Neutral Citation Number [2023] EWHC 2771 (SCCO)
Case No: SC-2023-APP-000067

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London WC2A 2LL

Date: 2/11/2023

Before :

COSTS JUDGE LEONARD

- -

Between :

Sylvia Olukoya	**Claimant**
- and -	
Riverbrooke Solicitors Ltd	**Defendant**

- -
- -

Jimmy Barber (instructed by **Chan Neill Solicitors**) for the **Claimant**
Karl King (instructed by the Defendant) for **the Defendant**)

Hearing date: 20 July 2023

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

COSTS JUDGE LEONARD

Costs Judge Leonard:

1. On 26 January 2023, the Claimant filed an application under section 70 of the Solicitors Act 1974 for the assessment of a bill delivered by the Defendant solicitors to the Claimant on 28 December 2022. The Claimant applied for alternative remedies, but they are not material for present purposes.

2. On 8 March 2023 this court made an order for the assessment of that bill, referred to in the order (for reasons that I will explain) as "the Revised Bill", and provided for four issues to be tried as preliminary issues on the assessment. They were:

    1) Whether the Defendant is bound by contract by the "agreed outcome" of a Legal Ombudsman procedure dated 20th February 2020, so that nothing can be due to the Defendant from the Claimant under the Revised Bill;

    2) Whether the Defendant is prevented from raising the Revised Bill by the Legal Ombudsman's Scheme Rules or other statutory provision, so that nothing can be due to the Defendant from the Claimant under the Revised Bill;

    3) Whether the Defendant is estopped from raising the Revised Bill, so that nothing can be due to the Defendant from the Claimant under the Revised Bill, and

    4) Whether the Defendant requires the court's permission to raise the Revised Bill and, if so, whether permission should be given.

3. The jurisdiction of the Legal Ombudsman Scheme is derived from the Legal Services Act 2007. The Legal Ombudsman is empowered to investigate complaints against solicitors and to provide remedies to clients for inadequate service. Remedies include the limitation of fees, compensation for financial loss or for distress and inconvenience, and the requirement of an apology.

4. The term "agreed outcome" has been used in the Claimant's Part 8 Claim Form, in correspondence and in evidence. It is not in itself indicative of a binding agreement. It is another way of describing what is referred to in the Legal Ombudsman's Scheme Rules as an "Informal Resolution", arranged between the parties through the Legal Ombudsman in February 2018 and described in more detail below. In this judgment I shall use the term "Informal Resolution".

The Witness Evidence

5. On 8 March 2023, having identified the preliminary issues to which I have referred, this court gave directions for the service of witness evidence on those issues. The timetable set for the service of that evidence was extended by agreement, and the Defendant also applied for permission to rely upon the late witness evidence of Mrs Undiga Emuekpere.

6. The application was opposed, and was listed for hearing on the date set for the hearing

of the preliminary issues. On the day, the statement was admitted by agreement: as I observed at the time, it is almost entirely irrelevant to the preliminary issues and there was really no point in taking up court time debating whether to admit it. The parties also agreed that the preliminary issues could be determined by reference to their submissions and witness statements, without the necessity for cross-examination.

7. Those witness statements comprise a statement on behalf of the Defendant from Mrs Chi Chikwendu (the partner in the Defendant firm who had ultimate responsibility for the Claimant's case) dated 19 April 2023; the witness statement of Mrs Emuekpere, dated 28 June 2023; a witness statement from the Claimant dated 16 May 2023; and a witness statement of Ms Kehinde Akintunde, a union representative who had assisted the Claimant before the Employment Tribunal, dated 16 May 2023.

8. I turn to the events that led to the making of the Claimant's application for assessment.

The Parties' Dealings

9. In 2017 the Claimant brought an Employment Tribunal claim against her former employer, the London Borough of Tower Hamlets. Initially the Claimant represented herself with the assistance of a direct access barrister, Ms Nabila Mallick. In April 2017, at a Case Management hearing, the Tribunal Judge indicated that the substantive hearing would take 10 days and Ms Mallick advised the Claimant that it would be wise to find a solicitor who could assist her in preparing for the hearing.

10. In consequence the Claimant, having (it would appear) first consulted the Defendant on 29 April 2017, instructed the Defendant. The Defendant's written letter of retainer is dated 23 May 2017. The Defendant, in that letter, offered an initial fee estimate of between £6,000 and £10,000, depending upon whether the case went to a final contested hearing; undertook every two months to send to the Claimant an estimate of costs incurred; and undertook to advise her should it appear that the Defendant's initial estimate would be exceeded.

11. The first substantive hearing before the Tribunal started on 15 August 2017 and lasted (on different accounts) either seven days or eight days including one half day. The Tribunal found in the Claimant's favour and listed a two-day remedy hearing on 7 and 8 June 2018.

12. On 30 July 2018, the Claimant wrote a letter of complaint to the Defendant. I need not set out her complaints in detail, but among them was that she had not been advised until the first day of the Remedy Hearing on 7 June 2018 that the Defendant's total claimed costs were in the region of £85,000. Nor did she accept that the Defendant had undertaken work to that value. The Defendant did respond to the Claimant's complaint, but no agreed resolution was achieved at that stage.

13. In a letter dated 7 August 2018, the Claimant terminated the Defendant's retainer.

14. On 22 January 2019 the Tribunal heard an application by the Claimant for an order that Tower Hamlets pay her costs. The Defendant, on the basis that it was an interested party, sent counsel (Mr Julius Nkafu) to the hearing. The costs application was refused, and an attempted appeal was unsuccessful.

