Case No: SCCO REF JJ 1706056

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Clifford's Inn, Fetter Lane
London, EC4A 1DQ

Date: 19/12/2017

Before :

MASTER JAMES

- -

Between :

Mr Ian Hanley	**Claimant**
- and -	
JC & A Solicitors Limited	**Defendant**

- -
- -

Miss Hynes (instructed by **JG Solicitors Limited**) for the Claimant
Mr Dunne (instructed by **JC & A Solicitors Limited**) for the Defendant

Hearing dates: 6 December 2017

- -

Judgment Approved

MASTER JAMES:

Background to this case

1. This matter involves an Application by Mr Ian Hanley ("the Claimant") who was the successful Claimant in a Road Traffic accident claim which settled on 30 July 2015. The Claimant had brought Part 8 proceedings against his former Solicitors, the firm of JC & A Solicitors Limited ("the Defendant") issued by JG Solicitors Limited on 14 November 2017 in the SCCO.

2. In those Part 8 proceedings, the Claimant sought an Order pursuant to section 68 of the Solicitors Act 1974 and/or the inherent jurisdiction of the High Court over Solicitors/s.7(9) Data Protection Act 1998 for:-

   (i) Delivery of such parts of the Defendant's file over which the Claimant has proprietary rights
   (ii) Delivery of copies of such other parts of the file over which the Claimant does not have proprietary rights
   (iii) The costs arising from this Application to be paid by the Defendant

3. The Defendant filed an Acknowledgment of Service dated 20 November 2017 indicating that it intended to contest the claim, that it objected to the Claimant issuing under the Part 8 procedure and that it intended to rely upon written evidence.

4. Also dated 20 November 2017, was a Witness Statement of Mr James Green of JG Solicitors who acts for the Claimant. In paragraphs 5 – 10 thereof, Mr Green set out the background to the original claim of which the salient facts are that on 16 June 2013 the Claimant was involved in a road traffic accident ("RTA") and instructed the Defendant to recover damages.

5. The accident and the CFA (signed on 8 January 2015) were both after 1 April 2013, the date from which, by the operation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO") the additional liabilities (principally any success fee and ATE premium) would come out of the Claimant's damages rather than being recovered from the RTA Defendant as would have been the case had the CFA been signed on or before 31 March 2013.

6. The claim settled on 30 July 2015 with payment of General Damages of £3,500.00 out of which the Defendant deducted a total of £1,086.25 in respect of a contribution towards its legal fees. The Witness Statement goes on to assert that the Claimant, having concerns about the amount of money that the Defendant had so deducted and instructed Mr Green's firm to obtain a copy of his file of papers in order to advise him. In effect the Claimant wishes, not to pursue, but to consider whether it is worth pursuing, a Detailed Assessment pursuant to the Solicitors Act 1974.

7. Without turning too much to the specific detail on the instant case, the Claimant asserts that he was unclear as to how the sum of £1,086.25 deducted from his damages, was calculated. I have seen an Invoice number 62011 dated 3 August 2015 and marked as paid upon the date it was raised; that Invoice shows £739.58 "client contribution" which, with VAT added thereto shows £887.50.

8. The £887.50 figure represents exactly 25% of the damages award of £3,550.00, 25% being the maximum that can be deducted from a client's damages by way of a success fee as prescribed by the Lord Chancellor in a case such as this, per Courts and Legal Services Act 1990 section 58(4)(b):

   The following further conditions are applicable to a conditional fee agreement which provides for a success fee—
   (a) it must relate to proceedings of a description specified by order made by the Lord Chancellor;
   (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 proceedings to which the agreement relates by order made by the Lord Chancellor.

9. The invoice does not specify that the £887.50 does represent a success fee it is just referred to as "client contribution"; there is also a reference on the Invoice to "Insurance Premium Deducted £198.75". Although the Invoice does not so state, £887.50 plus £147.92 equals £1,086.25, the amount deducted.

