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Case No: SC-2024-BTP-000498

IN THE HIGH COURT OF JUSTICE

SENIOR COURTS COSTS OFFICE

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

Date: 4 February 2025

Before :

DEPUTY COSTS JUDGE ROY KC

- -

Between:

NIKI CHRISTODOULIDES	**Claimant/ Paying Party**
-and-	
CP CHRISTOU LLP	**Defendant/ Receiving Party**

- -
- -

The **Claimant** in person.
Ms Erica Bedford of counsel (instructed by **DWF**) for the **Defendant**

Hearing date: 13 January 2025
Draft judgment circulated: 15 January 2025
Approved judgment handed down: 4 February 2025

APPROVED JUDGMENT

This judgment has been handed down remotely by circulation to the parties or their representatives by email and release to the National Archives.

Deputy Costs Judge Roy

Introduction

1. This is my judgment on the first defendant's preliminary point that the claimant's Points of Dispute ("PoDs") are non-compliant and should be struck out.

2. The matter was listed before me for a detailed assessment of the first defendant's costs with a time estimate of one day. That estimate was always wholly inadequate and unrealistic. I shall return to this point at the conclusion of this judgment.

3. In the event, submissions on this preliminary point took nearly all day. Moreover, I wished to review the papers again, there having been a late piecemeal flurry of documents from both sides which only reached me shortly before the hearing commenced. I therefore reserved judgment.

4. This judgment is structured as follows:

   (1) Background.
   (2) Law
   (3) Application of the law to the facts.
   (4) Conclusion and disposal.
   (5) Other matters.

5. I have considered all the matters to which my attention has been drawn. I shall not rehearse all of them. This judgment is already probably far too long for a preliminary point on a bill totalling a little over £132,000.

(1) Background

6. The claimant brought a claim against the first defendant (his former solicitors) and the second defendant (his former counsel) for professional negligence ("the professional negligence claim").

7. The professional negligence claim arose from four claims between the claimant and her sister (collectively "the original claims"). Two of these were decided against the claimant at trial. In both, the trial judges found in uncompromising terms that the claimant was dishonest.

8. The Defendants applied to strike out and/or for summary judgment in respect of the professional negligence claim.

9. The application was heard by Knowles J on 5 to 6 December 2022. The claimant was at that time represented by direct access counsel.

10. Knowles J handed down a detailed reserved judgment on 13 June 2023. This ran to 73 pages and 250 paragraphs.

11. In summary he held as follows:

    (1) The claimant's Particulars of Claim disclosed no reasonable grounds for bringing the claim, and the claim had no reasonable prospects of success.
    (2) The claim was also an abuse of process.
    (3) The claimant's pleading was in any event non-compliant. It was the antithesis of a concise statement of facts that would enable the defendants to understand the claim that they had to meet and to enable the court to identify the issues and give appropriate directions for a proportionate determination of the claim. It was in parts incoherent and impossible to follow. These deficiencies were pointed out to the claimant long before the application and she had done nothing to seek to rectify them. It would therefore not have been appropriate to grant permission to amend.
    (4) The claim against the second defendant was barred for the additional reason that it was subject to a prior binding compromise to the effect that he would accept a reduction in his fees in consideration for the claimant not pursuing any further complaint against him. In so finding Knowles J referred to various communications amongst the three parties which culminated in this agreement.

12. The professional negligence claim was thus struck out on three alternative grounds (four in the case of the second defendant), any one of which would have been sufficient.

13. In relation to the first basis of strike out, the claimant raised before Knowles J an issue as to the accuracy of the transcripts from one the trials in the original claims (that before Mr Recorder Cohen QC) relied upon by the first defendant. This was dealt with in the judgment as follows:

> *176. I asked for a schedule of Miss Sandells'* [counsel for the first defendant] *references, which I was provided with after the hearing. Niki had the opportunity to comment on this schedule, and did so.*
>
> *177. In the event, I have not found it necessary to refer to this schedule or the transcripts. Given this judgment is already long – probably too long - I think it would be disproportionate for me to start delving into the evidence. I have reached a clear conclusion based upon the judgments of the judges who heard that evidence, and they were obviously best placed to assess it. Furthermore, an issue arose at a very late stage – during the hearing - as to whether the transcripts I had been sent were accurate and there were different versions of transcripts later supplied to me. The whole picture was very confused. That confusion, obviously, did not clarify matters.*

14. My reading of this (which as per below, coincides with that of Stuart-Smith LJ) is as follows:

    (1) The first defendant relied upon parts of the trial transcripts.
    (2) The claimant was given the opportunity to dispute the accuracy of these. She availed herself of this.
    (3) Knowles J did not in the event take the transcripts into account. He found for the defendants without reference to them.
    (4) As the claimant's allegations as to the accuracy of the transcripts – which in any event were very confused and unclear - were only deployed to rebut the defendants' reliance upon those transcripts, they fell away. In other words, they were irrelevant.

15. On 10 July 2023 Knowles J made consequential orders, including that the claimant pay the defendants' costs on the indemnity basis. He appended brief reasons.