15. The Claimant referred her complaints about the Defendant to the Legal Ombudsman. The precise date of the complaint is unclear, but it was notified to the Defendant by the Legal Ombudsman's office on 4 July 2019. There followed correspondence between the Legal Ombudsman's office, the Claimant and the Defendant, culminating in the Informal Resolution to which I have referred. It is necessary, for present purposes, to refer to the contents of some of that correspondence (for the sake of clarity I have corrected some minor spelling/typing errors).

16. On 12 December 2019 Ms Jane Bartlam, a Legal Ombudsman Investigator, wrote to Mrs Chikwendu:

> "Thank you for speaking with me yesterday, as I explained my name is Jane Bartlam and I will be investigating the complaint from Ms Olukoya…"

17. Ms Bartlam went on to summarise the Claimant's complaint on inadequate costs information, exceeding estimate and excessive costs, and advised Mrs Chikwendu:

> "Ms Olukoya is of the view that the firm should reduce their costs back to the original estimate and no more and that if they did this, she would agree to this offer as a remedy to the complaint."

18. Ms Bartlam outlined the standard expected of solicitors in relation to costs information, indicated that the Defendant should have, but had not sent a final bill to the Claimant on the conclusion of the Claimant's application for costs against Tower Hamlets and advised that:

> "…If the firm's costs have exceeded the original estimate and if we agree there was some poor service then we may ask the firm to reduce the costs."
>
> Under the heading "My Role" Ms Bartlam said:
>
> "My role is to help you and Olukoya reach an agreement that you are both satisfied with. This can happen at any point during my investigation. If, based on the information outlined above, you wish to make an offer to resolve the complaint at this stage please contact me.
>
> If I can't help you reach an agreement, I will prepare a case decision, which will outline my conclusions based on the facts, and say what I think it will take to resolve the complaint.
>
> If I do write a case decision, it will be sent to you and Olukoya. You will both have the opportunity to respond. If either of you disagree with the case decision an ombudsman will consider your case and make a final decision.
>
> A final decision cannot be appealed. If the final decision is accepted by Olukoya, it is binding on your firm and you must do what it says. Acceptance of the final decision also stops Olukoya from making any other claim in relation to the complaint. If they reject the final decision, you will not have to do anything and we will close our case. No further

action will be taken."

19. Ms Bartlam provided the Defendant with a list of documents she required to see, and asked some supplementary questions. The documents were to be supplied by 19 December 2019.

20. Ms Bartlam's letter was accompanied by an email:

> "Attached you will find a letter that confirms the complaints being made against the firm by Ms Olukoya and a request for additional evidence so that I can review that and reach my conclusions on the case.
>
> I received the client care letter and the bill of costs yesterday thank you. I do however disagree with your view that a bill of costs is also an invoice. The bill of costs was prepared for the court. It was not addressed to Ms Olukoya and whilst in a letter you asked her "comments in due course" about the bill you did not ask for payment in that letter. You therefore appear not to have billed her at all for the work at this time?
>
> The final invoice should take account of monies paid on account and ask for payment and give details of how to pay. It is entirely separate and should have been sent out to request the firm's costs within a few weeks of the retainer ending.
>
> If the firm were going to ask the court to direct the other side to pay their costs and this was unsuccessful then at that point the firm needed to have invoiced Ms Olukoya for her direct costs and it seems this has not been done?
>
> If you could respond fully and let me have all the relevant information that I need by 19 December 2019 once I have had a chance to review all the evidence I will call you with my views and we can see if at that point an informal resolution can be achieved or whether the matter will need to proceed to a final Ombudsman decision…"

21. It would appear that an extension of time was agreed for the production of documents, and a substantive response was sent to Ms Bartlam by Mrs Chikwendu on 24 January 2020. In her response Mrs Chikwendu rejected the Claimant's complaints, said that had the Claimant engaged with the Defendant prior to referring to the matter to the Legal Ombudsman the matter could have been resolved, and concluded:

> "I can assure you that the lessons have been learned from the circumstances that the firm finds itself from Ms Olukoya matter and complaint and it is not an event that would repeat itself in the future. Managing clients' expectations is an important culture of this firm and central to our risk management overall…
>
> Thank you once again for the clarification you provided on the telephone as regards your role to assist the parties to reach an agreement. We should therefore be grateful for your conclusion on what it would take to resolve the complaint as we wish to draw a line under this matter as soon as

possible…"

22. On 12 February 2020 Ms Bartlam sent an email to Mrs Chikwendu:

> "I called today as I have now considered all available evidence in the case and have reached a conclusion. I would like to share my views with you and see if the matter can be informally resolved by agreement.
>
> If we disagree, the matter can progress to a final Ombudsman decision which will be published on our website whatever the outcome.
>
> Can you please call me tomorrow… If you are unable to call then let me know your availability on Friday and I will fix an appointment for then.
>
> May I also ask for an additional piece of evidence for Ms Olukoya as she wishes to make a claim against the defendant in the case for half of the costs…"

23. On 14 February 2020 Mrs Chikwendu wrote to Ms Bartlam:

> "… I make the following short points:
>
> 1. Your letter of 12 December 2019 at the 1st paragraph under the sub heading
>
> **"My role"** states as follows:
>
> " My role is to help you and Olukoya reach an agreement that you are both satisfied with. <u>This can happen at any point during my investigation. If, based on the information outlined above, you wish to make an offer to resolve the complaint at this stage please contact me.</u> (bold and underline mine).
>
> Any clear reading of the above is that without taking any further steps it was open to this firm to draw the line at that stage by accepting the offer of £10,000 plus VAT and disbursements put forward by Olukoya. This was exactly the view taken at the time by the firm which I communicated you during my telephone call in December prior to your encouragement to take an extension of time to provide evidence.
>
> Therefore, the fact that the crux of what you say you based your decision on is the fact that the exceeding of the estimate was not communicated in writing, seems to have rendered unproductive the additional time spent from December onwards as it proved to have been needless.
>
> At that stage the offer made by Olukoya was on the table and it was open to the firm to accept it at that stage according to your letter.

