantially exceeded. Under the terms of the Defendant's retainer, the Defendant was under a contractual obligation to notify the Claimant of that, but did not. I appreciate that intensive work was still being undertaken to prepare for trial. It was nonetheless incumbent upon the Defendant to update its estimate to the end of trial, and the Defendant did not.

206. As I have observed, however (see *Reynolds v Stone Rowe Brewer*) whether an estimate has been updated is not always to the point. In this case, an updated estimate so close to trial, could scarcely have made a difference, other than to worry the Claimant in precisely the way that the Defendant's August and September 2020 invoices did: there would have still been little choice but to carry on, at least to the end of the trial. The real question is whether the July 2020 estimate, given less than two months before the anticipated end of trial, was inadequate.

207. For the post-trial period from the handing-down hearing on 6 October 2020, no estimate was ever given. On 30 September 2020, Ms Jones advised the Claimant in necessarily broad terms about the further work that was likely to have to be done and explained, rightly in my view, that it would not be possible to give an estimate for such work until the outcome of the ancillary relief proceedings was known. She also attempted to record what the Defendant understood to be in agreement the effect that it will continue to work

for the Claimant on the understanding that its outstanding fees would be paid once the order of HHJ Williams had been implemented (which, to a substantial extent, is what ultimately happened).

208. The Claimant responded by asking that the Defendant and Ms Dunseath do nothing without precisely costing it in advance, an instruction with which it would not have been possible to comply. She was also ("my clear instructions") instructing Ms Kleyman to achieve her for her what the Claimant believed to be her full entitlement, notwithstanding her manifest dissatisfaction with the way in which how the September 2020 hearing had gone and her equally clear understanding that the case was not going her way. I cannot see how Ms Kleyman could have offered an estimate for such an unachievable goal.

209. As for what actually had to be done, Ms Kleyman should, in accordance with per professional obligations, provided a further estimate after 6 October. I can understand that in all the circumstances, not least the Claimant's tendency not to follow her advice, Ms Kleyman might have found it difficult to offer an estimate for costs after 6 October, but she should at least have tried. That was her professional obligation.

210. Any estimate would however necessarily have been based upon a realistic approach to the implementation of the order of HHJ Williams, accompanied as appropriate by a warning that if the Claimant failed to heed his warnings about continuing conflict, costs could be much higher. I do not believe that any such estimate would have borne any real relation what followed, or (for reasons I will give) that it could have changed the course of events.

211. The correspondence to the end of the retainer in May 2021 records a dreadful saga of practical complications, arguments about the marketing and sale of Skyview (even as late as 25 November 2020, according to the supplemental bundle, the Claimant was requesting a conference with Ms Kleyman and Ms Dunseath, and asserting that "Someone needs to talk to the judge"), procedural wrangling, continuing conflict between the Claimant and Mr Griffin and, to the Claimant's increasingly vocal dissatisfaction, ever-mounting costs.

212. Much of this, for example the running battle that developed over the marketing and sale of Skyview (discussed in more detail below) was not foreseeable in October 2020.

The Claimant's Reliance on Estimates

213. In most cases it would not be necessary to consider a client's reliance on costs advice until a conclusion had been reached on the adequacy of the costs advice given. In this case, the issues of adequacy, reliance and consequences are interlinked, because the Claimant's conduct is offered by the Defendant as the primary reason for costs exceeding estimate. I will, accordingly, address the issue now.

214. I am unable to accept that the Claimant, as she says, understood the Defendant's July 2020 estimate to represent the "very most" that she was going to have to pay under any circumstances. Again she overstates her case: that was expressly not the import of the July 2020 estimate. The Claimant's reaction to Ms Jones' email of 9 September (enclosing bills which brought costs and disbursements to date over £100,000) was not a happy one, and she was anxious to know whether that was the final figure, but it is not consistent with a previous understanding that she was never going to have to pay more than the July 2020 estimate. Had there been any such understanding, she would surely

have mentioned it at the time.

215. The Claimant's other evidence in relation to reliance upon the Defendant's estimates is, on consideration, of limited assistance.

