Splitting the bill

Andrew Hogan examines arguments over bills between law firms and their commercial clients

The City of London – with its magic circle and boutique litigation firms - remains a legal powerhouse, but challenges by outraged clients to their solicitors' bills of costs seem to be increasingly common. This trend is likely to continue and increase with the work now under way through the auspices of the Civil Justice Council, on the way solicitors charge and how their bills are assessed.

HOW IT BEGINS

A solicitor and client costs dispute in a commercial case rarely begins with the Solicitors Act 1974. It tends to begin with disappointment. A client thinks the case was overmanned, costs were under-explained, or simply too expensive. The solicitor thinks the work was necessary, the team was appropriate, and the client knew, or should have known, what the exercise would cost. This divergence between the two parties is always grounded in failings in client care and a breakdown in trust. Once trust has gone, the relationship changes character.

The former language of service, client care and discretion gives way to the harder language of retainers, invoices, payment, time bars and detailed assessment. That is the real lesson of the recent authorities in the solicitor-client space. They show that these disputes are not usually decided by broad complaints that the bill feels unfair. They are decided by a close reading of the contract, a careful classification of the bills, and a thorough application of the statutory machinery.

THE RETAINER

The first question is what the retainer says about billing. Do the terms of business entitle the firm to render interim statute bills at all? Do the terms say, in clear language, that monthly or stage bills were final for the period they covered? Or did they merely say that the firm would send invoices periodically to keep the client informed of the accumulating level of costs?

That distinction is everything. If the bills are valid interim statute bills, then time to seek an assessment starts to run against the client under section 70 from the date of delivery of the bills. If the invoices are to be regarded only as requests for payment on account, or component parts of a later final bill (a 'Chamberlain' bill), the client's challenge may remain alive long after the individual invoices were sent and paid. The battlefield, in other words, is often laid out before anyone reaches the question of whether the hourly rates were too high or the attendances too lengthy.

The modern law on interim statute bills has developed in a series of cases. The Court of Appeal accepted in *Richard Slade & Co v Boodia* [2018] EWCA Civ 2667 that if the contract allows it, a solicitor may render interim statute bills that relate to profit costs and bill disbursements in a later period, without losing the time bar protections of the act. In the subsequent High Court decision in *Boodia v Richard Slade & Co* [2023] EWHC 2963 (KB) an attempt to argue that there was a contractual duty or implied term to explain the concept of an interim statute bill and its effect in raising a time bar, failed.

Clear contractual words can make monthly bills final for the period they cover, and the court rejected the idea that validity depended on some separate requirement that the solicitor explain to the client, as a condition of the bill's effectiveness, the section 70 consequences of such billing. Put simply, the law does not disable solicitors from using interim statute bills. But it does insist on clarity.

But recent cases also show that courts will not manufacture finality where the retainer does not truly provide it, or where the terms of a statute logically preclude it. In *Signature Litigation LLP v Ivanishvili* [2024] EWCA Civ 901, the Court of Appeal upheld the conclusion that invoices totalling almost £13m were not interim statute bills, because with the retainer being a discounted conditional fee agreement structure, they were not (and could not be) final and complete for the work done in the period in question. A present invoice for only part of an ultimately recoverable fee, with the balance dependent on future contingencies, is not easily characterised as a final statute bill.

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The same insistence on genuine finality appears in *Topalsson GmbH v CMS Cameron McKenna Nabarro Olswang LLP* [2025] EWHC 118 (SCCO). There, a clause saying that the firm would bill monthly to keep the client informed of costs levels was not enough. Senior Costs Judge Gordon-Saker held that the firm was not entitled contractually to render interim statute bills, and that the final bill incorporating the earlier bills was the operative statute bill for section 70 purposes.

In sophisticated commercial litigation, invoices can be frequent, large and paid without immediate protest. It is tempting for firms to assume that regular billing and regular payment must bring certainty. But the recent authorities show that certainty does not come from habit. It comes from the legal character of the invoice, which in turn is derived from the legal rights in the contract of retainer. That is a serious point for commercial firms, because the larger the matter, the more expensive a mistaken assumption about finality may become.

TIME

Once the bill's status is identified, the next question is usually time - and whether the time for a client to bring an assessment has expired. Section 70 of the Solicitors Act 1974 remains the key provision. Within one month from delivery, the client may seek an assessment as of right and unconditionally. This does not preclude a solicitor seeking a payment on account under the Civil Procedure Rules at the appropriate time.

After one month the court retains a discretion to allow an assessment, but can impose conditions, which usually mean an interim payment being ordered as a condition for the assessment. After 12 months from delivery, or after judgment, or after payment but within 12 months of payment, special circumstances are required. After 12 months from payment, the jurisdiction is gone.

These provisions are old, technical and sometimes awkward, but they continue to decide modern cases. They are the reason why preliminary issues are so often attractive. If the solicitor can establish that the bill was a statute bill, and that it was paid more than 12 months before the application, the assessment may never begin. If the client can defeat either limb of that argument, the door remains open.

The most important modern development is the Supreme Court's decision in *Oakwood Solicitors Ltd v Menzies* [2024] UKSC 34, on the question of what is 'payment' for the purposes of the act. Before *Menzies*, solicitors frequently argued that once a bill had been delivered and the firm had deducted the billed sum from money held for the client, there had been 'payment' for section 70(4) purposes. The Supreme Court rejected that broad approach. It held that payment in this context requires more than unilateral deduction.