16. The claimant (by this stage acting in person) sought permission to appeal. This was refused by Stuart-Smith LJ. The reasons were longer than one often sees, but no less emphatic for that.

17. Importantly, the claimant placed her complaint about the transcripts of the trial before Recorder Cohen QC front and centre of her appeal. Stuart-Smith LJ dismissed this complaint in the following terms in the context of the claimant's challenge to Knowles J's finding that the professional negligence claim had no real prospect of success (emphasis added):

> *7. Ground 1 is headed "wrong decision" and asserts that Knowles J relied upon inaccurate transcripts at paras 173-177 of his judgment as the basis for his decision. The Claimant asserts that the corrected transcripts contain crucial evidence relating to her hearing disability. Her skeleton argument cites passages where it is asserted that the transcripts that were before Mr Recorder Cohen were inaccurate. I have followed all of the references provided by the Claimant in support of this Ground as best I can, though I am unable to detect any potential relevance at all in a number of them. There are, however, straightforward reasons why there is no substance in this Ground in relation to Knowles J's first issue:*
>
> *a. First, Mr Recorder Cohen was aware that the "professional note of evidence" that was provided during his trial was "not as accurate as would be a transcript of the tape recording. Caution is therefore needed when reading this note both for names which are not completely accurate and occasionally, for sense. Nonetheless it has truly lessened my burden and enabled the evidence to be taken much faster than the speed of my pen.": see para 5.4 of the Cohen judgment. I**t is therefore plain that the Recorder was fully aware of the potential inaccuracy of the note. There is no reason to believe that he would have been misled by any inaccuracy when forming his determinative conclusions and writing his judgment.***
>
> *b. Second, **despite an exorbitant effort to obtain corrected transcripts and to identify each alleged inaccuracy, the Claimant has not identified any inaccuracy that either did influence or could have influenced the Recorder** either during the hearing or when preparing his judgment so that he would have reached a different conclusion on the central question of the Claimant's honesty and accuracy as a witness. **Though I have not read the entirety of the tracking of alleged errors, I have read enough to be satisfied that the great majority are completely inconsequential**. I have not identified any that could have materially misled the Recorder.*
>
> *c. Third, **if there had been substance in this point, it could and should have been taken on appeal.** It was not.*
>
> *d. Fourth, there is no possibility that the Claimant's complaints about a failure to make reasonable adjustments for her disability would lead to a finding that the outcome of the actions before Mr Recorder Cohen and HHJ Johns would or might have been different if other adjustments had been made.*

> *e. Fifth, Knowles J reached his conclusion on the first issue at para 172 and only then referred to submissions that were made on the basis of the transcripts at paras 173-177.* ***He took the view, which he was entitled to take, that he would not delve into the evidence in the transcripts to which the First Defendant was referring in support of the First Defendant's submissions. To that extent his approach was favourable to the Claimant: it is evident that he did not rely upon the disputed transcripts to her disadvantage.***
> *f. Fifth,* ***I reject the submission that inaccuracies in the "transcripts" prejudiced the Claimant's ability to present her case. She has not identified any respect in which an inaccuracy in the original note of evidence prevented her from presenting her case fully*** *to either Mr Recorder Cohen or HHJ Johns or Morgan J or Knowles J. Her submission that it has seems to me to ignore completely the basis for the various judges' findings, none of which was dependent upon the accuracy of the note of transcript.*

18. The claimant also relied upon the allegedly inaccurate transcripts in respect of the finding of abuse of process. Stuart-Smith LJ rejected this in the following terms:

> *In subsequent paragraphs of section 5 dealing with this ground, the Claimant reverts to the issue of the unreliable transcripts. For the reasons I have given above, I do not consider that there is any substance in those complaints.*

19. It is thus clear that Stuart-Smith LJ carefully considered the claimant's allegations regarding the transcripts and rejected them emphatically.

20. That marked the end of the line for the professional negligence claim, save for the assessment of the defendants' costs.

21. The second defendant's bill came before me for provisional assessment in December 2023. The PoDs were very similar to those in respect of the first defendant. I dismissed all but a handful of the claimant's points in the following terms (or variations thereof):

> *This is not a proper point of dispute. It does not articulate any comprehensible challenge to the costs I am assessing. Nor does it specify, as required per* ***Ainsworth v Stewarts Law LLP*** *[2020] EWCA Civ 178, which items are being challenged.*

22. The claimant sought to challenge the provisional assessment. However, compounding and doubling down on the defects in the PoDs, the document requesting an oral hearing wholly failed to specify itemised challenges to the provisional assessment as required by the rules.