216. She says in her first witness statement that she relied upon all her advisers' costs estimates as she relied upon all of their advice, and that, notwithstanding her anxiety, she put herself in debt for what she believed at that time to be "the greater good", which I interpret as the achievement of her aims for the ancillary relief proceedings. That I can entirely accept.

217. In her second witness statement the Claimant says that she switched solicitors from Mr Bressington to the Defendant not only because they promised to try and find out what had happened with regard to Mr Griffin's finances, but because of their "promises over costs":

> "I was in considerable doubt about making the switch at the time, but was persuaded. If they had told me that they could not achieve what they set out to do, or that it would end up costing me over £180,000 to do so, I would never have switched instruction to them in the first place…
>
> I feel very let down by my solicitors. They knew that I had financial difficulties when I instructed them, and they had all the information they needed to give me an accurate estimate of costs. If they had told me the cost would be £180,000 to act for me, I would not have instructed Stephanie but would have looked elsewhere. If I had been given an accurate estimate, then I could at least have approached other firms and obtained quotes for them to act. Kleyman's failure to tell me what this case would cost has meant I lost the opportunity to explore alternative options."

218. As I have said, the Defendant did not promise the Claimant that the outcome of the ancillary relief proceedings would deliver everything she wanted, and made it clear that their charges would not be linked to the outcome. As for estimates, it is common ground that the Defendant did not offer any estimate of costs before 20 May 2020. Whilst it is clear that the Defendant agreed to act in a cost-efficient a way as possible, the Claimant cannot have, and did not, instruct the Defendant at the beginning of May 2020 because of any promise to the effect that costs would be limited to any given figure.

219. Nor was the Defendant under any obligation to (or, for that matter, ever asked to) provide the Claimant with any specific information regarding costs until after a retainer was signed, and the Defendant cannot have been under any obligation to provide an estimate for the cost of conducting the ancillary relief proceedings until after the Defendant was instructed to do so.

220. The Claimant's complaint that she would not have instructed the Defendant if she had known how things would turn out and what it would ultimately cost is, accordingly, no more than an expression of hindsight, of no assistance in determining the issues I have to address.

221. As the Claimant's table of estimates, costs and bills shows, costs, disbursements and VAT to 6 October 2020, the date of judgment, were in the region of £141,000, as compared

with the July 2020 estimate of (including billed costs) £82,648.80. By the conclusion of the matter, billed costs, disbursements and VAT came to £181,954.64, more than twice the July 2020 estimate.

222. The real question for present purposes is, accordingly, what the Claimant might have done, for example, had an estimate been given in July 2020 of total costs at in the region of £140,000 to the end of the trial, or £180,000 to the conclusion of the retainer. The only evidence the Defendant gives that helps with those questions is that, by the conclusion of the proceedings before HHJ Williams, she felt that she was "stuck", with no option but to continue with the Defendant.

223. I accept that. The speed at which costs to 6 October accrued in excess of the July 2020 estimate left both parties in a difficult position. The Defendant's decision to continue acting on the understanding that its fees would be met following the implementation of HHJ William's order, and the Claimants' continuing instructions on that basis, strikes me as a pragmatic solution, and the best option for both parties at the time.

224. With regard to costs as billed between October 2020 and May 2021, the Claimant says that she would never have accepted that level of costs, but not what she might have done had she had advance warning of it. Given her lack of ready funds, a change of solicitors does seem unlikely (and Ms Kleyman, like her predecessors, could have refused to release any papers without payment). The Claimant does mention that she sought out alternative conveyancing solicitors and alternative counsel for a hearing in April 2021, but the conveyancing fees themselves are not disputed and alternative counsel was sought because the Claimant did not have the ready funds to pay Ms Dunseath, so that does not add a great deal.

225. The only conclusion I can draw is that the Claimant, notwithstanding her real concerns about accruing costs, might well have been willing to invest in the Defendant's services at a cost of £140,000, or even £180,000, in order to secure the recovery of a half share of between £7 million and £7.5 million, at least if Ms Kleyman would be willing (as, in fact, she was) to wait for payment until the division of assets had been finalised. Her dissatisfaction lies in having spent so much money without securing the outcome that she wanted. Her statement, in one of her emails of 30 September 2020, to the effect that "If I get what I should be entitled to then I will be saying thank you, in more ways than one" suggests that if she had received what she regarded as a fair share of the matrimonial assets, her attitude to the Defendant's costs and disbursements might have been different.

