MIS-CERTIFICATION of SOC's | BILLS + S.32.5 STATEMENT ILLEGALITY
ALL COSTS DISALLOWED

Official Transcript.

Mr Sohan Pirta v Mr Padam Bahadur Shahi
Case No: 2BD00439
County Court At Birmingham
2 July 2015
2015 WL 4744934
Before: District Judge Griffith
Date: 2 July 2015
Hearing dates: 22nd and 23rd April 2015

Representation

- Mr Marc Banyard (instructed by Serious Accident Lawyers Limited) for the Claimant.
- Mr Nicholas Bacon QC (instructed by Keoghs) for the Defendant.

Judgment

District Judge Griffith:

1 The case is listed before me for a detailed assessment of the Claimant's costs on the standard basis pursuant to court orders dated 30th July 2012 and 26th November 2013 (the date on the face of the Bill is wrong). The substantive claim was for damages arising out of a road traffic accident which occurred in February 2009, as a result of which the Claimant suffered multiple injuries including a serious head injury. Within a few days of the accident Mr Sajid Abbas, a solicitor and partner with the firm Megsons LLP, came to represent the Claimant and thereafter took the matter forward on his behalf. Court proceedings were issued in January 2012 with a Defence being filed and thereafter allocation taking place. Subsequently, at a joint settlement meeting in May 2013, a settlement was agreed in the sum of £1,600,000. Although at this stage I have not been addressed as to the detail, I am told that there was, thereafter, an issue as to the Claimant's mental health and whether there would be a need for court approval of the settlement, the Claimant having proceeded through his litigation friend. In any event further work was undertaken and a final order reflecting the agreed settlement was made on 26th November 2013.

2 Detailed assessment proceedings were commenced via service of N252 Notice of Commencement dated 22 April 2014 and detailed Bill of Costs totalling £454,471.20. The Defendant filed and served Points of Dispute dated 15 May 2014. The Claimant served Replies to the Points of Dispute dated 25 June 2014. The request for a detailed assessment and the filing of the Claimant's Bill of Costs took place in November 2014 listing a hearing for 2.5 days.

3 Under cover of a letter dated 15 April 2015, about a week before the start of the detailed assessment hearing, an amended Bill of Costs totalling £453,454.81 was filed and served albeit not headed as such. It contained an amendment in respect of the hourly rates claimed as referred to in the narrative of the Bill. At the same time, Amended Replies to the Points of Dispute dated 9 April 2015 were filed and served by the Claimant. This judgment deals with point one which challenges the entitlement to an indemnity for costs, in effect challenging the validity of the Claimant's retainer and issues arising thereunder.

4 Having started to deal with point one, it quickly became clear to me that there were concerns about the retainer. There was the obvious concern that the first Bill contained the usual solicitor's certification, by Mr Abbas, but yet proved to be incorrect with regard to a key element of the Bill, namely hourly rates. However, it also became clear that Megsons LLP was not the only solicitors' firm to have dealt with the matter on behalf of the Claimant and yet there was no mention of this in the Bill. Mr Banyard produced two conditional fee agreements (CFAs), one with the Claimant himself and one subsequently with his litigation friend. There was also mention of a belief that assignments were in existence dealing with the transfer of the work to the other firms. However, nothing was available at court.

