Neutral Citation No: [2025] EWHC 679 (SCCO)
Case No: SC-2024-APP-000261

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 17/03/2025

Before :

COSTS JUDGE NAGALINGAM

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Between :

Captivatiun Limited	**Claimant**
- and –	
Orr Litchfield Solicitors Limited	**Defendant**

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James Miller (instructed by **Spencer West LLP**) for the **Claimant**
Francesca O'Neill (instructed by **Orr Litchfield Solicitors Limited**) for the **Defendant**

Hearing date: 12/03/2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 20 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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COSTS JUDGE NAGALINGAM

Costs Judge Nagalingam:

1. This judgment follows a hearing which was originally listed to consider making a directions order in Part 8 proceedings, but was intervened by the Defendant's application to dismiss those same proceedings.

2. The Defendant's dismissal application is brought on three bases, but in both her skeleton argument and oral submissions Ms O'Neill sensibly focused on reasons (b) and (c) of the Defendant's application.

3. For the sake of completeness, and for the reasons set out below, I am not minded to take into account technical service deficiency arguments for the purpose of considering this strike out application.

4. Firstly, I have already accepted there was confusion as to whether the Claimant or the court were to serve the Part 8 claim form. Secondly, the absence of a response pack and blank acknowledgment of service (if indeed not accompanying service) would in my view be too draconian a measure by which to strike out proceedings – especially when one considers the time delay between service and the Defendant's application (on the basis I consider service to have been effective on 26 June 2024). Thirdly, arguments as to the absence of evidence ignores the procedure by which Part 8 is utilised as a mechanism to secure a Solicitors Act assessment of costs. It is intended to be a streamlined procedure during which, at the first hearing, directions will be set for the exchange of evidence. Commonly such directions are agreed.

5. Accordingly, this judgment focuses on the second and third reasons for dismissal advanced. Namely, that the Claimant is out of time, and that their use of Part 8 in this particular case is an abuse of process.

6. My decision (below) also addresses Ms O'Neill's submissions as to the Claimant's eligibility to bring their Part 8 claim.

7. It assists to briefly set out a chronology of events relevant to the dispute over the Defendant's fees.

8. At a date prior to 28 April 2022, a company called 'Unlockd Marketing Ltd' issued a claim against the Claimant. On or around 28 April 2022, the Claimant engaged the Defendant to assist with Unlockd's claim and made a payment on account of £900 plus VAT.

9. On 30 May 2022 the Defendant sent the Claimant an invoice for £4,500 plus VAT. Around one week later, on 5 June 2022, the Claimant e-mailed the Defendant seeking an opportunity to discuss the received invoice.

10. By 16 June 2022, the Defendant had confirmed they could not carry out any further work until their first invoice was paid, and queried precisely what the Claimant wished to discuss prior to any scheduled meeting.

11. By 24 June 2022, the Claimant had arrived at the conclusion that their instruction of the Defendant had come to an end because no further work was apparently being carried out on their behalf pending resolution of any queries regarding the first invoice. On 6

September 2022, the Claimant received a second invoice from the Defendant in the sum of £9,018 plus VAT.

12. On 19 December 2023 the Defendant commenced Part 7 proceedings to recover its unpaid fees (under case reference K0QZ54EQ), seeking outstanding payments of £13,338.00.

13. On 12 April 2024 the Claimant placed the Defendant on notice of an intention to issue a Part 8 costs only claim in order to secure an order and directions for a Solicitors Act assessment.

14. On 18 April 2024 the Claimant commenced Part 8 costs only proceedings, seeking to secure an order for a detailed assessment of the Defendant's two invoices.

15. On 10 May 2024, the SCCO listed a directions hearing which was intended to be, amongst other things, a consideration of whether there was any basis upon which to list a preliminary issue hearing (to determine if special circumstances arose such that an order for assessment could be considered).

16. On 26 June 2024, and after a number of exchanged e-mails between the parties had been copied to the court, I directed the directions hearing be adjourned on the basis that the Defendant had not been served with the sealed Part 8 claim form. I am alive to the fact that the fault here may lie with the court rather than the Claimant, and as such costs directly referable to an adjournment caused by the court's failure to serve the sealed claim form on both parties may legitimately result in a submission to the court funds office rather than a between the parties costs order regarding the adjourned 27 June 2024 hearing.

17. On the same date as the adjournment, i.e. 26 June 2024, the Claimant served the Defendant with the sealed claim form. However, a certificate of service was not filed until 15 November 2024.