226. As for costs after 6 October 2020, I accept Ms Kleyman's evidence to the effect that the Claimant was so fixated on her belief that Mr Griffin had "stolen" from her that she lost sight of all reason and commerciality.

227. One of the central tenets of the Claimant's complaint about the judgment of HHJ Williams is that it provided for the sale of the home in which she had brought up her children. That is a regrettable necessity in very many divorce cases. The Claimant had no absolute right to remain in Skyview, but it seems to be her belief that she did, and that her absolute determination to retain the property, against Ms Kleyman's advice, rested on her conviction (entirely unsupported by evidence) that she and her husband were in competition for it. The costs consequences were substantial and most regrettable. Ms Kleyman could not have foreseen them, and the Defendant cannot be held responsible for them. The documentary evidence is littered with warnings by Ms Kleyman to the

Claimant that she was unnecessarily increasing costs, which the Claimant chose to disregard. Nothing Ms Kleyman might have said would, in my view, have persuaded the Claimant to behave differently over the post-trial period, or achieved any substantial saving in costs.

Whether There Is an Adequate Explanation for Costs Exceeding Estimate

228. The Claimant complains that all three of her solicitors departed substantially from their initial estimates. That is self-evidently true of Tanners, and would appear to be true of Mr Bressington, given that when he was disinstructed only £13,000 was left of the £70,000 Novitas facility which should have met most of his estimate of up to £75,000 to trial.

229. Where I differ from the Claimant is that this necessarily indicates failings on the part of her solicitors. It seems to me that they had to revise their initial views in the context of ancillary relief proceedings that, thanks to nature of the issues and the conduct of both parties, defied reasonable estimates of costs based upon a broad experience of such proceedings.

230. Hence Tanners' eventual warning that costs could escalate to £100,000, and (according to the supplemental bundle) Mr Bressington's revision of his opinion of Tanners' fees when he came to understand more about the case.

231. The speed within which the Defendant's July 2020 estimate was exceeded, and the amount by which it was exceeded by the end of trial (especially given that the Claimant would have made it clear that the proceedings were very contentious) does at first sight tend to support the conclusion that it was over-optimistic and, accordingly, inadequate. Ms Kleyman says however that had the Claimant conducted herself reasonably, then, excluding the costs of some unexpected developments (referred to below) the final costs figure would have been in the neighbourhood of the July 2020 estimate.

232. That seems perfectly possible. If a client takes up twice as much of a solicitor's time as is reasonably necessary, then costs are likely to be twice the amount of a previous reasonable estimate. An email from the Claimant dated 18 June 2020, for example, thanks Ms Kleyman "for listening to me repeat myself over and over". Ms Kleyman's time-based charges will, in consequence of such repetition, been a multiple of what they should have been.

233. There are two factors in particular that, in my view, militate against the conclusion that the July 2020 estimate was inadequate.

234. The first is that such a conclusion would not recognise developments which could not reasonably have been anticipated in the July 2020 estimate. They include, for example, multiple applications for disclosure rather than one; unanticipated expenses such as the costs of Taylor Wessing, incidental to the disclosure applications; the costs attendant on the *Imerman* issue; Ms Dunseath's illness during trial; the extended trial; the need for written closing submissions; and the Claimant's determined resistance to the closing submissions Ms Dunseath wished to make.

235. The second is the more important. The July 2020 estimate would have reflected the Defendant's understanding that the Claimant wanted to keep costs to a minimum. The documentary record demonstrates however that much of what Ms Kleyman says about the

Claimant's conduct, and its inflationary effect on costs, is justified. The Claimant, for all her genuine anxiety about costs, was either unable or unwilling, despite repeated warnings from Ms Kleyman, to work effectively with the Defendant to keep costs down to a more reasonable level. The way in which she insisted on conducting herself effectively guaranteed that any realistic estimate would be exceeded.

236. If I were to restrict the Defendant's recoverable costs to the amount of that estimate, whether to the end of trial or to the end of the retainer, then the Defendant would go unpaid for all the extra work that was undertaken precisely because the Claimant would not take what seems to me to have been sensible advice, and refused to conduct herself in a reasonable, realistic and cost-effective fashion. That cannot be right.