5 I was also referred to a statement of costs for summary assessment dated 27'h July 2012, again signed by Mr Abbas, which was clearly incorrect in key aspects. I will mention this in more detail later. Apart from this therefore, my concerns were that neither the Bill narrative nor the breakdown of the work undertaken, reflected the fact that other solicitors' firms were involved and the position with regard to the CFA was unclear.
6 Because of these concerns, I was of the view that a genuine issue had been raised as to the validity of the retainer and that this needed to be investigated further. I directed that the CFAs and two separate client care letters referring to the hourly rates should be disclosed to the Defendant and thereafter both parties were to consider their positions overnight, following which I would hear submissions.
7 The following morning I considered a skeleton argument prepared overnight by Mr Bacon and I also heard oral submissions from both representatives. In addition, the conducting solicitor throughout, Mr Sajit Abbas, attended court and gave oral evidence on these matters.
8 Firstly, it was confirmed that the first solicitors on record were Megsons LLP and that Mr Abbas was a partner in that firm. A notice of change of solicitors dated 3rd June 2013 thereafter put Me sons Personal Injury Limited on record. A notice of change dated 23r December 2013 put Alliance Law Solicitors on record and thereafter a further notice put the current solicitors, Serious Accident Lawyers Limited, on record.
9 Mr Abbas confirmed that he became a partner in Megsons LLP around 2003/2004 although he could not remember precisely when. He explained that he operated the personal injury department and agreed that he was responsible for matters relating thereto.
10 He told me that problems arose within the firm due to the actions of the senior partner which resulted in the Solicitors Regulation Authority taking action against them. The problems continued and ultimately Mr Abbas set up the successor practice of Megsons Personal Injury Limited. However, it appears he had difficulties in arranging professional indemnity insurance cover. Therefore he said that he had to wind down that firm in November/December 2013. Thereafter he went to work as a consultant with Alliance Law Solicitors and took all his cases with him, he says with the Solicitors Regulation Authority's consent. Subsequently he set up his own practice, Serious Accident Lawyers Limited.
11 Throughout, Mr Abbas has been the key fee earner dealing with this claim and the case has travelled with him.
12 Mr Abbas was referred to the statement of costs for summary assessment dated 2?'h July 2012. This was the Claimant's statement of costs in respect of an interlocutory application. He confirmed that he had signed the certification at the end of the document although he said that he did not think that he had prepared it himself but rather that the task was given to one of his case handling assistants, Miss Insa Hamid. Time was also claimed for her in the statement of costs. At that time, he had been a partner in the firm for seven or eight years and confirmed he was the principal partner doing personal injury work and therefore had ultimate responsibility for such matters. He agreed that the hourly rate charged for Miss Hamid of £144 was incorrect and also that she was a Grade D fee earner rather than Grade C as specified. He could offer no explanation for this error other than to say that he simply missed it and that it was an honest and genuine mistake.
13 In cross-examination, he initially agreed that he would be responsible for setting charging rates within the firm although this would be on advice from a costs draftsman but that he had never in fact had to change the rates within the firm. In fact he said that the case management system they used would not permit the changing of the hourly rates and therefore that the original rates within the system remained in place. He went on to explain that the rates shown on the system were the rates that would be charged to clients and opponents but then stating that it was the time record that would be relied upon and ultimately the costs draftsman would simply apply the rates "to which I was entitled". When he realised that what he was saying simply did not make sense, he changed his evidence to say that the hourly rates on the system could be changed but he was not the one to change it. When pressed however he conceded that the administrator of the system would be able to change the rates and that he was the administrator. In effect he came around to saying that he would be responsible for changing the rates, the rates could be changed on the system but simply he would need help from one of the IT members of staff to do it.
14 He agreed that, bearing in mind his position, he would be aware of the hourly rates charged in the firm on any matter, as he would set them. He was pressed by Mr Bacon therefore as to why he signed the certification on the statement of costs when the rate, and indeed the grade of fee earner, was incorrect. He denied that this was a deliberate ploy but