18. On 18 December 2024 the Defendant filed an acknowledgement of service in which this court's jurisdiction was disputed, and reasons set out for dismissal of the Part 8 proceedings (which are now set out in the application this judgment is the subject matter of).

19. On 12 February 2025, having not yet secured an order for detailed assessment (and consequent directions for the service a breakdown of costs), the Claimant requested a breakdown of the two disputed invoices. I have also observed that paragraph 17 of the associated Part 7 defence asserts that the Claimant sought a breakdown and narrative of the amounts billed on 10 January 2024.

20. Having set out a brief chronology, I have considered documents and/or submissions relating to the retainer, service of the Part 8 claim form, time limits, special circumstances, conduct/abuse of process and costs.

Retainer

21. Whilst this judgment is not intended to provide a chapter and verse analysis of the client care letter and terms of business, I ought to address any allegations that the same failed to set out the Claimant's rights to challenge fees.

22. The basis of the retainer is "We understand that, at this stage, you wish us to advise and assist you in relation to your dispute with Unlockd Marketing Ltd."

23. As to anticipated costs, the retainer (dated 28 April 2022) provides:

> "At this stage it is not possible to predict the amount of work which will be required as it is subject to a number of variables including (but not limited to) the extent of any discussions between us, your decision as to how you wish to proceed, the extent of the work to be undertaken by us, the nature of any response from you and any other parties involved in the matter and the amount of time it takes to conclude the matter. When the situation becomes clearer we will provide you with an estimate of our fees.
>
> At the present time, we are unable to anticipate what, if any, expenses and disbursements are likely to be incurred in connection with your matter. We will let you have this information as soon as practicable."

24. Section 22 of the accompanying terms of business document set out the Claimant's rights to complain. This includes "As well as your right to complain about any of our bills under our complaints procedure, you can also apply for the bill to be assessed by the court under Part III of the Solicitors Act 1974".

25. In this regard, I am satisfied that the Claimant was aware of the various means by which they could challenge the Defendant's fees informally and formally.

Service of the Part 8 claim form

26. Whilst much has been made in correspondence and witness statements regarding service of the Claimant's Part 8 claim form, Mr Miller and Ms O'Neill sensibly avoided engaging in lengthy submissions regarding the effectiveness of service.

27. Briefly, I am satisfied that the Defendant was placed on notice of the Claimant's intention to bring a Part 8 claim, with reference to the Defendant's letter to the Claimant dated 16 April 2024.

28. I am also satisfied that the Defendant has been in possession of the sealed claim form since 26 June 2024.

Time limits

29. The Defendant is correct to reflect that the Claimant finds themselves reliant on Section 70(3)(c) of the Solicitors Act 1974. In this regard, the Claimant is out of time to bring their Part 8 claim but can seek the court's discretion to permit a detailed assessment of costs to proceed.

30. There are numerous case examples of varying delays in bringing such proceedings. However, a key factor in this case is that the Defendant has not been disinterested in

the recovery of their costs. The Defendant has been actively engaged in pursuing payment, and whilst the Claimant may point to their own attempts to come to the negotiating table, the fact is the Claimant waited nearly 23 months (invoice 137) and nearly 20 months (invoice 147) before taking any procedural steps to challenge the Defendant's fees (outside of the scope of the 16 January 2024 Part 7 defence).

Special circumstances

31. The Claimant accepts that an order for detailed assessment is subject to first establishing that special circumstances arise because of the Claimant's own delay, such that the court would be invited to exercise its discretion and order assessment.

32. This is despite the Claimant being well out of time to bring their Part 8 claim and the fact there are ongoing Part 7 proceedings (which are now timetabled to trial in August 2025).

33. There is a presumption under section 70(3) of the Solicitors Act 1974 that no order for assessment will be made where the party chargeable with the bill makes their application after the expiration of 12 months since the delivery of the bill.

34. Whilst as a matter of practice it is common to list a separate hearing at which to decide if special circumstances arise, such hearings are not listed routinely. There is a burden on the party chargeable to demonstrate there are lines of argument that warrant further investigation, court time, and the deployment of further resources by all concerned.

35. That is the purpose, in part at least, of Mr Oualnan's witness statement dated 4 March 2025. At paragraph 16 of the same he sets out:

> "The Claimant has serious concerns regarding the invoices and the costs claimed by the Defendant. To date, no breakdown has been provided to support the sums invoiced, despite repeated requests. In particular, the Claimant draws the Court's attention to the Defence filed in the Part 7 proceedings, which is exhibited at [KAO1/47-54]. That Defence sets out serious allegations that the Defendant was disinstructed and that the fees claimed appear to be fabricated. These matters must be properly investigated through a detailed assessment rather than being avoided through the Defendant's procedural tactics."