You also stated yesterday that in your personal opinion, having also confirmed that you had not spoken to Olukoya on that point, was that if the firm had given her an estimate of £50,000.00 she would not have instructed the firm.

2. You confirmed that you had not and could not undertake any assessment of the individual pieces of work done when I asked you the question of how you reached your conclusion on the reality of the actual work carried out in the case.

That also seems to have made it impossible to achieve any objective finding with respect to the 2nd limb of the complaint in relation to "Charged excessive costs".

Quantum Meruit is a universal principle of contract law applied to resolve any question on the issue of excessive costs by carrying out an objective exercise to determine the reasonable value of service charged and received. That finding can only be made after an actual assessment of the pieces of work carried out and not by reference to identifying mathematical and other typo errors on the timesheets. You made it clear in our telephone discussion yesterday that you did not and could not carry out that exercise.

3. Nevertheless, I must say that aside the regret of the time wasted from December 2019 onwards, the positive note from engaging with your service on this matter is that it has deepened my resolve to ensure that the additional safeguards we have since implemented in the firm's case management system are strictly adhered to, in order to prevent such an oversight recurring with respect to not providing written confirmation to a client following oral discussion about levels of cost. This matter was an exception but with grave consequences and lessons have been learned. Further I have thus realised that the limitations of your service precluding dealing comprehensively with the question of cost assessment mean that no confidence can be placed on it in that regard on any question on the issue of whether costs charged are excessive.

4. Please find the attached fee note of Nabila Mallick of Counsel. It is noteworthy that her fees during the period the firm instructed her between May 2017 and June 2018 was about £14,600.00. It is a known fact that the scope of work undertaken by a Barrister in any litigation is a fraction of the scope of work undertaken by the instructing solicitors. The work undertaken by the solicitors always exceeds that of Counsel and rightly so because the solicitors deal with the opponent as well as the client, and prepares the documents and thereafter briefs the Counsel to conduct the advocacy. I am only making this point for what it is worth.

5. Notwithstanding the foregoing, the firm has taken the same view it had formed from the beginning to draw a line under this matter at the earliest opportunity. This is because it was always clear to this firm that the motive of Olukoya was to seek every opportunity not to pay this firm's well earned fees and found expression through your service on the technical poor service point of having not been provided with written confirmation of when the estimated cost was exceeded. It remained an incurable point for which the firm regrets as it fell below our service standards which is clearly set out in our terms of engagement and changes have been implemented accordingly.

6. Therefore I can confirm that the Olukoya's offer of £10,000 plus VAT and disbursements is accepted. The only disbursements expended during this firm's conduct of the matter are in respect of the following:

(i) The medical expert's fee of £500.00

(ii) Counsel's fee of £500.00. The invoice of Mr Julius Nkafu and remittance slip of payment is attached.

The above were the disbursements settled from the £1,000.00 paid in June 2018 by Olukoya.

(iii) It is noted that at the time of writing an email was received from Olukoya with the email from Ms Mallick's clerk confirming that Nabilla Mallick of Counsel's fees are confirmed as paid up…"

24. On 18 February 2020 Ms Bartlam wrote to the Claimant:

"I am pleased to confirm that Riverbrooke Solicitors Ltd has agreed to send you a final bill to reflect the costs, VAT and Disbursements that you were originally advised you would need to pay in their client care letter, when you originally instructed the firm.

You will receive a bill for £10,000 costs plus VAT at 20% £2,000 and Disbursements to the value of £1,000. The expert medical report they paid £500 and they also paid £500 to Mr Julius Nkafu a barrister who attended a hearing on 22 January 2019 at the end of your instruction, to try to recover all their costs from the other side. Whilst this hearing was ultimately unsuccessful for the firm, you would be liable for the cost of the disbursement as this hearing was ordered by the judge at the final hearing of your case.

The firm will deduct from the total of £13,000 the amounts you have already paid a total of £2,500.

This will leave you with a total of £10,500 to settle the full and final bill and you have agreed to do this within 2 weeks from the date of receipt of the final bill.

> I understand you are willing to accept this outcome. I have asked Riverbrooke Solicitors Ltd to send you a final bill as shown above by 4 March 2020. If this doesn't happen, please let me know. If you then do not pay in full the final bill within 2 weeks of receipt the agreement will have been broken. This case will remain closed if the firm have sent a final bill as agreed but if you do not pay by the agreed deadline, then the firm may take legal action against you to recover all their costs in court."