23. I therefore held that the claimant was precluded from challenging the provisional assessment; ***Christodoulides v Holbech*** [2024] EWHC 2172 (SCCO). The relevant parts of my extempore reasoning for present purposes were as follows:

> *9. The letter* [seeking to challenge the provisional assessment] *simply does not identify the item or items in the provisional assessment, which are to be reviewed. There were 43, I think, items provisionally assessed. What was required was for them to be identified by number, or at least one way or another. The letter simply does not do this …*
>
> *11. I pause here to add that non-compliance of the 12 April letter is in no way cured by the subsequent application. It likewise does not identify the items in the provisional assessment to be challenged.*
>
> *12. Instead, very much like the letter of 12 April, it contains wide-ranging complaints of unfairness, lack of transparency, improper conduct of various practices and so forth on behalf of the second defendant and/or his lawyers. It still does not "identify the item or items in the court's provisional assessment which are sought to be reviewed".*
>
> *14. I have listened very carefully to what the claimant has said today. I have explained the rules more than once. I have ensured that they are set out for her, and indeed physically displayed in front of her in the White Book. I repeatedly explained the nature of the hearing and encouraged her to focus her submissions on the question of why there should be an oral hearing despite what the rules say. Having done so I have heard nothing to change my original vie*
>
> *15. I appreciate it is difficult for a litigant in person to direct their arguments with appropriate focus, but the fact of the matter is that virtually all of the claimant's submissions have really been directed at the allegations of misconduct and fabrication which go to the substance of the case rather than why the provisional assessment should be re-opened despite non-compliance with the rules. I asked her why the rules could not have been complied with and she was not able to identify any real answer to that.*
>
> *16. I should say I fully accept in principle that, for example via **CPR 44.14**, if there has been misconduct that does empower the court to disallow some or all of a party's costs. However, that does not change the fact that the claimant was required to comply with **CPR 47.15** in order to re-open the provisional assessment.*
>
> *17. I appreciate that the claimant feels very strongly about all these matters and I also appreciate that acting without lawyers is very difficult, stressful and challenging. I agree that some leeway is justified. However, it cannot justify this level of non-compliance. I refer here to the judgment of **Barton v Wright Hassell LLP** [2018] UKSC 12; [2018] 1 WLR 1119, per Lord Sumption at [18], and I quote:*

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

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

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

23. ... The claimant has, for no good reason which I have been able to identify or which has been evidenced or explained, simply failed to comply with the rules. Indeed, she has made no attempt to do so, and still today does not seem to recognise the need to do so. There is no suggestion that, for example, she took the basic step of trying to ascertain what the relevant rules (which are readily available on the internet) said and required. By reference to the case of ***Barton****, which I have just quoted, being an unrepresented party is not by itself a good reason for non-compliance.*

24. There are powerful factors militating against relief:

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

(2) This non-compliance is persistent and continuing. Notwithstanding the terms of my order of 7 May 2024, there has still be no attempt to provide a compliant request. The application notice did not contain or append any such. It was really just more of the same. In my judgment it would be contrary to the overriding objective to allow what would be a third bite of the cherry. This is especially as the claimant has not stated any intention to rectify the problem by producing a compliant request.
(3) To allow non-compliance here would undermine the very point of the rule, which is to ensure that any oral hearing should be conducted properly and fairly and within properly identified limits in accordance with the overriding objective. See by analogy ***PME v The Scout Association*** *[2019] EWHC 3421 (QB); [2020] 1 WLR 1217 and* ***Ainsworth v Stewarts Law LLP*** *[2020] EWCA Civ 178; [2020] 1 WLR 2664. In other words it is not to be a free-for-all. If I were to allow an oral hearing on the basis of the current request I am afraid to say that free-for-all is precisely what the assessment would be.*

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

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

(1) The fact that serious allegations are raised is not by itself any excuse for non-compliance: ***Gentry v Miller*** *[2016] EWCA Civ 141; [2016] 1 WLR 2696.*
(2) In this case, the point cuts both ways. Indeed, in my view overall it tells against the application. Fairness to those facing such serious allegations (and at the moment they are just allegations, I can make no finding either way as to their merits) requires that the allegations be clearly and precisely identified so that they have a fair and proper chance to meet them. That would simply will not be possible given the non-compliance here.

24. As will be apparent, the claimant's modus operandi in respect of the second defendant's costs has been essentially identical to her modus operandi in to respect of the first defendant's which I am now considering. Her approach to this assessment has been in effect an unwavering continuation of her approach to the previous one.

25. The first defendant served its bill separately in March 2024. The PoDs were served in April 2024. The Replies were served in May 2024. Thus the matter has come before me for assessment.