simply that Miss Hamid had been instructed to prepare the statement of costs, she had handed it back to him and he had checked the document but failed to spot the errors. Surprisingly, he went on to say that he was not sure what Miss Hamid's hourly rate was.
15 So far as the first Bill is concerned, again he confirmed his signature on the certificate. It was also noted that he claimed two hours for checking the Bill, not an insignificant amount of time and during which I would have expected him to have checked the Bill thoroughly. He acknowledged that his hourly rate pre-2010 recorded as £198 per hour was incorrect as indeed was the Grade D fee earner rate claimed at £109 per hour. In the amended Bill they were reduced to £168 and £105 respectively. In all fairness to Mr Abbas, it was also noted that other rates had been understated and were therefore increased in the amended Bill.
16 Again he could offer no explanation for the error other than claiming it was an honest mistake. Worryingly, he confirmed that he does not normally check the hourly rates in Bills but only the time spent, relying upon the costs draftsman's knowledge of the firm to insert the correct rates.
17 Mr Abbas pointed out that the Bill was corrected when he became aware of the problem through the involvement of another costs draftsman, Mr Banyard. In court he told me that he was happy that the amended Bill properly reflects the position as between him and his client. In response to that he was referred again to the sixth page of the amended Bill which simply records that the matter was funded on a CFA basis and that there was no mention in the Bill of the funding in respect of a litigation friend or indeed the involvement of the other firms. The Bill was not broken down to reflect this. Again he could offer no explanation for this other than saying, in effect, that he simply relied upon the costs draftsman. It was noted again however that a further two hours was claimed for checking the amended Bill.
18 Mr Abbas confirmed that no new CFA was entered into with the client/litigation friend upon the case transfer to Megsons Personal Injury Limited. His initial response was that he assumed that the original contract would be assigned. He then went on to say that it was actually assigned and that, in his view, there was continuity. However, he was unable to produce any express written assignment but simply produced. for the first time, a signed authority containing signatures of the Claimant and the litigation friend and dated 29th May 2013. It is effectively a consent for the file to be transferred to Megsons Personal Injury Limited and for the CFA *dated 1 ih February 2009* to be "transferred/assigned".
19 Finally he was referred to the statement pursuant to CPR 47 PD 32.5(1)(c) and (d) , within the assessment bundle. This is a document required by the rules to be served on the paying party. The purpose, as it states, is to set out what is contained within the CFA so as to enable the paying party and the court to determine the level of risk undertaken by the solicitor.
20 I have considered the two relevant CFAs, one being with the Claimant himself dated 1ih February 2009 and the other being with his litigation friend dated 1st January 2012. They are identical in terms and neither of them contains a definition of 'win' or 'lose'. Nevertheless, the CPR 47 statement contains such definitions.
21 Also that statement states:
"It may be that your opponent makes a Part 36 offer or payment which you reject on our advice, and your claim for damages goes ahead to trial where you recover damages that are less than that offer or payment. If this happens we will not add our success fee to the basic charges for the work done after we have received notice of the offer or payment."

22 However, the CFAs state:
"It may be that your opponent makes a Part 36 offer or payment which you reject on our advice, and your claim for damages goes ahead to trial where you recover damages that are less than that offer or payment. If this happens we will ***(not add our success fee to the basic charges) (not claim any costs)*** for the work done after we have received notice of the offer or payment."

I have put the different wording in italics.
23 Finally, the statement states:
"A success fee of 100% is claimed in the event that the matter concludes at trial. A success fee of 12.5% is claimed in the event that the matter concludes prior to trial."

24 This would indicate a simple two-stage success fee of a type that one often sees in CFAs. However, that is not what the CFAs state. Under the heading "Success Fee" it is stated:
"This is 12.5–100% of our basic charges.

The success fee is set at 100% of basic charges, where the claim concludes at trial; or 12.5–100% where the claim concludes before a trial has commenced. None of the success fee relates to the postponement of payment of our fees and expenses. The success fee on your case varies in light of the risks associated to your case."

25 Mr Abbas was not an impressive witness and changed his evidence as he was going along. He appeared rattled as the realisation of the implications of what was being put to him was sinking in and he appeared very much on the defensive. It is clear that he was, at the very least, extremely lax in the way that he administered the firm in terms of matters relating to time charging. That laxness was apparent in the way he gave his evidence.

26 Most worrying of all, from the court's point of view, is the rather cavalier attitude he had in respect of signing certifications on Bills and statements of costs. It was most worrying to hear that he would not normally check the hourly rates despite these being such an important element of a costs claim, the effects of misstatement potentially being financially very significant. As it turns out in this case it seems that the financial implications, if the errors had been undetected, would have been relatively modest but that is not the point. The certifications are there for a purpose and are very important and solicitors should not put their signatures to such lightly. However, it is clear that he did. Hourly rates are easily identified, as is the grade of fee earner, and would stand out to someone who was familiar and responsible for setting rates within a firm. It is hard to understand how he could have missed the incorrect details on the statement of costs as this was a limited document prepared inhouse. To a limited degree I have more sympathy for him in respect of the Bill of Costs as this document was prepared by costs draftsmen and I can understand a degree of reliance upon them. Nevertheless, again the rates are easily identified and should be checked by the person responsible for the Bill, in this case Mr Abbas. He cannot absolve himself of responsibility.