25. On the same date Ms Bartlam wrote to Mrs Chikwendu:

> "Thank you for your email dated 14 February 2020 concerning Ms Olukoya's complaint.
>
> To resolve this complaint, your firm and Ms Olukoya have agreed that you will issue a full and final bill of costs by no later than 4 March 2020 as follows:
>
> £10,000 costs
>
> £2,000 VAT at 20 % £1,000 Disbursements
>
> Total bill £13,000.
>
> Less payments on account totalling:
>
> £2,500
>
> The amount claimed should be £10,500.
>
> You should do this by no later than 4 March 2020. Ms Olukoya has agreed that upon receipt of the bill, she will pay it in full within 2 weeks of receipt. If Ms Olukoya fails to make the payment and breaks the agreement with the firm, this case with the Legal Ombudsman will remain closed but the firm can then take legal action if necessary to recover any outstanding costs…
>
> This case will now be closed and I will take no further action."

26. The Defendant then rendered to the Claimant a bill dated 21 February 2020 and headed "Final Invoice". In accordance with the terms of the Informal Resolution, the bill incorporated profit costs of £10,000, disbursements of £1,000 and VAT of £2,000. Against the total of £13,000 the bill set off a payment on account of £2,500, leaving a balance payable of £10,500.

27. The bill provided bank account details for payment, and on 5 March 2020 (again, in accordance with the terms of the Informal Resolution) the Claimant transferred the sum of £10,500 to the Defendant's account.

28. There would appear to have been no further dealings between the Claimant and the Defendant until over two years and nine months later, on 28 December 2022, when the Defendant delivered to the Claimant an invoice dated 18 November 2022 and headed "Revised Final Invoice". The invoice was in the sum of £157,951, against which was credited "total paid" of £13,000, leaving a claimed balance of £144,951.

The invoice was accompanied by a detailed breakdown.

29. It was the delivery of that "Revised Final Invoice" that prompted the Claimant's application for assessment, and it is that "Revised Final Invoice" (referred to as "the Revised Bill") that is the subject of the court's order for assessment of 26 January 2023.

30. The Defendant, nonetheless, on 9 February 23 delivered another "Revised Final Invoice", again dated 18 November 2022 but now for a total of £106,169.94 and a claimed outstanding balance of £93,179.94.

The Legal Ombudsman's Report to the SRA

31. I need to refer briefly to the events that led to the delivery of the first "Revised Final Invoice" in December 2022.

32. Section 143 of the Legal Services Act 2007, which created the office of the Legal Ombudsman, reads:

> "This section applies where–
>
> (a) an ombudsman is dealing, or has dealt, with a complaint under the ombudsman scheme, and
>
> (b) the ombudsman is of the opinion that the conduct of the respondent or any other person in relation to any matter connected with the complaint is such that a relevant authorising body in relation to that person should consider whether to take action against that person.
>
> (2) The ombudsman must give the relevant authorising body a report which–
>
> (a) states that the ombudsman is of that opinion, and
>
> (b) gives details of that conduct.
>
> (3) The ombudsman must give the complainant a notice stating that a report under subsection (2) has been given to the relevant authorising body.
>
> (4) A report under subsection (2) may require the relevant authorising body to report to the ombudsman the action which has been or is to be taken by it in response to the report and the reasons for that action being taken.
>
> (5) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint..."

33. Rule 5.59 of the Legal Ombudsman's Scheme Rules, as in effect at the relevant time, reads:

> "If (at any stage after the Legal Ombudsman receives a complaint) an ombudsman considers that the complaint discloses any alleged misconduct about which the relevant Approved Regulator should consider action

against the authorised person, the ombudsman:

a) will tell the relevant Approved Regulator;

b) will tell the complainant that the Approved Regulator has

been told;

c) may require that Approved Regulator to tell the ombudsman

what action it will take; and

d) may report any failure by that Approved Regulator (other than the Claims Management Services Regulator) to the Legal Services Board."

34. I would observe that these provisions imposed a duty upon the Legal Ombudsman, entirely independently of the resolution of the Claimant's complaint, to report to the Solicitors Regulation Authority (SRA) any issue of potential misconduct on the part of the Defendant which, in the Legal Ombudsman's view, merited a referral.

35. It is clear that such a report was made in this case. Mrs Chikwendu quotes in her evidence from a report from the Legal Ombudsman to the SRA, which was evidently based upon the investigation undertaken by Ms Bartlam. There is no need for me to refer to its content, which is not my concern for present purposes (and upon which, I emphasise, I have drawn no conclusions whatsoever) but it seems evident that Mrs Chikwendu feels strongly about it.

36. In her covering letter of 28 December 2022, enclosing the "Final Revised Invoice", Mrs Chikwendu said:

> "In the circumstances that subsequent developments to the agreed outcome decision dated 18 February 2020, which was brought to the notice of this firm on 5 October 2022, required a re-consideration of the relevant matters with particular reference to the question of the firm's legitimately incurred costs in the conduct of your above matter...
>
> The current issues between the parties can only be properly resolved upon a detailed assessment of the firm's bill of costs on a Solicitor and Own Client basis under the provisions of the Solicitors Act 1974 by a Costs Court…"

37. At paragraphs 34 and 47 of her witness statement, Mrs Chikwendu says:

> "… notwithstanding the agreed outcome, the Claimant was pursuing a separate and undisclosed claim against the Defendant with the Defendant's regulator through the LeO…
>
> It would be patently unethical and may amount to a travesty of justice if the Claimant is at liberty to simultaneously maintain a claim upon unsubstantiated conclusions… and at the same seek the intervention of the costs court to preclude a detailed assessment of the same subject matter… which intervention of the costs court upon a detailed assessment in itself is required…"

38. I have omitted, in the passages quoted above, references to the subject matter of the report which further demonstrate that the delivery of the "Revised Final Invoice" was a response to the Legal Ombudsman's Report to the SRA, which Mrs Chikwendu interprets as a "separate and undisclosed claim" against the Defendant by the Claimant, and in relation to which she believes that vindication for the Defendant can only be properly achieved through a detailed assessment of the Defendant's full claimed costs.