10. Making matters no clearer is the decision by the Defendant to raise a further Bill in response (I will not say in retaliation) to the Claimant's decision to instruct JG Solicitors Ltd in this matter. The letter serving that Bill makes clear that if it is not paid within one month, the Defendant will bring Section 70 Solicitors Act proceedings itself. I am not aware (that deadline having passed at the beginning of November 2017) whether the Defendant has indeed issued such proceedings or whether this remains hanging over the Claimant's head.

11. Paragraphs 12 to 25 of the Witness Statement contain details of the Claimant's request for delivery of papers; I will dwell on the details somewhat, for the simple reason that this Court is receiving a large and increasing number of these types of claims and they often share the same features; I have, however, omitted the dates other than the first and last.

12. It appears that between 28 March 2017 and 25 October 2017 the parties engaged in correspondence as follows; the Claimant had made requests for the documents in the form of:

    (a) a written request with the Claimant's signed authority annexed,
    (b) a request pursuant to the Data Protection Act 1998 ("DPA") and
    (c) a reference to the case of *Jonathan Evans v JC&A Solicitors Ltd* (unreported; SCCO reference JR1702965) accompanied by an offer of 25p per page based upon Master Rowley's decision in that case.

13. The Defendant had (at the time of Mr Green's first Witness Statement) responded to the above overtures thus:

    (a) Sending copy documents with a comment in the covering correspondence that *"…there are no further papers…"*

(b) Sending a Subject Access Request Report under the DPA enclosing a table containing 'data type' 'data description' and 'documents containing data'
(c) Offering to provide the copy documents over which the Claimant does not have proprietary rights, but for a fee of £644.00, which appears to be 4 hours at £161.00 (Grade C rate) per hour with no VAT, presumably on the basis this is a "self-service" item by Solicitors.

14. In short, by the time Mr Green's first Witness Statement was signed, the parties had not reached an accord upon the issue of copy documents. In particular, per the Claimant:

(a) The Claimant found no funding documents, none of the correspondence from the Defendant to the Claimant throughout the retainer and no fee invoices raised throughout the currency of the retainer hence there clearly were further papers despite the Defendant's comment to the contrary
(b) The DPA table was all very well, but the documents described therein were not annexed thereto
(c) Although not actually in the Witness Statement, implicit therein and argued before me at the subsequent telephone Hearing, £644.00 is a disproportionate and unreasonable amount; the Solicitors ought to fillet the file and extract the requested documents and photocopy them for 25p per sheet; that 25p should cover the cost of filleting and copying.

15. It would be fair to say that the rest of Mr Green's first Witness Statement is really more of a Skeleton Argument as it deals with papers over which the Claimant has a proprietary right (by reference to *In re Thomson* (1855) 20 Beav 545) and papers over which the Claimant has no proprietary right (by reference to *In re Thomson* and also *In re Wheatcroft* (1877) 6 ChD 97).

16. The Statement also refers to a Northern Irish case *The Mortgage Business PLC and Bank of Scotland PLC (trading as Birmingham Midshires) v Thomas Taggart and Sons* [2014] NICh 14. In effect, whilst acknowledging that Northern Irish precedent is not binding in the SCCO, I was invited to follow the "overwhelmingly cogent and correct" decision of the learned Judge in that case.

17. He found that the ratio in *In re Wheatcroft* did not preclude a Claimant who has been a poor record-keeper from requesting copies of correspondence with his former Solicitor subject to paying the necessary costs involved; more detail on these three cases is set out below.

Proceedings in the SCCO

18. The matter was originally Listed for a Hearing at 10:00 on 22 November 2017 with an elh of 30 minutes. However, the above referred-to Witness Statement, with its exhibits, came through on the afternoon preceding that date (the e-mail sending it to me, not copied to the Defendant, was dated 12:07) and at the Hearing it became apparent that the Defendant had not received these items. As my Hearing on the following date had settled I re-listed it (with the parties' consent to abridged notice)

for half an hour on the following morning, to give the Defendant time to receive and to consider that evidence.