27 For me to find that he deliberately inserted or at least retained incorrect hourly rates with the intention of securing higher payment than he was entitled to, would be tantamount to me finding that he had acted fraudulently. Of course I need to make my findings on the balance of probabilities but the more serious the allegation, the more convincing should be the evidence required to prove it. Mr Abbas remained adamant throughout cross-examination that he was mistaken but had acted honestly and in that regard he did appear genuine. I do not find on balance that Mr Abbas deliberately miscertified the position with a view to recovering more than he was entitled. I am conscious of the fact that financially, taking into account the overstatement and understatement of hourly rates in the Bill, things may well have balanced out more or less. However, I do find that he has acted with a high degree of incompetence in failing to properly check, if at all, the statement of costs and the Bill, before signing them. He seems to have had a complete disregard as to the importance of the certification and his responsibility as the person signing. In particular, the matters that have been misrepresented in the Bill are important matters from the Defendant's point of view as they would contain matters relevant to funding which may be capable of challenge, as indeed has proved to be the case.

28 I will now consider the legal submissions in the light of the above.

29 The Defendant's primary position is that both CFAs are unenforceable as they fail to comply with section 58 Courts and Legal Services Act 1990 as amended by the Access to Justice Act 1999 , and therefore costs are unrecoverable.

30 Section 58(1) provides:

"Conditional fee agreements

(1) A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to subsection (5)) any other conditional fee agreement shall be unenforceable.

(3) The following conditions are applicable to every conditional fee agreement–

(a) it must be in writing;

(c) it must comply with such requirements (if any) as may be prescribed by the Lord Chancellor.

(4) The following further conditions are applicable to a conditional fee agreement which provides for a success fee–

(b) it must state the percentage by which the amount of the fees which would be payable if it were not a conditional fee agreement is to be increased; and

(c) that percentage must not exceed the percentage specified in relation to the description of the proceedings to which the agreement relates by order made by the Lord Chancellor."

31 It is a fundamental requirement therefore that a CFA with a success fee must state the actual percentage of the success fee. Usually one finds in such agreements a single success fee but one also often finds a staged success fee whereby specific percentages are provided to apply at the conclusion of the case at specific stages. Usually, it will provide for a lower success fee should the case conclude at an early stage. Indeed that is what the CPR 47 statement incorrectly states was the position. Had the Defendants not pushed for further information, they would have been faced with that single statement indicating a common, and maybe uncontentious, success fee provision. However that is not what the CFAs provide, as previously indicated. The contract provides that the success fee can be between 12.5% and 100% but does not in fact state what the success fee is. It simply states that the success fee varies in light of the risks associated with the case but does not say how it varies or what the risks are. It would be impossible for the Claimant to know from the agreement what success fee could be charged. Mr Banyard met this argument by referring to the fixed success fee regime applicable for this case pursuant to the pre-151 April 2013 CPR 45.15(2) and 45.16 . The latter fixes the success fee at 100% where the claim concludes at trial or 12.5% where the claim concludes before trial or is settled before a claim is issued. CPR 45.18 allows for an application to be made for an alternative percentage increase where the fixed increase is 12.5%. The argument is that this case settled pre-trial and therefore 12.5% would normally apply. However, taking into account subparagraph (2) and the settlement value of this case, the Claimant would have been able to apply for a percentage increase. Of course it did not do so but it could have done so if viewing the matter at the outset. Mr Banyard therefore argues that the success fee as stated in the CFAs reflects the rules.

32 I disagree because the CFAs themselves do not in any way limit the client's liability to pay the success fee, for example by reference only to such that is actually recovered from the opponent. The rule referred to simply provides a mechanism by which the receiving party can apply to increase the percentage recoverable from the paying party. It has no relevance to the contractual position as between client and solicitor and the client can potentially remain liable for the balance that is not recovered.

33 I still need to consider the question of materiality of the breach which I find has occurred. In this regard I was referred by Mr Bacon to the case of *Bradley Hollins v Rev S H Russell [2003] EWCA Civ 718* . This is a well-known authority on the point and the test is set out in paragraph 107 of the judgment which states:

"The key question, therefore, is whether the conditions applicable to the CFA by virtue of section 58 of the 1990 Act have been sufficiently complied with in the light of their purposes. Costs judges should accordingly ask themselves the following question:

'Has the particular departure from a regulation pursuant to section 58(3)(c) of the 1990 Act or a requirement in section 58 , either on it's own or in conjunction with any other departure in this case, had a materially adverse effect either upon the protection afforded to the client or upon the proper administration of justice?' If the answer is 'yes' the conditions have not been satisfied. If the answer is 'no' then the departure is immaterial and (assuming that there is no other reason to conclude otherwise) the conditions have been satisfied."