39. It is beyond question, however, that the Claimant has not made an "undisclosed claim" through the Legal Ombudsman. The terms of the Legal Ombudsman's scheme do not permit "undisclosed" complaints. The undisputed evidence demonstrates that, as between the Claimant and the Defendant, the complaint resolution process before the Legal Ombudsman terminated with the Informal Resolution. As is equally evident from the rule 5.59 referred to above, any referral to the SRA was a matter for the Legal Ombudsman and entirely outside the control of the Claimant. She had no say in the matter.

Conclusions: Whether the Defendant is Bound in Contract by the Informal Resolution

40. Notwithstanding references in Mrs Chikwendu's evidence as to "Riverbrooke Solicitors' intention" I do not believe that there is any difference of opinion between the parties as to the principles that govern the determination of this issue.

41. It is settled law that the question of whether there is a binding contract between parties, and if so upon what terms, requires consideration of what was communicated between the parties by words or conduct. Subjective intentions are irrelevant.

42. The principles were helpfully summarised at paragraph 45 of the judgment of the Supreme Court in *RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG (UK Production)* [2010] UKSC 14, [2010] 1 W.L.R. 753:

> "… Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a precondition to a concluded and legally binding agreement."

43. Applying those principles, it seems to me to be beyond doubt that when the Claimant and the Defendant accepted and put into effect the Informal Resolution brokered by the Legal Ombudsman they entered into a legally binding contract.

44. The terms of that contract were clear and complete. They were based on the offer from the Claimant communicated to the Defendant in Ms Bartlam's letter of 12 December 2019, as expressly accepted by the Defendant in Mrs Chikwendu's letter of 14 February 2020 and relayed to the Claimant by Ms Bartlam. Ms Bartlam's letters of

18 February 2020 set out the procedure by which the agreement would be implemented, which both parties, by their actions, plainly accepted. Accordingly, under the terms of the contract the Defendant was to render a "full and final bill of costs" for £10,000 plus specified disbursements and VAT, as the Defendant did on about 21 February 2020, and the Claimant was to pay it within two weeks, which the Claimant did.

45. Mr King for the Defendant submits that Ms Bartlam was mistaken in indicating to the Claimant that the Defendant was willing to accept the sum of £10,000 in full and final settlement of its entitlement to recover its fees. The Defendant was, he says, accepting that sum only in part payment.

46. As to that, applying *RTS Flexible Systems Ltd*, one must look to the parties' communications and actions. Ms Bartlam confirmed to the Defendant in her letter dated 18 February 2020 that it was a term of the Informal Resolution that the Defendant would render a "full and final" bill of costs to the Claimant, to be paid within two weeks of receipt. The Defendant did not argue with or purport to correct that statement, but delivered a bill, clearly identified as "final", in accordance with the terms of the Informal Resolution. There was no mistake, and no suggestion at any time that the sum paid by the Claimant was being accepted only in part payment: that would have been wholly inconsistent with the agreed termination of the Claimant's complaint.

47. The Defendant argues that there was no consideration for the Informal Resolution, so that it cannot (by reference to authorities such as *Foakes v Beer* (1884) 9 App. Cas. 605, *British Russian Gazette and Trade Outlook, Limited v Associated Newspapers, Limited*, [1933] 2 K.B. 616 and *Ashia Centur Ltd v Barker Gillette LLP* [2011] 4 Costs L.R. 576) represent a binding agreement. I mean no disrespect to Mr King's careful submissions when I say that that, to my mind, is an insupportable assertion.

48. The Claimant provided good consideration for the Informal Resolution. She did so by terminating her complaint to the Legal Ombudsman; surrendering the possibility of public vindication of her complaint by the independent authority established to deal with such complaints; and foregoing her possible entitlement to remedies beyond the reduction of the costs payable, such as compensation or an apology from the Defendant.

49. That in itself is quite sufficient by way of consideration for the acceptance of £10,000 in settlement of the Defendant's claimed costs, but the Claimant's acceptance of the Informal Resolution conferred other benefits on the Defendant.

50. The Defendant's belated acceptance, in February 2020, of the Claimant's offer as first communicated by Ms Bartlam on 12 December 2019, followed Ms Bartlam's clear indication that she had come to the conclusion that had the Claimant understood at the outset that the Defendant's costs would exceed £10,000, she would not have instructed the Defendant.

51. One very possible outcome of that conclusion, had the matter proceeded to a formal determination, would have been a determination by the Legal Ombudsman to the effect that, in consequence of a failure to supply adequate costs information, the Defendant's recoverable costs should be substantially reduced to a level consistent

with the original estimate. The Legal Ombudsman's findings, as Ms Bartlam mentioned, would have been published on the Legal Ombudsman's website, which at the least would have been an embarrassment for the Defendant.

52. The Defendant avoided that substantial risk (and the risk of the other possible sanctions available to the Ombudsman to which I have referred) by accepting the Claimant's offer. Having done so it is not now open to the Defendant to assert that in accepting the Informal Resolution, the Defendant was simply accepting part payment of a debt. That is plainly not the case.