36. Paragraph 18 of Mr Oualnan's statement also defers to the defence in the associated Part 7 claim in support of an argument that "it is quite clear that special circumstances apply in this case".

37. I do not consider that either Mr Oualnan's witness statement nor Mr Miller's oral submissions make good on the suggestion that the allegations set out in the Part 7 defence will somehow escape being properly investigated should the disputed fees be assessed under the Part 7 procedure. That is not a persuasive argument in my view.

38. To put it another way, I do not consider such issues of fact are going to be practicably dealt with differently under Part 8 than they would be under Part 7 for the purpose of a specific allegation as to whether something was done or not done.

39. I do appreciate there is a dispute as to the true value of the matter/s upon which the Defendant was originally instructed to represent the Claimant. If, for example, one were to take the Claimant's £600 figure as being the true value of their dispute with Unlockd Marketing Limited then I can envisage there being some scope for investigation as to why costs of £14,418 have been incurred.

40. At paragraphs 41 to 43 of Mr Oualnan's witness statement he seeks to set out what the special circumstances might be. One also turns to the defence in the Part 7 claim for indications as to what might give rise to consideration of the existence of any special circumstances.

41. As my analysis of the retainer confirms, it is simply wrong to suggest that the Claimant was not informed of their Part III Solicitors Act 1974 rights. It is also unhelpful to cite the absence of a pounds and pence estimate without also acknowledging that the client care letter explained why a monetary estimate could not be provided at that stage.

42. As to what the Claimant was advised regarding recoverable fees in the event of success, that strikes me as less a special circumstance and more a factor in what costs might be allowed at an assessment (regardless of whether that assessment proceeds under Part 7 or Part 8).

43. Thereafter, the Claimant speaks of the Defendant's fees being unreasonable or excessive. These are not special circumstances, but rather a common theme of most solicitor/client fees disputes.

44. Where, in the alternative, the Claimant speaks of "serious concerns about the amounts claimed and the work allegedly carried out" and that "some of the work claimed therein was not carried out", those amount to serious allegations.

45. For example, at paragraph 43.i. of Mr Oualnan's statement it is confirmed that "The Claimant alleges that the fees appear to be fabricated, which must be properly investigated by way of detailed assessment".

46. I do not consider that standard directions in a Part 8 Solicitors Act assessment of costs hold some special status over the available directions under Part 7, where such serious allegations of fact are raised.

47. Indeed, the Part 7 claim is already subject to directions which include the exchange of witness evidence and include provision for cross examination such that those serious allegations, if maintained, can be interrogated at a full day fast track trial in the county court.

Conduct / abuse of process

48. Much in the way of accusations and allegations were levelled by counsel against each opposing party. Whilst witness statements have been produced on behalf of each side, I am conscious of the fact that neither witness has yet been cross-examined and I made it clear that I would make my decisions based only on the documents before the court.

49. In my view, a considerable amount of inference is necessary to conclude that the Claimant brought the Part 8 proceedings to "wear down" the Defendant.

50. At paragraph 16 of her skeleton argument, Ms O'Neill asserts:

> "… where the Part 7 proceedings are on foot, it is plainly abusive and vexatious to issue another set of proceedings concurrently, dealing with the exact same issues. It is an abuse to bring vexatious proceedings, i.e. two or more sets of proceedings in respect of the same subject matter which amount to harassment of the defendant to make them fight the same battle more than once with the attendant multiplication of costs, time and stress."

51. Ms O'Neill also cites *Wallis v Valentine* [2002] EWCA Civ 1034 in support of the argument that to pursue a claim for an improper collateral purpose amounts to an abuse of process. In doing so, she argues for analogy in alleging the Claimant's Part 8 claim is similarly "designed to cause the defendant problems of expense, harassment, commercial prejudice or the like beyond those ordinarily encountered in the course of properly conducted litigation".

52. Ms O'Neill proceeds to allege that the Claimant has engaged in "attritional litigation" designed to make the Defendant "give up their pursuit" of unpaid fees.

53. I am unable to conclude, without drawing significant inference, that the Claimant has acted in a manner designed to harass or wear down the Defendant. The mere issuance of a Part 8 claim ought not to have caused the Defendant anything more than minimal expense.

54. Given that the court's direction was to list the matter for a short directions hearing by video, and as admitted by both parties, the principle sum in dispute being modest, I do not agree that the Part 8 claim ought to have caused the Defendant to incur anything more than minimal expense.