34 I was also referred to the case of *David Myatt and Ors v National Coal Board [2006] EWCA Civ 1017* whereby the Court of Appeal made it clear that the court did not need to consider whether a client had suffered actual prejudice as a result of a section 58 failure and also that the question of the enforceability of a CFA was to be judged by reference to the circumstances existing at the time when the CFA was entered into rather than by reference to circumstances known to exist at the time when the question arose for decision. I therefore need to look at how this appeared to the client at the time of the agreement.

35 The provisions in section 58 are clear and uncompromising in that if one or more of the applicable conditions are not satisfied then the CFA is unenforceable. Parliament clearly had it in mind that there was a need to safeguard the interests of clients and no distinction is made within the wording as between cases of non-compliance that were innocent and those that were negligent or committed in bad faith.

36 I find in this case that the CFAs did have a materially adverse effect on the Claimant as he could not ascertain what his potential was for paying the success fee at the conclusion of the

case. As such both are noncompliant with section 58 and therefore unenforceable. As a consequence therefore, taking into account the indemnity principle, no costs are recoverable at all from the Defendant. Of course any disbursements that were paid directly by the Claimant himself contracting independently with a third party, would be recoverable from the Defendant but I have not been told of any such disbursements.
37 However, in the event that I am wrong on this point, I need to consider the Defendant's secondary argument with regard to the miscertification and the question of misconduct pursuant to CPR 44.11 which states as follows:

"(1) The court may make an order under this rule where–
(a) a party or that party's legal representative, in connection with a summary or detailed assessment, fails to comply with the rule, practice direction or court order; or

(b) it appears to the court that the conduct of a party or that party's legal representative, before or during the proceedings or in the assessment proceedings, was unreasonable or improper.

(2) Where paragraph (1) applies, the court may–
(a) disallow all or part of the costs which are being assessed;
"

38 Under the first limb in (1)(a) above, the Defendant argues that the Claimant solicitors have failed to comply with rules or practice directions on a number of occasions. Firstly, it is said that there has been a failure to comply with CPR PD 47.5.21 which states:
"The bill of costs must contain such of the certificates, the texts of which are set out in Precedent F of the Schedule of Costs precedents annexed to this practice direction, as are appropriate."

39 The argument is that, as the certificate in the statement of costs and in the first Bill of Costs was clearly incorrect then there is a breach in that compliance with the section implies a correct certification. I disagree with this interpretation. It seems to me that the practice direction simply requires a signed certificate. If there is a miscertification then separate consequences flow from that but such is not in itself a breach of the practice direction.
40 Secondly, that the Bills do not comply with the rules with regard to separating the Bill into component parts to reflect the fact of different firms representing the Claimant throughout. Practice Direction 47.5.8 states:
"Where it is necessary or convenient to do so, a bill of costs may be divided into two or more parts, each part containing sections (2), (3) and (4) above. The circumstances in which it will be necessary or convenient to divide a bill into parts include the following:
(3) Where the receiving party was represented by different legal representatives during the course of proceedings, the bill must be divided into different parts so as to distinguish between the costs payable in respect of each legal representative."

41 Clearly this has not been done and therefore I find there is a breach of the practice direction.
42 Thirdly, that under the pre-1st April 2013 rules, CPR PD 47.32 requires a statement to be produced as referred to in paragraph 19 above. The requirements are within 32.5(1)(c) and (d). Whilst a statement has been served, it does not correctly state the position so far as the Part 36 offer situation is concerned (see paragraphs 21 and 22 above). Also, the purpose of the practice direction is to inform the paying party of key elements of the CFA. The spirit of compliance would require the Claimant to have indicated that there was in fact no definition of win or lose within the CFA rather than simply to remain silent. In the light of these matters therefore, I find that there has been a breach of the regulation.
43 Fourthly, CPR PD 47.5.11 states that the background information in a Bill of Costs should set out:

(3) "a brief explanation of any agreement or arrangement between the receiving party and his legal representatives, which affects the costs claimed in the bill."

Clearly that has not been complied with as the Bill makes no mention of the different firms involved nor the purported assignment from Megsons LLP to Megsons Personal Injury Limited.