53. Mr Barber has identified a further benefit to the Defendant from the Informal Resolution. Ms Bartlam appears to have believed, mistakenly, that the Defendant was still instructed by the Claimant on 22 January 2019, when the Defendant sent Mr Julius Nkafu of counsel to attend the costs hearing before the Tribunal.

54. In fact the Claimant had terminated the Defendant's retainer over five months earlier. Mr Nkafu was not instructed by or on behalf of the Claimant (who was, as ever, represented by Ms Mallik). He was instructed by the Defendant to represent the Defendant's interests. The Defendant was not entitled to include Mr Nkafu's fees as a disbursement in a bill to the Claimant. In doing so, and in accepting payment of those fees from the Claimant, the Defendant received a benefit which fell outside any legitimate claim for costs against the Claimant.

55. In the light of those conclusions it is not necessary for me to make any finding as to whether the Defendant's claimed costs could be characterised as a liquidated debt, of the kind to which the authorities relied on by Mr King apply. I would observe however that (by reference to *Turner & Co v O Palomo SA* [2000] WLR 37, at paragraph 46) the Defendant's claim for costs does not appear to be a liquidated debt. I find the Defendant's attempts to characterise it as such to be unconvincing, contradicted as they are not only by Mrs Chikwendu's express acknowledgement, in her correspondence with Ms Bartlam that the Defendant's claim for cases was in "Quantum Meruit", but the Defendant's desire for the "Revised Final Bill" to undergo a detailed assessment by this court (in which, as Mrs Chikwendu puts it, the court would "examine whether in fact the work claimed was carried out, the reasonableness of the work carried out, and at the level of costs claimed for every item of work"). The court does not undertake the detailed, point by point assessment of liquidated debts.

56. Finally, I should deal with an argument raised by the Defendant to the effect that an Informal Resolution", by virtue of being "informal", cannot be binding. It seems to me that terminology is entirely beside the point. One must look at the correspondence and the parties' actions to determine whether or not the Informal Resolution was contractually binding.

57. For all those reasons, my conclusion is that the Defendant is bound by the terms of the Informal Resolution entered into by the parties in February 2020, and has no further claim to costs. It follows that the "Revised Final Invoice," referred to in this court's order of 26 January 2023 as the "Revised Bill", must be assessed at nil.

58. Given that finding, it is not strictly necessary for me to address the remaining preliminary issues, but I should do so because I have concluded that even if the

Informal Resolution had not been a binding contract, the Defendant would still not have been entitled to render any further invoice to the Claimant after payment of the 21 February 2020 "Final Invoice".

Conclusions: Whether the Defendant is prevented from raising the Revised Bill by the Legal Ombudsman's Scheme Rules or other Statutory Provision

59. On the hearing of this issue it was common ground between the parties that (whilst a determination by the Legal Ombudsman would have been binding on both parties if accepted by the Claimant) there is no provision in the Legal Ombudsman's Scheme Rules, or elsewhere in statute, to the effect that an Informal Resolution is binding.

60. That, perhaps, is unsurprising. As the correspondence to which I have referred makes clear, the point of the "informal resolution" process is to achieve a legally enforceable Resolution without the need for a public, formal determination. It is not (or at least, should not be) necessary to improve upon or add to the normal principles of contract that make an Informal Resolution binding.

Conclusions: Whether the Defendant Requires the Court's Permission to Raise the Revised Bill and, if so, Whether Permission Should be Given

61. When I received skeleton arguments from each party prior to the commencement of the preliminary issues hearing, it appeared to me that neither party had yet addressed the principles that led me to identify this as a preliminary issue. According, I referred both parties to *Bilkus v Stockler Brunton (a Firm)* [2010] EWCA Civ 101, an authority which offers a useful starting point in considering the relevant principles.

62. The point, in brief, is that a final bill rendered by a solicitor to a client is, by definition, final for the work described in it. It has recently been established (*Boodia and another v Richard Slade and Co Solicitors* [2018] EWCA Civ 2667) that there may be a separate final bill for disbursements, but that has no bearing for present purposes.

63. Being final, the bill is binding upon the solicitor who renders it. The solicitor cannot amend that bill without the agreement of the client or the permission of the court.

64. To be clear, I refer here to a "statutory" (or "statute") bill, meaning a solicitor's bill that satisfies the requirements of the Solicitors Act 1974 and of the relevant case law. Otherwise, the bill has no legal force at all: the solicitor will not be able to take action to recover the billed costs and the client will not be able to obtain an order for their assessment.

65. In her witness statement Mrs Chikwendu says that "The final invoice dated 20 February 2020 rendered by the Defendant to the Claimant does not constitute a Statute Bill", but she does not say why. Whether or not a solicitor's bill is a statutory bill does not turn upon the intentions of the solicitor who delivered it. One must look at what the parties did, and apply the established criteria accordingly.

66. It is perfectly possible for a solicitor to deliver a non-statutory invoice, typically by way of an "interim bill" that represents nothing more than a request for payment on account during the course of the solicitor's retainer. Following the termination of the

retainer, however, there is no more work to do and there is no point in rendering an interim bill. One would expect a bill delivered at that point, absent some specific provision to the contrary such as an outstanding conditional fee arrangement, to be (or at least to be intended to be) a statutory bill. Absent good reason a solicitor should render a final statutory bill promptly after the termination of a retainer: if not, the court may order the solicitor to do so.