55. Indeed, but for the hurdle of the Claimant being required to demonstrate special circumstances, it is clear to me that by reference to the time ledgers at pages 133 and 134 of the Defendant's hearing bundle, any costs associated with the production of a breakdown of costs would have been minimal. Thereafter, the defence in the Part 7 proceedings already point to what would otherwise amount to short points of dispute, to which similarly short points of reply would likely have followed.

56. Separate to the Part 7 proceedings, the Claimant has engaged in inter partes communications which attempted to agree directions in their proposed Solicitors Act assessment claim. This was to avoid taking up court time with what might otherwise be a straightforward directions order.

57. I observe that the Claimant is critical of the Defendant's conduct in that regard, citing an apparent refusal to meaningfully engage in discussions as to Part 8 directions, and in particular for a preliminary issue stage to decide special circumstances.

58. However, the Defendant's response cannot be considered in a vacuum. The Defendant's decision to be disengaged in the Part 8 claim is consistent with their long sustained view that once they had decided to sue for their fees via Part 7, there was no reason to stifle those proceedings in favour of long overdue Part 8 proceedings which would serve to duplicate the work both parties had already put in to the Part 7 proceedings.

59. I concur with that conclusion, and it would be inconsistent for the Defendant to complain of duplicated costs whilst also incurring costs in responding to the Part 8 claim as though it were going to dislodge the existing Part 7 claim.

60. In my view, the Defendant was entitled to resist the Part 8 proceedings and to bring an application seeking to dismiss the same.

61. Whilst I am addressing conduct, I recognise Mr Miller's concerns with the sheer amount of expense the Defendant appears to have incurred to date in responding to the Part 8 claim and bringing their own application for dismissal. I indicated that I had significant concerns in that regard and I address those further below.

Decision

62. Mr Miller was correct to recognise that in many instances, the SCCO is minded to order the stay of any extant Part 7 proceedings and manage a dispute over solicitors' costs under the Part 8 procedure.

63. However, each case is considered on its merits. In many instances, the solicitor is content for a Part 7 claim to be stayed in favour of the defined procedure and directions for Solicitors Act assessment. It is also usually the case that a Defendant in receipt of a Part 7 debt claim will react quickly, as opposed to the index matter in which a full defence to the Part 7 claim had been served some 3 months before a Part 8 claim was issued (and where well over 12 months after the disputed bills were delivered).

64. As to the Claimant's reliance on my decision in *Yasin v Whitmore Solicitors* (SC-2021-APP-000450), there are a number of distinguishing factors. Firstly, in *Yasin* the claimant's claim was brought before the expiration of one month from the service Whitmore Solicitors' Part 7 claim form. Secondly, the *Yasin* judgment was concerned with whether a gross sum bill could be assessed under an order pursuant to section 64 of the Solicitors Act 1974, or whether such an assessment was precluded by section 70 of said act. Secondary to that question was one of whether the disputed amount ought to be subject to a common law assessment of damages or a detailed assessment of costs.

65. As to a common law damages assessment (of unpaid fees) versus a detailed assessment of the same sum, Mr Miller for the Claimant was unable to explain to me what benefits Part 8 had over Part 7 in the context of the disputed invoices in this matter.

66. Mr Miller repeatedly cited the one fifth rule. However, that does not mean the Claimant cannot obtain costs protection under Part 7 (through the making of protective offers).

67. In terms of exposure to costs, it is also relevant to note that in the Part 7 proceedings, which as of today are already nearly 15 months old, the claim has been allocated to the Fast Track and assigned to complexity band 1 (as a defended debt claim). This means the costs are fixed as per CPR 45.44 plus disbursements as set out in Section IX to Part 45.

68. Given the statements of costs I have seen thus far in the Part 8 proceedings, there is no compelling reasonableness or proportionality argument that would lead me to conclude that in the factual procedural circumstances of this case, as at 12 March 2025, the parties would be better served under Part 8 than Part 7.

69. In those circumstances, the only reason to consider permitting the Part 8 proceedings to progress further would be if there are features of this fees dispute which can only be dealt with under the auspices of a Part 8 Solicitors Act assessment, or where I am satisfied that a special circumstances argument has some potential merit such that a separate hearing to decide the same ought to be listed.

70. I take into account the fact that under Part 7, and as progressed as matters are as a consequence of District Judge Rippon's order dated 6 March 2025, all of the key directions I might have otherwise been persuaded to make in Part 8 proceedings have already been put in place. This includes the sensible inclusion of an ADR provision.