(2) Law

26. **PD 47.8.2** provides as follows (emphasis added):

> *8.2 Points of Dispute **must** be short and to the point. They **must** follow Precedent G in the Schedule of Costs Precedents annexed to this Practice Direction, **so far as practicable**. They **must**:*
>
> *(a) Identify any general points or matters of principle which require decision before the individual items in the bill are addressed; and*
> *(b) Identify specific points, stating concisely the nature and grounds of dispute.*
>
> *Once a point has been identified it should not be repeated but the i**tem numbers** where the point arises should be inserted in the left hand box as shown in Precedent G.*

27. Binding and authoritative guidance on these requirements was given by Asplin LJ in ***Ainsworth v Stewarts Law LLP*** [2020] EWCA Civ 178; [2020] 1 WLR 2664

28. ***Ainsworth*** was solicitor client assessment. The receiving party contended that the challenge to document time within the PoDs was non-compliant. As recorded by the Court of Appeal at [6], this point was pleaded follows:

> *The Claimant* [i.e. the paying party] *requests the court to note that over a period of 11 working days the Defendant seeks to claim 46.8 hours of work which is equivalent to approximately 4.3 hours of time every single day. It is the clear opinion of the Claimant that under any stretch of the imagination, the level of time expended can in no way be justified and against the relevant test, the time expended, and its subsequent cost must be deemed to be unusual in nature and amount.*
> *As with the timed attendances upon the Claimant, the Claimant is mindful of the requirements of the Civil Procedure Rules as to the need to keep Points of Dispute brief and succi*
> *nct. It must therefore be stated that all entries are disputed. By way of general indication however, the Claimant can confirm the main issues with the document time are as follows:*
> *1. Significant duplication between fee earners*
> *2. Wholly excessive time expended by fee earners reviewing documentation provided by the Claimant*
> *3. Too much time claimed generally in relation to preparation*
> *4. An excessive level of time claimed in relation to drafting of communications*
> *5. Unnecessary inter-fee earner discussions arising due to the duplication*
> *6. Excessive time spent collating documentation*
> *7. Significant preparation time claimed in relation to meetings with the Claimant.*
>
> *It can be confirmed that the above stated list is not exhaustive of the issues but provide a general overview as to the reason why the time claimed is unusual in nature and/or amount. The Claimant reserved their position generally*

29. Chief Master Gordon-Saker upheld the receiving party's complaint and dismissed this point on the basis that it had not been properly pleaded. His reasons were set out by the Court of Appeal at [10]:

> *8. In oral submissions, Mr Poole on behalf of the claimant seeks to take a broad brush approach to the document schedule and indicated that what he would like to do is to identify some particular items and explain why those are unreasonable, with a view to persuading the court that the time overall should be reduced on a broad brush approach and he candidly accepted, as one might expect, that the items which he would be relying on in particular would be the biggest items in terms of the time spent.*
>
> *9. The difficulty with that, it seems to me, is that the claimant has not set out in his points of dispute which items he wishes to challenge and why and that does cause, as the defendant has indicated in its reply, a difficulty insofar as – in respect of items which have not yet been identified – they would need to look at the attendance notes to see what work was done and why and the context in which it was done in order to seek to explain why the time claimed is reasonable, if indeed that is the objection, or why a particular fee earner was engaged in doing it and why possibly more than one fee earner was engaged in doing it.*
>
> *10. The purpose of points of dispute is really to prevent that work being done on the hoof in the course of a hearing. The solicitors are entitled to know specifically which items are challenged and the reasons for the challenge. Insofar as the claimant states that all entries are disputed, it seems to me that it would be beholden on him to explain why each particular entry is challenged and whether he is asserting that no time should be allowed or reduced time should be allowed or whether the work should have been done by a different grade of fee earner. But, as pleaded, the points of dispute, it seems to me, do not raise a proper challenge to the documents items and certainly do not raise a challenge which can be properly answered by the defendant without a considerable amount of time being spent in looking at the papers to reply to that challenge and that, it seems to me, is a process, which if it is to be done, should be done in advance of the hearing rather than at the hearing.*
>
> *11. One can well understand why Mr Poole is seeking to adopt the approach that he is of encouraging the court to take a broad brush but the difficulty with that approach is that we are not going to be looking at every item, we will only be looking at particular items and presently, apart from Mr Poole, none of us knows which items those are going to be. It seems to me that that does put the defendant in a difficult position. It also puts the court in a difficult position. I read the papers in the light of the points of dispute as they are pleaded and I was not able to identify which particular items are challenged or why.*
>
> *12. In the circumstances, I think the only fair course is to dismiss that point of dispute 10 on the basis that it has not been properly pleaded.*

30. The paying party's appeal was dismissed by His Honour Judge Klein sitting as a judge of the High Court. The Court of Appeal dismissed the paying party's second appeal, Asplin LJ reasoning as follows:

> *37 Accordingly, 47PD.8 para 8.2 is directly relevant. It makes it absolutely clear that points of dispute should be short and to the point and, therefore, focussed. Furthermore, sub-paragraphs (a) and (b) leave no doubt about the way in which the draftsman should proceed. General points and matters of principle which require consideration before individual items in the bill or bills are addressed, should be identified, and then specific points should be made "stating concisely the nature and grounds of dispute." Such an approach is entirely consistent with the recommendations and observations made in the Review of Civil Litigation Costs: Final Report, 2009 to which we were referred.*
>
> *38. Common sense dictates that the points of dispute must be drafted in a way which enables the parties and the court to determine precisely what is in dispute and why. That is the very purposes of such a document. It is necessary in order to enable the receiving party, the solicitor in this case, to be able to reply to the complaints. It is also necessary in order to enable the court to deal with the issues raised in a manner which is fair, just and proportionate.*
>
> *39. As I have already mentioned, the complaint should be short, to the point and focussed. As para 8.2(b) of 47PD.8 indicates, that requires the draftsman not only to identify general points and matters of principle but to identify specific points stating concisely the "nature and grounds of the dispute" ... Having explained the nature and grounds of dispute succinctly, the draftsman should insert the numbers of the items disputed on that ground in the relevant box. The principle is very simple. In order to deal with matters of this kind fairly, justly and proportionately, it is necessary that both the recipient and the court can tell why an item is disputed. The recipient must be placed in a position in which it can seek to justify the items which are in dispute*