67. The Informal Resolution brokered by the Legal Ombudsman provided expressly for the Defendant to render a "full and final bill" and for the Claimant to pay it within a specified period. The bill was on its face described as a "Final Invoice", meaning of necessity that there were no further invoices to be rendered.

68. Nor would the two bills rendered by the Defendant to the Claimant in December 2022 and February 2023 have been headed "Revised Final Invoice" if they did not purport to be revisions of a final bill (it is evident from Mrs Chikwendu's evidence that she was at the relevant time unaware of any legal obstacle to the revision of a solicitor's final bill).

69. The Informal Resolution provided that if the Claimant did not pay the "full and final bill", the Defendant would be free to sue upon it (and not, as Mrs Chikwendu suggests, to take action to recover the full amount of its claimed costs, which is inconsistent with the term "full and final bill of costs"). That would not have been possible unless the bill was a statutory bill.

70. It does not (as I understood Mr King to suggest) matter that the bill dated 21 February 2020 was marked "final" rather than "full and final". That is a distinction without a difference.

71. I also understood Mr King to argue that there was insufficient information in the bill dated 21 February 2020 for it to allow it to qualify as a statutory bill. It is not open to the Defendant to rely upon alleged defects in its own final bill as a ground for purporting to render another. If the Claimant does not complain that the bill is insufficient, it does not lie with the Defendant to do so.

72. It is not a good point in any event. The sufficiency of the information in a bill turns not just upon the contents of the bill but upon the knowledge of the parties. In this case, the Claimant was well aware of what the Defendant claimed to have done on her behalf, and she had, according to the Defendant's correspondence, received what was described as "a detailed bill" in August 2018. The final bill represented the outcome of an agreed compromise. The Claimant did not need to know more than that, but in fact she knew all about the Defendant's claimed costs.

73. All that aside, it is simply not credible that a solicitor would deliver a bill marked "final" and then wait for almost three years to deliver the real "final" bill. As I have observed, the delivery of the "Revised Final Invoice" was prompted by the Legal Ombudsman's report to the SRA. If that report had not been made, the "Revised Final Invoice" would in my view never have been delivered.

74. For those reasons, my finding is that whether or not the Informal Resolution represented a contractually binding settlement, it is eminently clear that the bill dated 21 February 2020 was delivered as, and was, a statutory bill. It follows that the

Defendant needed, but did not apply for, the permission of the court to deliver a "Revised Final Invoice" to the Claimant almost three years later.

75. As for whether the Defendant should receive such permission retrospectively, it seems to me beyond argument that even if the Informal Resolution had not been legally binding upon the Defendant, permission should not be given.

76. At paragraphs 58 to 60 of his judgment in *Bilkus v Stockler Brunton*, Stanley Burnton LJ explained the relevant principles. I have highlighted in bold some passages that are particularly pertinent to the present case:

> "… In *Sadd v Griffin* [1928] 2 KB 510, Farwell LJ, giving the judgment of the Court of Appeal , said:
>
> '… **it is settled beyond controversy that the solicitor is, for the purposes of taxation, bound by the bill that he has delivered and cannot alter it without the leave of the court or the consent of the party**.'
>
> However, it was emphasised that **the jurisdiction of the court to grant leave to a solicitor to alter or to withdraw his bill was to be carefully and sparingly exercised, being restricted to cases of genuine mistake or error on the part of the solicitor when preparing his original bill**. In *Polak v Marchioness of Winchester* [1956] 1 WLR 818, the Court of Appeal confirmed that it had an inherent jurisdiction to permit a solicitor to withdraw his incorrect bill of costs and to substitute a fresh correct bill, but Jenkins LJ said, at 827:
>
> 'I entirely agree with the judge when he said that one has to take a strict view to maintain the necessary safeguards, and nothing I say is to be regarded as suggesting to solicitors that they can be careless or unbusinesslike in a matter such as this, and then as of course apply for and receive the assistance of the court. **It is only in exceptional cases, cases of special circumstances, of genuine mistake [or] inadvertence, that assistance ought to be given**.'
>
> These principles are equally applicable to bills delivered following the enactment of the Solicitors Act 1974…"

77. There was no question of mistake here. The bill dated 21 February 2020 was prepared and delivered exactly in accordance with the terms of the Informal Resolution.

78. Further, even if the Informal Resolution had not been legally binding on both parties, it would be wholly contrary to the public policy underlying the Legal Ombudsman's scheme rules to allow a solicitor, having accepted an informal resolution brokered by the Legal Ombudsman in accordance with that policy, to walk away from the settlement and to render another bill as if it had never happened. That would be so even if the motive for attempting to do so had not been (as it was) an unfounded

grievance against the Claimant.

79. For those reasons, my finding is that the Defendant had no right, without the court's permissions, to deliver a "Revised Final Invoice" to the Claimant in December 2022 (or for that matter to purport to deliver another "Revised Final Invoice" to the Claimant on 9 February 2023), and that it would be wrong for permission to be given.

80. It follows that even if I had not found the Informal Resolution to be contractually binding on the Defendant, I would have found that the "Revised Final Invoice" must be assessed at nil.

Conclusions: Whether the Defendant is Estopped from Raising the Revised Bill

81. Promissory estoppel operates to prevent a party from insisting upon their strict contractual entitlement against another party where they have promised or represented that they would not do so.