44 I am satisfied therefore that the Defendant has made it's case in respect of CPR 44.11(1)(a) .
45 I now need to consider the second limb under (1)(b). This argument revolves around the miscertification point in respect of the Bills and the statement of costs. Clearly I can consider the statement of costs issue as it is something which has occurred "during the proceedings". From what I have said previously, there has clearly been miscertification of the statement and the Bills and the question is whether that conduct can be said to be "unreasonable or improper" within the meaning of the rule. Leaving aside for the moment any technical definition of "misconduct", I am of the view that the Claimant's solicitors can be criticised with regard to the way that Mr Abbas has failed to carry out his duty when signing the certificates, for failing to ensure that the correct position was set out in the narrative and in the way that the Bill was constructed, insofar as the CFA position and the involvement of other solicitors' firms were concerned. Mr Abbas, being a solicitor, is an officer of the court and a key ingredient of his professional obligations is to act with integrity. It is his signature on the certifications and he must ensure that the contents are correct, bearing in mind the reliance that both opponents and the court put on that certification.
46 The seminal statement of principle as to the degree of trust afforded to a solicitor who signs a certificate of this kind, is found in the judgment of Lord Justice Henry in *Bailey v IBC Vehicles [1998] 3 All ER 570* which states:
"The court can (and should unless there is evidence to the contrary) assume that his signature to the bill of costs shows that the indemnity principle has not been offended. For the avoidance of doubt, I also agree that the taxing officer may and should seek further information where some features of the case raises suspicions that the whole truth may not have been told. And the other side of a presumption of trust afforded to the signature of an officer of the court must be that breach of that trust should be treated as a most serious disciplinary offence."

47 The certifications amount to a declaration by a solicitor, which in itself should carry weight, that the indemnity principle had not been breached and that the costs put forward are true and accurate. In fact in this case, to the extent as indicated previously, the declaration was false. This is not a case of a single isolated error but rather a pattern of failure in respect of three certifications. My concern is heightened by the fact that Mr Abbas has certified the second Bill in the knowledge of the previous error and yet that second Bill is still not correct. I therefore have grave doubts as to trusting the signatures on the Bills.
48 I return to the question of the nature of the conduct which would fall within the meaning of "misconduct". It was put to me by Mr Bacon, there being no challenge to the submission, that the same meaning can be given to unreasonable and improper conduct under CPR 44.11 as under the wasted costs regime. In that regard I was referred to the leading authority of Ridehalgh v Horsefield and Anor [1994] CH 205 , a Court of Appeal decision with the leading judgment being given by Sir Thomas Bingham MR where, at page 232C, he deals with the meaning of "improper, unreasonable or negligent" under section 51 of the Supreme Court Act 1981 . He states:
"Improper means ... but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalty. It covers any significant breach of a substantial duty imposed by a relevant code of professional conduct. But it is not in our judgment limited to that. Conduct which could be regarded as improper according to the consensus of professional (including judicial) opinion can be fairly stigmatised as such whether or not it violates the letter of a professional code.
Unreasonable ... aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference whether the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on the practitioner's judgment, but it is not unreasonable."

49 I refer also to the extract from the judgment of Henry LJ in Bailey v IBC Vehicles as above, where he referred to a breach of trust in respect of miscertification, being treated as a most serious disciplinary offence.