(3) Application of the law to the facts

31. Ms Bedford fairly conceded that several of the points within the PoDs, namely 1, 31, and 49.6, whilst far from ideally pleaded, sufficiently identified what was being challenged and why (at least to an extent).

32. She nevertheless contended that (a) all the points stand or fall together; (b) as the PoDs as a whole were non-compliant they should be struck out entirely, including any compliant points therein.

33. I do not accept this. There is no logical or principled reason why the compliant points should be struck out. It would be unfair to the claimant and would constitute a windfall to the first defendant. Such an all or nothing approach is not applied to substantive pleadings. No reason to apply it to costs proceeding was identified or is identifiable.

34. The analysis below therefore excludes these compliant points, which I will in due course determine on their merits in the normal way.

The PoDs in general

35. These could scarcely be less compliant:

    (1) They are the antithesis of short, to the point and focussed. They are prolix (32 pages in length), discursive, and unfocused. They for the most part consist of a scattershot litany of allegations of misconduct and the like which have little if anything to do with the reasonableness of the first defendant's costs.
    (2) Whilst it would have been practicable to follow Precedent G, at least substantially, there has been no attempt whatsoever to do so. The PoDs completely fail to do so.
    (3) They do not identify the items in dispute. Notwithstanding their length, they do cite a single item number from the bill.
    (4) They do not identify, or least not in any coherent or comprehensible fashion, what reductions in costs the points raised are said to generate, and why.

36. There has thus been wholesale non-compliance. More basically, the PoDs are, as Ms Bedford submitted, virtually incomprehensible.

37. These PoDs therefore contain all the defects identified in ***Ainsworth*** and ***O'Sullivan***, but (a) to a much greater extent than in those cases; and (b) with other serious defects in addition.

38. Given that the PoDs in ***Ainsworth*** and ***O'Sullivan*** were struck out, as a matter of inexorable logic, these PoDs must likewise be struck out.

39. The bottom line is that the wholesale defects in the PoDs make it impossible to conduct the assessment in a manner which is fair, manageable, proportionate and in accordance with the overriding objective.

40. These problems were in no way cured or ameliorated by the claimant's written submissions (set out in three documents received by me shortly before the start of the hearing and further unsolicited set emailed to me the day following the hearing) or her oral submissions. Quite the contrary:

    (1) The submissions effectively doubled down on the misguided approach adopted within the PoDs. The claimant repeated and expanded upon her allegations of misconduct and insisted on seeking to revisit matters decided in the substantive litigation notwithstanding that I repeatedly highlighted that this was not the purpose of the hearing and was not permissible. I will return to these matters below, but the short point here is that these allegations do nothing to address the issues of the PoDs being non-compliant.
    (2) With one brief exception, the claimant's submission failed to address the question of compliance at all. My repeated invitations and urgings to the claimant to address me on the actual point I had to decide proved futile. She simply refused to engage with the point at all.

41. The exception was a suggestion by the claimant that the fact that she only received the file of papers from the original claims (i.e. the underlying litigation against her sister) at the start of November 2024 somehow excused non-compliance. I reject this:

    (1) I do not accept that the claimant required these papers to produce compliant PoDss. These papers – which are several removes from the costs I am assessing – cannot have had anything more than marginal relevance at most to that exercise. The papers that mattered were those from the professional negligence claim.
    (2) If it truly were the case that the absence of these papers was an insuperable obstacle, the claimant should have applied for an extension rather than producing non-compliant PoDs.

(3) The claimant has in any event had these papers for well over a month. She made no attempt whatsoever to deploy them to produce compliant PoDs.

(4) Indeed, given the consistent pattern of the claimant's conduct and approach, I have no real doubt that the absence of these papers made no difference to compliance:

(a) The claimant's mindset is that she is entitled to advance whichever points she wishes in whatever manner she wishes as many times as she wishes irrespective of the requirements of the rules and of the court's rulings.

(b) She does not appear at any time even to have attempted to identify what the applicable requirements are, much less make any attempt to comply with them.

(c) At no point has she ever even acknowledged the existence of any requirement under the rules. Much less has she acknowledged any possible non-compliance. Still less has she sought to rectify such non-compliance.

(d) This is all the more striking given that both the professional negligence claim itself and her previous challenges to the second defendant's costs were both struck out for defective and non-compliant pleadings.