19. The best laid plans of mice and men going as they often do, at 16:49 on 22 November 2017 Mr John Gibson Scott of the Defendant e-mailed a Witness Statement raising serious issues of conduct and Wasted Costs and, after having read it, it appeared to me that 30 minutes would not suffice to hear the matter. I took the decision to notify the parties by e-mail to save costs, and re-Listed it for a telephone Hearing on 6 December 2017 at 10:30 elh 90 minutes.

20. On 28 November 2017, the Claimant filed and served a second Witness Statement of Mr Green, plus a first Witness Statement of Mr Carlisle (Costs Draftsman) responding to the conduct issues raised in Mr Gibson Scott's first Witness Statement and raising a few of their own conduct issues in respect of Mr Gibson Scott for good measure.

21. The matter came before me for Hearing by telephone on 6 December 2017 and I heard full argument from Miss Hynes of Counsel for the Claimant and Mr Dunne of Counsel for the Defendant. The Wasted Costs aspect was dealt with first; given that I had adjourned two Hearings due to late service of documents, one being Mr Green's first Witness Statement and the other being Mr Gibson Scott's first Witness Statement I was not surprised but was grateful to learn from Mr Dunne that he did not propose to press the Wasted Costs point.

22. I did, however, ask him to feed back to those instructing him that in order to succeed in a Wasted Costs Application, they would have to establish conduct that was improper, unreasonable or negligent (Section 51(7) Senior Courts Act 1981 refers, see also CPR PD 46 paragraph 5.5). Since I did not hear argument, much less reach any decision upon the conduct complained of by either side, I will not go into any further detail upon it, however it did not seem to me that the conduct complained of as far as delaying a telephone Hearing by 24 hours was concerned, rose to that level. As it seemed that subsequent events had made it six of one and half a dozen of the other in any event, it was quite right of Mr Dunne not to pursue it.

23. Miss Hynes addressed me at length upon the three authorities above referred-to. She acknowledged that, as of 25 October 2017 (as stated above) the Defendant had provided information pursuant to the Data Protection Act 1998 so that the action under the DPA 1998 referred to at 9(b) above, was no longer pursued.

24. On 5 October 2017, the Defendant had served a Bill of Costs upon the Claimant, annexing invoices, so that these items (referred to at 11(a) above) were no longer pursued either.

25. Rather, the Application had now devolved to (per paragraph 7 of Miss Hynes' Skeleton Argument) a copy of the Claimant's funding documentation, and copies of letters written by (rather than to) the Solicitor or more specifically (per paragraph 22 of her Skeleton) to:

    (i) All letters addressed to Claimant
    (ii) All Funding documents

(iii) Letter to Elite Insurance
(iv) Letters to Premex Medical
(v) Vetting Questionnaire

The Law – Claimant's submissions

26. Miss Hynes took me through the statute and case law. The Solicitors Act 1974, section 68(1), states as follows:

68 Power of court to order solicitor to deliver bill, etc.

(1) The jurisdiction of the High Court to make orders for the delivery by a solicitor of a bill of costs, and for the delivery up of, ***or otherwise in relation to****, any documents in his possession, custody or power, is hereby declared to extend to cases in which no business has been done by him in the High Court.*

27. The emphasis on the words *"…or otherwise in relation to…"* is as Miss Hynes wished me to place it; in her submission, this provision of the Solicitors Act gives the Court the power to order delivery up of documents in the Solicitor's possession, or to order something else. In this context, that would be copies, provided that the Client pays for them.

28. In *In re Thomson* the client had disinstructed her Solicitor and wished to have the originals of letters written to her former Solicitor by third parties, and the copies that he had kept of letters written by him on her behalf, and which he was refusing to hand over. The Master of the Rolls (Romilly MR) held that copies of letters written by the Solicitor and copied in his own letter-book could not be ordered to be given up; they had been made for his own benefit and protection and if the Client (or former Client) wished to have copies of them, she must pay for them. He added that no question had arisen as to letters from the client to her Solicitor, but indicated that his impression was that the Solicitor would be entitled to retain those. As to letters written to the Solicitor by third parties, relating exclusively to her business, he had received those as her Agent and she was entitled to delivery up of these items.