71. Thereafter, disclosure has been ordered and one simply cannot see how the Part 7 Claimant isn't best served by anything other than as full a disclosure of their file as practicable to extinguish any allegation of fabricated time, claims for work not done, or unreasonable time/fees. In any event, even under Part 8 procedure, the Part 8 Claimant would not be able to compel disclosure of the Defendant's files whilst the fees remain unpaid.

72. Thereafter District Judge Rippon's directions permit for the exchange of witness evidence and provision for oral evidence at trial. A trial is already listed for 12 August 2025. It is therefore a certainty that resolution of the fees dispute can be achieved earlier via the existing Part 7 proceedings than a Part 8 detailed assessment in the SCCO could be listed.

73. Finally, and certainly of pertinence, is the fact that were I to stay the Part 7 proceedings, it would still require the Claimant to overcome the hurdle of demonstrating special circumstances before an order for assessment under Part 8 could even be contemplated.

74. That leaves open the possibility of a lengthy delay to a listed defended debt fast track trial, the commitment of court time and parties' resources to a high stakes preliminary issue hearing to decide whether special circumstances arise, with outcomes that would otherwise mean the Part 7 directions are resurrected and progressed to trial, or Part 8 directions ordered which practicably are going to be of little difference to those already ordered by District Judge Rippon.

75. In any event, and citing my analysis above as to the special circumstances, I simply cannot conclude that additional court time and party resources to a further hearing to decide if special circumstances arise is either warranted or proportionate. There is nothing in the Claimant's Part 8 claim nor evidence, skeleton argument or oral submissions made since that leads me to conclude there is any prospect of special circumstances being established.

76. In all the circumstances I have concluded that the Part 8 proceedings shall be dismissed. In that regard, the Defendant's application has succeeded and the consequences of that are set out further below.

77. For the sake of completeness, I address Ms O'Neill's CPR 46.14 point.

CPR 46.14(1) applies where:

(a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing; but

(b) they have failed to agree the amount of those costs;

(c) no proceedings have been started.

78. The editorial note at 46.14.1 (page 1577 of the 2024 White Book) provides that:

"[The] purpose [of CPR 46.14] is to enable assessment proceedings to be commenced when there are no existing proceedings in which an order for assessment could be made. It deals with the situation where parties have agreed the substantive issue between them and one party has agreed to pay the other's costs, but it has not been possible to agree the amount of those costs. An application is made under Part 8 and a reduced fee is payable. There will normally be no need for the parties to attend court for the Pt 8 application. If the applicant does not satisfy the court as to the existence of an agreement or the application is opposed, it will be dismissed".

79. The practice direction to rule 46.14 also references the fact that in a dispute as to solicitors' costs, the parties to that dispute are entitled to utilise Part 7 or Part 8, but that Part 8 is to be used where the sole issue is the amount of costs.

80. It is not clear to me that the sole issue between the parties is the amount of costs. Guidance in this regard is taken from relevant passages of the Part 7 defence.

81. At paragraph 15 of the Part 7 defence it states that "the invoiced amounts are disputed and require further clarification and evidence…", and that "…there are disagreements regarding the specifics of the Agreement concerning the fee quote and this will be addressed below."

82. The Part 7 defence admits a payment was made but argues it was not in satisfaction of either invoice, but rather as a payment on account.

83. Paragraph 26 of the Part 7 defence, relying on the reasons in the preceding paragraphs, states that "It is admitted that the Defendant has not paid the sum demanded by the Claimant. It is denied that the Defendant is liable to do so."

84. As such, the Claimant would still find themselves in some difficulty because the conduct of the parties suggests there is a dispute as to whether the Claimant is liable to pay any costs to the Defendant. Further, proceedings (in the form of Part 7) were started well before the Part 8 claim was issued.

Costs

85. With regards to costs, both parties may, if so advised, submit claims to the Court Funds Office for the costs directly referable to the adjourned 27 June 2024 hearing. The parties should be careful to exclude costs that were incurred in any event and I observe

generally that where any claim/s are submitted I would expect the amounts to be extremely modest.

86. The application for dismissal having succeeded, the Defendant shall have their costs of the same. That shall extend to the costs of objecting to the Part 8 claim.

87. However, whilst the order that shall accompany this judgment when it is handed down will make clear the Claimant's liability to pay the Defendant's application costs and costs in responding to the Part 8 claim, the Defendant is reminded of the very serious concerns I expressed as to the magnitude of costs they are seeking in that regard.

88. The statements of costs submitted by the Defendant are nothing short of incredible and serious consideration ought to be given to agreeing a sensible sum before coming back before me to summarily assess such costs.

89. Should such a summary assessment be necessary, the parties may simply write to my clerk requesting the same.