(e) Even when the applicable requirements were been drawn to her attention repeatedly during the two hearings before me, she simply ignored them in favour of making submissions on other matters.

(f) It is therefore clear to me that the claimant (i) never had any intention to produce compliant PoDs, (ii) was never going to have had any intention to do so, and (iii) almost certainly never will have any intention to do so.

42. Point (4) immediately above goes to the root of the problems in this assessment (and indeed in the previous one of the second defendant's costs). The claimant's mindset is that she is the aggrieved party, that the other side are in the wrong, and that the rules therefore should not apply to her. Her entire approach as described above reflects this. Such a mindset and approach are profoundly misguided. They are not ones which the court could possibly tolerate, much less endorse.

43. I add that the claimant did not apply for an adjournment. However, even had she done so, I would not have been minded to grant one:

(1) Per ***Ainsworth*** at [11]:

> *An adjournment was then sought in order that further Points of Dispute could be filed. The Chief Master refused an adjournment on the basis that: the deficiency in the Points of Dispute had been pointed out in the Points of Reply almost six months before the hearing but Mr Ainsworth chose not to serve anything more.*

This decision was upheld. The claimant here can be in no better position.

(2) The reasons for not granting relief in respect of the second defendant's costs as set out above apply here. Indeed, they do so with even greater force. My previous judgment made crystal clear to the claimant what needed to be done properly to challenge costs and the consequences of not doing so in a compliant way. ***Ainsworth*** itself was specifically referenced numerous times in the provisional assessment and then again in the judgement. It is evident that the claimant has paid no heed to this whatsoever. The judgment was nearly six months ago, giving her ample to time to revisit thee PoDs in this assessment.

(3) Indeed, the claimant was placed on even earlier clear notice of the general need to plead clearly and properly and of the terminal consequences of failing to do so. This was one of the bases upon which the professional negligence claim was struck out, which of course was the very event giving rise to the defendants' costs.

(4) Given the claimant's mindset, I see no real prospect of the defects being cured were an adjournment granted.

Conduct arguments

44. The claimant makes various allegations of misconduct against the first defendant and its advisers. The two pursued in oral submissions were (1) alleged alteration of trial transcripts from the original claims (referred to above); and (2) alleged breach of privilege.

45. These allegations are a somewhat separate issue and could potentially survive notwithstanding the defects in the PoDs.

46. That is because **CPR 44.11** provides a freestanding power to reduce costs in the event of misconduct. Moreover, the power is punitive rather than compensatory; ***Gempride Ltd v Bamrah*** [2018] EWCA Civ 1367; [2019] 1 WLR 1545 at [14]. There is therefore no need to identify any connection between the misconduct and any particular element of the bill.

Such reductions can be, and often are, broad brush e.g. disallowance of a percentage of the costs.

47. Indeed, given that the misconduct need not relate to any particular element with the bill it is not necessary to plead any **CPR 44.11** point within the PoDs, although it will generally be convenient to do so. The allegations could for example be made in a standalone application.

48. However, in this particular case, I have no doubt that the claimant's allegations fall to be struck out for the following reasons, any one of which would be sufficient. These overlap to a degree.

49. Firstly, the matters in question were raised and rejected in the professional negligence claim. Insofar as they were not, they should have been raised at that stage. The claimant is therefore precluded from resurrecting them by the doctrines of issue estoppel and/or the rule in ***Henderson v Henderson*** (1843) 3 Hare 100; ***Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd*** [2013] UKSC 46; [2014] AC 160 at [22], at [32-33], ***Finzi v Jamaican Redevelopment Foundation Inc & Ors (Jamaica)*** [2023] UKPC 29; [2024] WLR 541 at [32-33].

50. Secondly, even leaving aside these doctrines, my role is limited to assessing the second defendant's costs so as to give effect to Knowles J's order. It is no part of my function to retry matters in the substantive litigation. I have no jurisdiction to do so. It would be wholly inappropriate for me to do so. I repeatedly made this clear to the claimant during the hearing. She ignored this and continued to seek to press these matters regardless.

51. Thirdly, in the absence of an order reserving conduct issues in the substantive litigation to assessment, **CPR 44.11** ordinary applies only to misconduct in the assessment proceedings as opposed to the substantive litigation. See ***Andrews v Retro Computers Ltd*** [2019] 1 WLUK 237. The defendants in ***Andrews*** alleged that the first claimant had, among other things, lied in his witness statements, misled the court in several respects, abused the defendants' websites, hacked emails, and raised false allegations. It will be observed that there are significant parallels with the claimant's approach here.

52. Deputy Master Friston held that it would be contrary to the overriding objective to interpret **CPR 44.11** as permitting parties to lengthen detailed assessment proceedings by effectively allowing them a second bite at the cherry. Unless certain issues had been reserved to detailed assessment, costs judges would be overstepping the mark if they made wholesale reductions that would properly be within the remit of the judge who made the order for costs. In ordinary circumstances, **CPR 44.11** should not be used to allow paying parties to adjust or negate their costs liability for reasons that were, or could have been, addressed when the costs order was made.