50 Although I have not been taken to the solicitors' conduct rules, extracts from the SRA Handbook core principles are set out in Mr Bacon's skeleton argument. There is a requirement to uphold the rLJie of law and the proper administration of justice and act with integrity. I would be surprised if this miscertification, particularly as we are not concerned with an isolated error, would not be treated as a breach of the solicitors' professional code of conduct. As such it would therefore fall within the meaning of "improper".
51 In any event, I am of the view that the position is more certain when considering the meaning of "unreasonable". If one looks at the acid test, as referred to in the Ridehalgh judgment, and considers the degree of criticism that can be levelled against the Claimant's solicitors in this case which does not permit of a reasonable explanation, it is clear to me that the conduct falls within the meaning of unreasonableness for the purpose of CPR 44.11 .
52 In any event, some guidance is given within PD 44.11.2 which states: "Conduct which is unreasonable or improper includes steps which are calculated to prevent or inhibit the court from furthering the overriding objective."
53 The overriding objective requires the court to deal with a case justly and this encompasses the concept of dealing with a case fairly and ensuring that the parties are on an equal footing. In a situation where one party has significantly misrepresented their position thus ensuring a potential financial or tactical advantage, it cannot be said that this would lead to the court dealing with the case fairly or the parties being on an equal footing. Where a solicitor has miscertified important documents to be put before the court, whether such has been done deliberately or recklessly, it must follow that this is a failure to comply with the overriding objective.
54 I am satisfied therefore that the Defendant has made their case against the Claimant under 44.11(1)(b).
55 The next question which arises is whether I should exercise my discretion, the appropriate word being "may", and disallow all or part of the costs which are being assessed.
56 Mr Banyard, without wishing to detract from the importance of correctly certifying, argues that the omissions in the Bills are relatively minor and affect Part 1 of the Bill only and therefore, should any costs be disallowed, they should be in respect of Part 1 only. He mentions also the actual potential for financial advantage was in reality rather limited. I disagree with that submission. I cannot stress how important it is for solicitors to take very seriously their duty to the court and indeed their opponent, in certifying Bills and statements of costs, knowing that those other parties rely upon that certification. Apart from the hourly rates and grade of fee earner being misstated, it seems to me that the true funding position has been masked, resulting in a significant tactical advantage to the Claimant if it had remained undetected. The fact that these matters have now surfaced at a late stage, at the pressing of the Defendant, has proved the point in that the Claimant has failed to recover any costs as a result of the breach of section 58 . Such lack of transparency cannot be condoned. The misconduct in my view is serious and justifies the disallowance of all of the Claimant's costs.
57 Again very late in the day at the hearing before me, the Claimant raised the question of assignment of the conditional fee agreements. Of course, in view of my previous findings, this point is meaningless. However I will consider it briefly on the basis that it may be said that I am wrong with regard to my previous findings. The point arises because of the transfer of the Claimant's file from Megsons LLP to Megsons Personal Injury Limited.
58 As the point was made very late in the day, understandably the representatives have been unable to fully prepare their submissions but I have heard some submission from them, albeit truncated.
59 Of course the first CFA came to an end when the second CFA was entered into with the litigation friend. The second would come to an end upon the case being transferred to a new solicitor, unless assigned. The Claimant argues that there was an effective assignment under common law where only the benefit of a contract can be assigned but not the burden, the point being that undertaking work on the file is a burden.
60 Mr Banyard referred me to the case of Jenkins v Young Bros Transport Limited [2006] EWHC 151 . This was proposed as an authority stating that both the benefit and burden of a conditional fee agreement could be assigned as an exception to the general rule. In particular he referred me to paragraphs 28 to 31 of the judgment in which it is made clear that the judgment was upon the particular facts of the case. It was suggested that the facts were similar in that there was a particular relationship between the client and the solicitor which involved personal confidence. It was said that there existed a similar relationship between the

Claimant and Mr Abbas. Whilst that much is true, it does not paint the whole picture so far as the facts of Jenkins is concerned. When one examines the factual detail, it is much different from the case before me in that Mr Jenkins was provided with a new contract and terms of engagement after the assignment. There was a full discussion about the implications of the move and a detailed letter was sent explaining the position. That is not the case before me. The only document I have been given is the signed authority previously referred to which comes nowhere near to being an assignment in itself nor having the effect of a new agreement or setting out details of the terms. Jenkins was decided on its own facts and those are different to the ones before me. I do not find therefore that it is of help to the Claimant.
61 Neither do I accept Mr Banyard's argument that, regardless of it falling within the exception, the burden had substantially been discharged by the time of the assignment. This is on the basis that the assignment predated the joint settlement meeting by a few days. Nevertheless further work had to be done extending over a few months. I am not aware of any authority which provides for a different approach to be taken depending on the amount of 'burden' remaining to be discharged.
62 In any event, the signed authority referred to does not appear to be effective in that the only CFA in force at that time was that of the litigation friend and the authority itself refers to the Claimant's own CFA.
63 I do not accept the Claimant's arguments and I do not find that there has been an assignment of either of the CFAs.
64 In summary therefore, my judgment is that the CFA retainer underpinning this case is unenforceable and, there being no solicitor entitlement to costs from his client, all the costs within the Bill are unrecoverable from the Defendant.
65 If I am wrong about that, then I find there has been misconduct for the purpose of CPR 44.11 which justifies disallowance of all costs in the Bill.
66 When I hand down judgment I will deal with any applications that arise as a result. The parties must inform the court immediately if they feel that the time estimate given is insufficient so that it can be relisted.