29. Turning to *In re Wheatcroft* the Solicitor had retained certain original letters written to him by his former Client in connection with the Client's business, and also copies of his letters to the Applicant in his own letter-book. The Master of the Rolls (Jessell MR) held that the Solicitor was entitled to retain the letters from the client and the copies of the letters in his letter-book, as such letters and copies were his own property.

30. What Miss Hynes submitted was that that must be correct, but that it misses the point (per *In re Thomson*) namely that the Solicitor cannot be made to deliver up his only copy of these items but that if the former Client wished to have copies of them she could, as long as she was prepared to pay for them. In short, although *In re Wheatcroft* (1877) is 22 years after *In re Thomson* (1855) it does not address much

less overturn the principle established in the earlier case, that a client who is prepared to pay for copies of these items, can have them.

31. Turning to *The Mortgage Business PLC and Bank of Scotland PLC (trading as Birmingham Midshires) v Thomas Taggart and Sons* Miss Hynes acknowledged that I was not bound by this case (as it is a Northern Irish case) but that it was directly on point to the present case and that I should be persuaded by the "…overwhelmingly cogent…" reasoning of Mr Justice Deeny in that case, in finding that *In re Wheatcroft* was no bar to the Claimant seeking, not delivery up of the letter book (or for a more modern-day equivalent, of the Solicitor's database) but of a copy of it, paid for by the Claimant.

32. In effect, the "penalty" that the Claimant should pay for being a poor record-keeper and having an incomplete file, is to pay for the copy documents needed to supplement what little he may have retained. A "penalty" of being debarred from bringing any effective Solicitors Act 1974 section 70 challenge to the Solicitor's Bill was, in Miss Hynes' submission, the net result if I dismissed this Application and would be both unduly harsh and (in effect) contrary to the interests of justice. However, with every respect for the learned Judge in this case, following Northern Irish precedent is not something that I am either bound or persuaded to do.

33. Miss Hynes sought to fortify her submission (on being debarred from Solicitors Act proceedings) by reference to CPR PD46 at para 6.4 (under Assessment of solicitor and client costs: rules 46.9 and 46.10) which states:

    ***"6.4** The procedure for obtaining an order under Part III of the Solicitors Act 1974 is by a Part 8 claim, as modified by rule 67.3 and Practice Direction 67. Precedent J of the Schedule of Costs Precedents is a model form of claim form. The application must be accompanied by the bill or bills in respect of which assessment is sought, and, if the claim concerns a conditional fee agreement, a copy of that agreement. If the original bill is not available a copy will suffice."*

34. Miss Hynes pointed out that, if the Defendant maintained its refusal to provide the CFA or a copy thereof, this would in effect debar the Claimant from bringing a claim since, without the CFA, it could not issue a Part 8 Claim (or at least, not in a way that complied with the Practice Direction).

35. I doubt that is an insurmountable barrier to Solicitors Act proceedings; if the Claim Form stated upon its face that the CFA was not enclosed in circumstances that the Claimant had not retained his copy and the Defendant firm was refusing to furnish a copy, I should have thought that would enable the Court (having regard to the Overriding Objective of the CPR) to List the matter for a Directions Hearing, at least; at that stage the likely Directions would include provision for the Claimant's new Solicitors (in this case JG Solicitors Ltd) to inspect the file, where the CFA would of course be found.

Defendant's submissions

36. The submissions of Mr Dunne for the Defendant were of much briefer gist (which is not a criticism). He stated that the Defendant had handed over copies of everything that the law as it currently stands obliges the firm to hand over, and that what the Claimant in this case (and the unseen hundreds if not thousands of Claimants with similar cases waiting in the wings) was doing was engaging upon a fishing expedition to see if there was anything on the Solicitor's file that might enable them to launch an Application for Detailed Assessment.