82. For the principle to be enforced, there must be no ambiguity on the part of the party making the promise (which can be express or implied). They must be clear that they do not intend to enforce their legal rights, and the person to whom the promise is made must have acted on that promise either to their detriment or have altered their course of action as a direct result of relying on that promise.

83. Promissory Estoppel will not be available as a defence if the promisee has behaved inequitably.

84. The Defendant argues, by reference to *Jones v Richard Slade & Co Ltd* [2022] Costs LR 1191, that I do not have jurisdiction to determine whether the Defendant was estopped from delivering the "Revised Final Invoice" in December 2022.

85. This objection came late in the day: it should have been raised on 8 March 2023, when I made an order to the effect that I would hear this issue. As best I can recall, the issue of jurisdiction was not then raised by the Defendant but even if it had been disputed at the time, the right course would have been to appeal that part of the order of 8 March 2023, instead of trying to shut out the issue on the date set for it to be heard.

86. In any event I do not believe that *Jones v Richard Slade & Co Ltd* excludes the hearing of this issue on an assessment. The question, as Johnson J explained at paragraph 44 of his judgment, is whether the issue is relevant to the assessment of costs. There is jurisdiction to address such matters if it is necessary to do so as part of the process of assessing costs (including the decision whether to order the assessment of costs). Such is the case here.

87. That said, the issue, in view of the findings I have already made, is academic. I would only point out that the matters I have identified that demonstrate that the Claimant provided good consideration for the Informal Resolution would apply equally to support the conclusion that the Defendant is debarred, through promissory estoppel, from raising or relying upon the "Revised Amended Invoice".

88. Even if I were to disregard the Claimant's evidence to the effect that, on the understanding that her dispute with the Defendant had been settled, she disposed of

various records that would have assisted her in disputing the Defendant's claimed fees in a detailed assessment, and that the passage of time has affected her ability to meet them (and there is no reason why I should disregard it) it seems to me that the basis for promissory estoppel is fully made out.

89. The Defendant argues that the Claimant has forfeited any right to rely upon estoppel because she behaved inequitably. That is based upon two allegations. The first is that the Claimant being "deceptive" in pursuing an "undisclosed claim" with the Legal Ombudsman. I have already demonstrated why that allegation is unfounded.

90. The second is that the Claimant pursued a claim for the Defendant's full claimed costs before the Tribunal, so seeking to recover costs which, at the same time, she disputed were due to the Defendant.

91. The obvious obstacle to that second allegation, which as framed as an allegation of "duplicity" (in other words, dishonesty) is that there is no evidence to support it.

92. Contrary to what Mrs Emuekpere seems to believe the Claimant, having disinstructed the Defendant, was under no obligation to keep the Defendant informed of the progress of her costs application, or of the attempted appeal from the Tribunal's refusal to make an order. As for the hearings themselves the evidence, including that of Mrs Emuekpere, indicates that neither the Claimant nor Ms Mallick accepted the Defendant's costs figures.

93. The position as put to me by Mr King was that it is "inconceivable" that the Claimant did not put the Defendant's full claimed costs to the Tribunal in the course of applying for a costs order. I find it entirely conceivable, and in fact there is no good reason to suppose that she did. Of necessity, an order for costs comes before the quantification of the costs payable under that order, and the quantification stage was never reached. Nor do I have any reason to suppose that Ms Mallik, as counsel for the Claimant, would have represented to the Tribunal that the Claimant had a legitimate claim for costs at a level which she herself did not believe to be correct.

94. I am familiar with the dilemma faced by any solicitor's client who needs to maximise the recovery of their incurred litigation costs from an opponent, whilst at the same time taking issue with the level of costs claimed by their own solicitor. In this court, the problem may be addressed by providing for an assessment to take place between solicitor and client, with the assessment between the opposing parties to be stayed in the meantime.

95. Presumably the Tribunal, had it made an order for costs, could have referred the Claimant's costs for assessment in the County Court, so that some similar arrangement could have been made. It might well have been necessary, in that event, for the Claimant to identify the Defendant's claimed costs before the Tribunal, whilst explaining that the Defendant's figures were not accepted. There is however no evidence to support the supposition that the Tribunal ever had any details of the Defendant's costs at all.

96. In any event, for the reasons I have given, had I not found that the Informal Resolution was contractually binding upon the Defendant, I would have found that the Defendant was debarred by promissory estoppel from relying upon the "Revised Final

Invoice".

Summary of Key Conclusions

97. The Informal Resolution brokered by the Legal Ombudsman in February 2020 is a contractually binding agreement which limited the Defendant's claim against the Claimant for costs and disbursements to a total of £13,000, all of which has been paid in accordance with the terms of that Informal Resolution.

98. For that reason alone, the Defendant had no right to render a "Revised Final Invoice" almost three years later, in December 2022. The "Revised Final Invoice" stands to be assessed at nil.

99. As an entirely separate point, the bill delivered by the Defendant to the Claimant on about 21 February 2020 and headed "Final Invoice" was a final, statute bill. The Defendant needed, but did not have permission, to revise that bill as the Defendant purported to do in December 2022 and again in February 2023.

100. Nor would it be appropriate for permission to be given. That is not just because the necessary criteria, on established authority, have not been made out, but because it would allow the Defendant to escape the outcome of an informal resolution brokered by the Legal Ombudsman in accordance with the Ombudsman's Scheme Rules. To give permission in those circumstances would be wholly contrary to public policy.

101. Again, for that reason alone, it would be appropriate to assess the "Revised Final Invoice" at nil.