53. Whilst there is a legitimate debate as to precisely where the line here should be drawn, I find that reasoning entirely persuasive insofar as it applies to this case. This is the clearest possible example of an illegitimate attempt to take a second bite of cherry. Indeed, it could be said to be the third or even the fourth bite of the cherry, given that these matters have (or at least could have been) raised in the original claims, before Knowles J and then when seeking permission to appeal. I refer back to one of the reasons given by Stuart-Smith LJ for refusing such permission on the basis of alleged discrepancies with the transcript "*if there had been substance in this point, it could and should have been taken on appeal* [i.e. in the original claims]. *It was not."*

54. The claimant at one point argued that Knowles J had reserved these matters to the detailed assessment when making the costs order giving rise to this assessment. It is clear from the order and the accompanying reasons that he did no such thing. The order itself contains no reservation. The reasons insofar as material simply say that the quantum of costs was a matter for detailed assessment.

55. Pausing there, irrespective of which analytical rubric is applied, this is the clearest possible abuse of process. As I have already noted, the bulk of claimant's submissions sought resurrect matters already rejected Knowles J and Stuart Smith LJ. Indeed, at times she seemed to be inviting me to revisit matters determined in the original claims.

56. This in fact might fairly be described as doubly abusive. It is collateral attack on the findings in the professional negligence claim, which was itself held to be an abusive collateral attack on the findings in the original claims.

57. The clearest example is in respect of the transcripts. Point 10 of the PoDs pleads as follows:

> ***10. Inaccuracies in Take Note Transcripts.*** *It is disputed that the transcripts relied upon by DW Law and presented as accurate before Judge Knowles were significantly inaccurate and unreliable. A forensic word track assessment report comparing the Take Note transcripts to the official court transcripts from Ubiquis revealed substantial discrepancies, as follows:*
>
> *Date: 6/12/16*
> *Take Note Transcripts Revisions: 2,903*
> *Date: 7 /12/16*
> *Take Note Transcripts Revisions: 9,518*
> *Date: 8/12/16*
> *Take Note Transcripts Revisions: 9,203*
> *Date: 9/12/16*
> *Take Note Transcripts Revisions: 7,732*
> *Date: 12/12/16*
> *Take Note Transcripts Revisions: 9,644*
> *Date: 13/12/16*
> *Take Note Transcripts Revisions: 4,424*
> *Date: 14/12/16*
> *Take Note Transcripts Revisions: 9,353*
> *Date: 15/12/16*
> *Take Note Transcripts Revisions: 9,615*
> *Total Revisions: 62,383 revisions from the official court recorded transcripts.*
>
> *This extensive number of revisions indicates a significant level of discrepancy between the Take Note transcripts and the official court transcripts. The inaccuracies in the Take Note transcripts undermine their reliability and raise serious questions about the evidence presented by DW Law before Judge Knowles.*

58. These are precisely the same matters the claimant unsuccessfully sought to rely upon when seeking permission to appeal.

59. Fourthly, the allegations are not pleaded with sufficient precision or clarity. I have already described the prolix, scattershot and virtually impenetrable nature of the pleading. Whilst the specific requirement relating to PoDs do not apply here, the basic general requirement that allegations need to be formulated with sufficient precision and clarity to enable the other side and the court can understand them remains applicable. Indeed, it applies with

even greater force here given the serious nature of the allegations for the reasons I set out in my judgment in respect of the second defendant's costs. (A point to which the claimant, all too characteristically, has paid no heed to whatsoever.)

60. Fifthly, partly as result of the nature of the pleading, it would be impossible to investigate and determine these allegations in a proportionate manner. In my view, even at their very highest these are side issues capable of generating no more than a very small reduction in the overall costs. The time and costs required to undertake the granular consideration sought by the claimant would not be worth the candle. It would be the epitome of wasteful satellite litigation. This is not permissible. See by analogy ***Manzanilla Ltd. v Corton Property and Investments Ltd***., Court of Appeal, 23rd April 1997 per Lord Woolf MR:

> *The ability of the court to make a wasted costs order can have advantages, but it can be of no advantage if it is going to result in complex proceedings which involve detailed investigation of facts. If a situation involves detailed investigation of facts, and indeed acts of dishonesty, then it may well be that a wasted costs order procedure is largely inappropriate to cover the situation, except in what would be an exceptional case. ... If this limits the ability of someone ... to obtain a wasted costs order, then in my judgment that is a restriction inherent in the nature of the remedy which they are seeking to receive. It would destroy that remedy if the court did not, except in an exceptional case, insist upon the matter being dealt with summarily.*

The **CPR 44.11** jurisdiction closely parallels the wasted costs jurisdiction.

61. Sixthly, I can see no merit in the allegations. The claimant was unable to articulate or demonstrate any arguable case for misconduct.