37. Mr Dunne added that in this (and presumably in many other cases involving JG Solicitors Limited) the Defendant's position as per Mr Gibson Scott's Witness Statement at paragraph 20 was that:

    (a) The matter had settled some time (in this case just over two years) ago
    (b) The invoice had been delivered up at the point of settlement
    (c) The invoice had been paid in full [by deduction from damages] on the point of delivery
    (d) That the costs recovered had been billed off and the VAT paid
    (e) The party and party costs were subject to the fixed RTA costs regime
    (f) Hourly rates were agreed in the obligatory Client Care letter [see below]
    (g) The sum to costs inclusive to the 25% contribution to costs was authorised [see below]
    (h) The sum authorised in respect of the ATE premium [see below]

38. I appreciate that Mr Gibson Scott's Witness Statement was prepared under pressure of time. What I think he meant by paragraph 20 (g) is that the Claimant had authorised the deduction of costs up to a maximum of 25% of the damages recovered, and at paragraph 20(h) that the Client had authorised payment of the ATE premium. This was a Conditional Fee Agreement case so I assume the reference to the obligatory Client Care letter at paragraph 20(f) would include the CFA itself which (per Miss Hynes) the Claimant does not currently have.

39. Mr Dunne asserted that section 68(1) of the Solicitors Act 1974 is intended to give a Client access to her own property and the "…or otherwise in relation to…" wording is not carte blanche to seek copies of documents which do not belong to her.

40. Mr Dunne further pointed out that what the Claimant was in fact seeking was (in effect) an Order for pre-action Disclosure of the Solicitor's file, in an area where such Applications have not previously been made nor entertained.

41. Mr Dunne added that any suggestion that the Claimant was being "kept out" of his right to an Assessment was wrong, whether by reference to PD46 or otherwise; the Claimant had left with his damages, and without a backward glance, two years ago. He was not at all concerned about what the Defendant had done (by deducting its fee contribution from those damages) until JG Solicitors Ltd contacted him as part of a marketing push. Mr Dunne asserted that disproportionate pressure was being applied to firms such as the Defendant with multiple Claim Forms coming from former Clients who had (in reality) no real concerns but had responded to marketing pressure from firms including JG Solicitors Ltd.

The law – My comments

42. The reference to time is of course significant; if a Bill has been paid and an Application is made under the Solicitors Act more than 12 months after paying the Bill, the Court has no jurisdiction to Order an Assessment (Solicitors Act 1974 section 70(4) refers).

43. However, case law such as *Watts (Thomas) & Co (a firm) v Smith* [1998] 2 Costs LR 59 CA and *Turner & Co v O Palomo SA* [1999] 4 All ER 353 leaves a window of opportunity to a Claimant in these circumstances, in that the Solicitor cannot treat his unpaid Bill as "liquidated" damages and enter default Judgment for the full sum.

44. Hence the Claimant is entitled to challenge the quantum even beyond the one year limit but only if the Defendant pursues him, not (it appears) vice versa. In circumstances that the Defendant issued a fresh Bill on 5 October 2017 this is likely moot as that Bill has not been paid and is not too historic to be challenged under the Solicitors Act 1974.

45. Both sides referred me to other decisions at SCCO Master level including decisions by Master Rowley and Master Nagalingam; I am aware (as stated at paragraph 8 above) that this Court is receiving a large and increasing number of these types of claims and I suspect every Master now sitting in the SCCO has already heard several of them. As my brother SCCO Judges' decisions are not binding upon me I do not cite them here but did read them all.

46. Neither party produced to me the Law Society's current (21 March 2017) Practice Note "Who owns the file?". This document comes with a health warning to the effect it is the Law Society's view of good practice in this area but not the only standard of good practice and that it is NOT legal advice, nor will the Law Society accept any legal liability in relation to them, but it is widely publicised as the way things are at present and merits inclusion here.

47. The Practice Note states as follows:

"Should you receive a request from a client to supply them with documents, you will need to consider the ownership of those documents, in particular which belong to the client and which belong to you.

Documents which come into existence during the retainer are in one of two categories:

(a) where the solicitor is acting as professional advisor
(b) where the solicitor is an agent of the client.

The second category is usually correspondence with third parties where the solicitor is sending or receiving correspondence on behalf of the client. On the normal principles of agency, these documents belong to the client.