237. If one could, on some broad-brush basis, identify the level of costs that might have been incurred had the Claimant conducted herself in a more reasonable and realistic way, then one could compare that figure with the estimate, make allowance for unforeseeable developments, and come to a conclusion about whether the estimate was indeed inadequate and whether the Defendant's costs should be limited accordingly. That, however, is not possible. The Defendant's fees are inextricably bound up with the Claimant's day to day instructions and the Claimant's day to day conduct. The Claimant has by her own actions made it impossible to identify any figure by which the Claimant's costs and disbursements should be limited.

238. It follows that it would not be right to limit the Defendant's recoverable costs to the figure of £82,648.80; to £82,648.80 plus some arbitrary figure for post-trial costs; or to any other identifiable figure. The only way to identify a figure which is reasonable for the Claimant to pay the Defendant is to undertake a detailed assessment, evaluating what the Defendant did on the Claimant's instructions (and taking into account for example the Claimant's counter-allegations about duplication and wasted costs on the part of the Defendant).

Summary of Conclusions

239. For the purposes of determining whether the Defendant's costs, as recoverable from the Claimant, should be limited by reference to estimates, the only pertinent estimate given by the Defendant was the July 2020 estimate. Read properly in context, the July 2020 estimate included costs already billed and came to £82,648.80. It should have, but did not, mention post-trial costs. There would at the time however have been insufficient information to offer an estimate of post-trial costs and it would have been reasonable to expect that such costs would not be substantial.

240. After the July 2020 estimate, costs accrued so fast and so substantially that the actual figure to the end of the September 2020 hearing was in the region of £141,000. There is however an explanation that accounts for at least some of the difference between the July 2020 estimate of £82,648.80 and the actual figure of £141,000.

241. Part of that explanation lies in developments that were not so reasonably foreseeable as to fall within the July 2020 estimate.

242. Part of it lies in the conduct of the Claimant. Any estimate given by the Defendant would necessarily have been based upon the premise that the Claimant would accept reasonable advice, act in a reasonable way, avoid incurring substantial unnecessary costs and heed

repeated warnings that she was incurring substantial unnecessary costs.

243. The Claimant did none of those things. Despite repeated warnings, she habitually caused unnecessary costs to be incurred, making it inevitable that the July 2020 estimate would be exceeded. The Defendant is entitled to be paid for any costs incurred in consequence of that conduct. Further, in the light of that conduct it is not possible to reach the conclusion that the July 2020 estimate was inadequate or to identify with any fairness any overall limit that should be put upon the Defendant's recoverable costs and disbursements to the end of the September 2020 hearing.

244. The Defendant should have updated, but did not update, the July 2020 estimate when it became clear that it would be exceeded. That would already have been the case at least by the end of August 2020. Any such update would not, however, have changed the course of events to the end of trial.

245. After the final ancillary relief hearing in September 2020, the Defendant was not in a position to provide any useful further estimate of future costs until the outcome of the ancillary relief proceedings was known. That would have been on 6 October 2020. An updated estimate of future costs should have been given then. None was given then or subsequently, despite the fact that the Claimant, who had incurred costs of approximately £141,000 to 6 October 2020, went on to incur another £40,000 approximately in further costs.

246. Any such estimate could not, however, have foreseen the substantial difficulties attendant upon the finalisation and the implementation of the order of HHJ Williams, much of which came about in consequence of the Claimant's own unreasonable conduct, against the advice of the Defendant. Again the Claimant, not the Defendant, must bear the burden of costs incurred in consequence of such conduct; again, that conduct makes it impossible to identify any overall figure to which the Defendant's costs should be limited; and again it is unlikely that the provision of an estimate by the Defendant after 6 October 2020 would have had any material effect on the course of events.

247. For all those reasons, it would not be appropriate to set a limit upon the Defendant's recoverable costs by reference either to estimates given or estimates not given. Absent a settlement, it will be necessary to identify the amount that it is reasonable for the Claimant to pay the Defendant by proceeding to a full and detailed assessment of the Defendant's bills.