62. As regards the transcripts point, when pressed the claimant disclaimed that she was alleging that the defendant or its advisers had themselves interfered with the transcripts. It follows that any tampering could only have been done by the transcribers (TakeNote). It is impossible to imagine any possible reason for them to do so. But even if they did, their conduct is not that of the defendant or its advisers. Even on the claimant's own case, it remains entirely unexplained how any discrepancies with the transcripts could constitute misconduct on the part of the first defendant or its advisers.

63. In any event, Stuart-Smith LJ found that any discrepancies were immaterial. Even if it were open to me to find otherwise, the claimant has identified no basis for me to do so. She was not able to identify any alteration relevant to the professional negligence claim, much less relevant to the first defendant's costs. She was only able to point to the number of alleged alterations. (That is all that a purported expert report dated 5 July 2023 relied upon by the claimant by Alphabet Transcription Services ultimately does, even leaving aside that it is not CPR Part 35 compliant, and that no permission to rely upon it has ever been sought, much less granted). However, materiality in this context is qualitative rather than quantitative.

64. I regret to say that the claimant appears to have developed something of an irrational fixation on the transcripts. The weight she seeks to attach to the alleged alterations is out of all proportion to their potential significance. They would have been of marginal significance at most in the original claims. They were held to be irrelevant to the professional negligence claim. It is almost impossible to see how they could be of any conceivable relevance to the second defendant's costs.

65. As regards the allegations of breach of privilege, again these were very difficult to follow and made no real sense. The argument as I understood it was that the first defendant was guilty of misconduct by deploying privileged exchanges referred to above which were made in the course of agreeing a reduction the second defendant's fees in consideration for the claimant agreeing

66. I assume in the claimant's favour that these exchanges were privileged. However, the allegation in my view is hopeless even on that assumption:

    (1) Without prejudice privilege does not apply when there is a dispute as to whether an agreement was reached or as to the terms of such agreement. That is precisely what was in dispute between the claimant and the second defendant before Knowles J.
    (2) A claimant bringing a professional negligence claim is normally required to elect to waive legal professional privilege as a requisite for being permitted to do so.
    (3) It is clear to me that as a matter of fact any privilege in this case was waived, at least implicitly. The materials in question were deployed by the second defendant before

Knowles J, who relied upon them in his judgement. There is no suggestion of any protest on the claimant's behalf that they were privileged.

67. In any event, this material was deployed solely in relation to the claim against the second defendant. I cannot see how this can have any possible relevance, by reference to **CPR 44.11** or otherwise, the to the costs payable to the first defendant.

68. I have considered the various other points made by the claimant in support of her arguments here. I will not lengthen this judgment further by attempting to address each of them. That would be a disproportionate if not impossible task given the confusing and scattershot manner in which they were made. Suffice to say that:

(1) They are extremely unclear difficult to understand.
(2) I can see no merit in them. Indeed in most cases, I cannot even identify their potential relevance.
(3) Even on their own terms, they provide no discernible answer to the matters set out above.

(4) Conclusion and disposal

69. Subject to the limited exceptions which I have identified, the PoDs are struck out.

(5) Other matters

70. I will relist to determine the remaining matters in the assessment, including the costs of the assessment and any consequential matters.

71. As a postscript, I return to my observation at the outset that the time estimate supplied by the first defendant was wholly unrealistic.

72. I appreciate that such estimates are far from a precise science. However, any proper consideration of this matter would have revealed that on any view one day was always going to wholly inadequate.

73. Any meaningful reflection would have revealed that there was no chance of completing all the following within a day: (1) the substantial preliminary point; (2) insofar as that point was dismissed, argument and determination of the disputed costs themselves; (3) argument and determination of the costs of the assessment and other consequential matters.

74. This especially so given:

    (a) The volume of papers. Even leaving aside documents produced by the claimant, the first defendant's file as originally lodged ran to 16,856 pages. A pared down bundle was subsequently lodged, but this still ran to 2,280 pages. Indeed, the first defendant had applied for the assessment to adjourned because of volume of documents.
    (b) That the claimant was acting in person.
    (c) That on any view her PoDs were going to seriously hamper the efficient conduct of the assessment. That indeed was one of the first defendant's foundational arguments, which I have upheld.

75. I add here that it would in my view be no answer for the first defendant to say in terms "our preliminary point was irresistible so there was never going to be a full assessment." If that was the first defendant's view (and it would have been a reasonable one to hold) it should have made a standalone application for determination of the preliminary point rather than submitting an inadequate time estimate.

76. Inadequate time estimates can seriously hamper the ability fairly to determine the case in question. They are also liable to have adverse knock-on effects on other court users and the efficient administration of justice.

77. It is therefore vital that parties and their advisers properly apply their minds to the practicalities of what a hearing will actually involve and provide realistic time estimates reflecting this. Faling to do so constitutes a breach of the duty under **CPR 1.3** to help the court further the overriding objective.

78. Failure to do so is liable to result in sanctions. I flag up in this regard the **CPR 44.11** empowers the court to disallow costs to mark its disapproval of unreasonable conduct and pour encourager les autres even if there is no demonstrable effect on the costs inter partes.

Andrew Roy

Deputy Costs Judge Andrew Roy KC

4 February 2025