Where the solicitor is acting as professional advisor, ownership of documents depends on the purpose of the retainer and whether the production of the document was a stipulation of the retainer (see *Leicestershire CC v Michael Faraday & Partners* [1941] 2 KB 205, *Chantrey Martin v Martin* [1953] 2 QB 286 and *Gomba Holdings v Minories Finance* [1989] BCLC 115).

In consequence documents on the file generally fall into the following categories:

- *Original documents sent to the firm by the client will continue to belong to the client (except where title was intended to pass to the firm).*
- *Documents sent or received by the firm as the agent of the client belong to the client (for example, communications sent to the firm by third parties, and the firm's communications with third parties as agent for the client; this would include correspondence with a counterparty or the giving or receiving of instructions to/from the client's other advisors).*
- *Final versions of documents, the production of which was the object of the retainer, belong to the client (for example, agreements or written representations).*
- *Final versions of documents prepared by a third party (including the client's other advisers) during the course of the retainer and paid for by the client belong to the client (for example, opinions of counsel and experts' reports).*
- *Documents prepared for the firm's own benefit or protection, or prepared as the means by which the firm discharges its function belong to the firm (for example, file copies of letters written to the client, notes regarding time taken, or made for protective purposes regarding advice to the client, drafts and working papers generally).*
- *Copies of internal emails and correspondence created during the course of the retainer, and all emails and correspondence written by the client to the firm belong to the firm.*
- *Accounting records, including vouchers and instructions, belong to the firm.*

Note that where a document belongs to the client, you may nevertheless be entitled to retain it in circumstances where you can properly exercise a lien in respect of unpaid fees. This also applies to documents which plainly belong to the client because they were created before the retainer and provided to the solicitor by the client.

There is no distinction between hard copy and electronic documents. Whether a document has always existed only in an electronic medium, such as a portable document format file (PDF) stored electronically, or has been scanned into electronic form from an original hard copy, or has always and only existed as a hard copy, it will still be capable of being allocated to one of the categories referred to above.

Remember that the guidance set out above is on the basis that there is no contractual arrangement with the client covering the ownership of documents. Your firm's terms and conditions of business may set out, as a matter of contract, which documents belong to the client and which to the firm. Your terms and conditions may also provide for the circumstances in which you will destroy documents or in which a charge may be made for search, retrieval and return of documents to the client."

48. For completeness' sake I should add, neither side referred me to the two cases in the Law Society's Practice Note (which is unsurprising given that neither side produced to me the Practice Note itself), however the above fairly and squarely maintains the line that there are many papers on a Solicitor's file that do not need to be handed over

and there is nothing to suggest that it would be "best practice" to hand over a copy of such documents if the Client asks for it.

The Status Quo as at 2017

49. The status quo as at today's date, in the SCCO and up and down the country, is that such Applications almost invariably lead to an Order for the production of the documents that belong to the Claimant/former Client (or copies thereof) upon payment of a fee of some sort (whether it be 25p per page or some other sum), but that production of the documents that do not belong to the Claimant/former Client (or copies thereof) is <u>not</u> generally Ordered.

50. The development of a new business model of representing Claimants who were previously represented under a CFA by their former Solicitors, and whose damages have been depleted to a greater or lesser extent by the charging of a fee under the post-LASPO regime, has led to a significant increase in the number of these cases coming through the Courts, and the SCCO in particular.

51. Does this mean that there is a need for a change in the status quo? Miss Hynes certainly addressed me on the basis that there was; she referred to the fact that *In re Thomson* was not only decided before the invention of the photocopier, it even pre-dates the world's first commercially-produced typewriter. Surely (she submitted) the early decisions had a great deal more to do with the prohibitive time and cost implications of copying documents at a time when that involved a clerk laboriously copying them out with pen and ink, than with any point of principle regarding ownership of documents? By comparison, in these days of paperless offices, an entire file can be copied at a few keystrokes and at little more than the cost of the paper and toner used to print it off.