The client must have had the opportunity to see and consider the bill, and there must be agreement, express or inferential, to the amount paid in satisfaction of it. The court accepted that agreement can be inferred from conduct, including acceptance of a balance, but mere prior authority in a CFA to deduct fees from damages was not enough, without agreement to the amount ultimately taken. That decision materially strengthens clients resisting limitation-style arguments based only on deduction from client funds.

The practical consequence of *Menzies* is that solicitors should be more careful before assuming that any internal transfer, deduction or retention amounts to payment. This is not merely a personal injury point. The same reasoning applies in commercial cases where solicitors are holding settlement monies, sale proceeds, escrowed funds or money on account. Client protection, not accounting convenience, is the animating idea of the statutory scheme.

Mehta v Howard Kennedy LLP [2025] EWHC 1008 (SCCO) is a useful recent reminder that limitation-style arguments still matter, and can still succeed, where the solicitor has its house in order. In *Mehta*, the SCCO held that the invoices were interim statute bills, that the retainer was not a contentious business agreement of the kind alleged (which would have extended the time bar period), and that payments made by third parties were effective payments where they were made with the knowledge and consent of the client.

The point is that *Menzies* does not rescue a client from a well-drafted retainer, properly rendered statute bills, and actual payment in the statutory sense. Preliminary challenges are still worth taking. They are simply worth taking only after the solicitor has checked that every rung on the ladder is sound.

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THE ASSESSMENT

If the client gets through the gateway, the dispute then becomes what most lay people imagine it was all along: a quarrel about the amount. CPR 46.9 provides that solicitor and client costs are assessed on the indemnity basis, but with important presumptions. Costs are presumed reasonably incurred if they were incurred with the client's express or implied approval, and reasonable in amount if their amount was expressly or impliedly approved. But unusual costs, whether by nature or amount, may be presumed unreasonably incurred if the solicitor did not tell the client in advance that they were unusual and might not be recoverable. So the assessment is not a free-ranging judicial impression. It is an exercise structured by presumptions, warnings, approvals and the adequacy of costs information.

There is also a procedural discipline which modern paying parties ignore at their peril. *Ainsworth v Stewarts Law LLP* [2020] EWCA Civ 178 remains the leading authority on 'pleading points' in the context of a detailed assessment: points of dispute must identify what is challenged and why. PD 47 paragraph 8.2 says that points must be short and to the point, but they must also identify specific points and state concisely the nature and grounds of dispute. Recent cases show that this is not a box-ticking formality. It is the structure of the contest. Vague allegations of excess, duplication or disproportionality are not enough. The parties and the court must be able to see, item by item or point by point, what is really in issue. *Ward v Rai* [2025] EWHC 1681 (KB) has recently underlined the same theme in the broader detailed assessment context. Non-compliant, vague or late-elaborated points may not survive. That matters in solicitor and client disputes, because these cases often begin with strong feelings and weak pleading.

The productive challenges are usually familiar ones. Are the time records intelligible and consistent? Were the hourly rates communicated and updated? Was there unexplained partner attendance, supervisory layering or duplication, amounting to 'overmanning'? Did the estimate bear any rational relationship to the eventual bill, and, if not, was the client warned in time to make an informed choice about whether to continue?

Those questions are not glamorous, but they move the figures. In a commercial case, they also shape the secondary argument about implied approval. A sophisticated client may approve a great deal. But approval is hard to infer where the picture presented to the client was incomplete or materially misleading.

The costs of the assessment itself are often treated as an afterthought. They should not be. Section 70 still contains the one-fifth rule. Unless the court orders otherwise, if more than one-fifth of the amount of the bill is assessed off, the solicitor pays the costs of the assessment; otherwise, the party chargeable pays them. But that is only the starting point. Section 70(10) preserves a discretion where there are special circumstances relating to the bill or the assessment.

The final point is interest, and here care is needed. Section 66 gives the costs officer power, on an assessment of contentious business, to allow interest at such rate and from such time as is just, on money disbursed by the solicitor for the client and on money of the client in the solicitor's hands and improperly retained. That is an important provision where the solicitor has deducted sums from client money and, on assessment, must refund part of them.

There is an obvious fairness in saying that the client should not merely recover the overcharge, but also compensation for having been kept out of the money. The appropriate rate is likely to be that equivalent to what the solicitor would have charged for being kept out of costs, had the decision gone the other way.

CONCLUSIONS

A commercial client who wishes to challenge a solicitor's bill should begin with the retainer, the status of the bills and the section 70 timetable. A solicitor who wishes to defend the bill should do the same.

Only after that should either side spend much money on line-by-line argument about rates and time. That may sound dry. In truth it is the opposite. This is where modern solicitor and client costs litigation lives.

The recent cases show a legal landscape in which drafting matters, billing architecture matters, costs information matters, and procedural discipline matters. The old act may creak, but it still has teeth. And the party who ignores its machinery is likely to feel them.

The Solicitors Act Working Group review, part of the Civil Justice Council, is now running 12 months late. The terms of reference of the review include a steer to consider the following matters:

- Recommendations for primary legislative reform to the Solicitors Act 1974.
- A Solicitors Act 1974 section 56 general order, to help develop a better scheme for non-contentious costs.
- A possible costs regime for online digital portals.
- The scope of future reform in relation to contentious / non-contentious costs.

When the report emerges, which could be by the time this article is published, it can be expected to have a strong steer towards consumer protection: and while that might be good for clients, it might cause more issues for solicitors - much more so than under the current regime.

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