52. In the present case, Miss Hynes expressed the view that the time taken by the Defendant to find all letters addressed to the Claimant, all Funding documents, letter to Elite Insurance, letters to Premex Medical and the Vetting Questionnaire and print those off for the Claimant, would be adequately compensated by a charge of 25p per sheet of copying thereby generated, the difference per sheet between what paper (and toner) costs and 25p providing sufficient "cushion" to cover a junior fee-earner's time going through the file stripping out those items.

53. I think that suggestion is somewhat mischievous. If I were to Order the Defendant to copy its entire file at (say) 10p per page, that would leave JG Solicitors Ltd the sum of 15p per sheet to fillet the file themselves. I know not whether JG Solicitors Ltd would be prepared to do the job for that sum since I am not seised of any Solicitors Act proceedings as yet uncontemplated between JG Solicitors Ltd and the Claimant. However, I do not accept the methodology put forward; going through what might be hundreds of pages to find a handful of documents is not in my view adequately compensated by 25p per sheet actually copied.

54. That said, the Defendant's suggestion of 4 hours of Grade C time at £161.00 to fillet a Stage 2 Portal RTA file is equally mischievous. Based upon a Bill served on 5 October 2017 in the sum of £2,025.00 profit costs at £250.00/hour there has been

something like 8.1 hours of work on the matter. How it could possibly take anyone 4 hours to go through such a file, escapes me. It rather seems as though both parties have pitched the cost of this exercise at an unrealistically low or high figure, whether deliberately or otherwise.

55. It is of note that the Defendant's quote of 4 hours at Grade C does at least constitute an offer to produce documents which it does not (per the status quo) have to produce. That offer having been rejected by the Claimant, is moribund and not binding upon the Defendant.

Decision

56. I am not persuaded that I should Order production of documents that do not belong to the Claimant. Notwithstanding Ms Hynes' very well-presented arguments, her reliance upon *In re Thomson* is in my view misplaced. The first paragraph of the (very short) reported Judgment explains why:

"[Mr Thomson] *…handed over to the new Solicitors the deeds, books, papers and writings belonging to the Petitioner, except the original letters addressed to and received by him as the Petitioner's Solicitor…except copies of letters written by him as the Petitioner's Solicitor, and exclusively relating to her business, which copies had been made by him and had not charged for in his bill of costs. These he declined to deliver up, but he offered to furnish copies…at the expense of the Petitioner. This proposal being unsatisfactory to* [the Petitioner], *she presented a petition for the delivery up of these…copies…"*

57. Hence there is currently no [binding] decided case in which Solicitors have been Ordered to hand over papers over which they (rather than the Clients) have proprietorial rights. *In re Thomson* did Order production of copies upon payment of a fee but, crucially, Solicitors had already offered that and the case had gone before the Master of the Rolls solely for a decision upon whether the Client ought to pay for the privilege.

58. I am concerned by several aspects of this case, for example the Defendant taking a sum equal to exactly 25% of the damages and rendering a second Bill several years after the first one was delivered and paid. However, I am also concerned by the floodgates that would likely be opened by a ruling that Solicitors can be Ordered to hand over their complete file in circumstances such as these; such a move would foreseeably instil considerable satellite litigation and I am not persuaded that this would be a positive step, and dismiss the Application accordingly.

59. I did indicate during the telephone Hearing that I would produce Written Reasons (and a formal Judgment if required) so that if the losing party (the Claimant) wishes to take this to the next tier on Appeal he has the full detail to hand; it is only because of the increasing volume of such cases that it was reasonable and proportionate to take this amount of time over a matter of just over £1,000.00.

60. Speaking of proportionality, I note that JG Solicitors Ltd had put forward a Statement of Costs in the sum of £3,337.16 for this Application, which is considerably more

than the Defendant firm billed for the RTA upon which the Claimant originally instructed them to act for him. Having lost the Application of course the Claimant does not recover his costs but in view of the Defendant's conduct (I do not say misconduct) in particular in raising Wasted Costs in a manner which was not appropriate, the Order that I make is no Order as to costs.

Date: Friday, 15 December 2017