Neutral Citation No. [2022] EWHC 3283 (SCCO)

Case No: CL 1605782
SC-2020-BTP-000969

**IN THE HIGH COURT OF JUSTICE**
**SENIOR COURTS COSTS OFFICE**

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

Date: 22/12/2022

**Before** :

**COSTS JUDGE LEONARD**

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**Between :**

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| **Naim Lone** | **Claimant** |
| **- and -** | |
| **Michael Petrou** | **Defendant** |

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**Naim Lone** in Person

**V A Orphanou** (instructed by **RSO Solicitors**) for the **Defendant**

Hearing date: 20 October 2022

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# Approved Judgment

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

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COSTS JUDGE LEONARD

**Costs Judge Leonard :**

1. The proceedings to which this judgment relates started with a detailed assessment, governed by Part III of the Solicitors Act 1974, between a solicitor (the Claimant) and the solicitor's former client (the Defendant) and undertaken by me. The subject of the 1974 Act assessment was a bill delivered by the Claimant to the Defendant on 5 July 2016, almost 6½ years ago, and the proceedings before me have extended to the assessment of the Defendant's costs of a failed application for permission to appeal by the Claimant, following the assessment of his bill.

2. The substantive proceedings (as one would hope) have now been completed, but the Claimant has made further applications. Some have been withdrawn, as I shall explain. Those that have not been withdrawn are an application filed by the Claimant in September 2022 for me to recuse myself and for a stay or variation of an order made by me on 1 August 2022. They are addressed in this judgment.

3. The recusal application is based upon the proposition that the decisions I have made in the course of these proceedings have, individually or cumulatively, produced such a perverse outcome as to create a reasonable concern that my decisions have (whether by bribery or through the influence of an unnamed party) been biased in favour of the Defendant.

4. The stay application relates to the only issue left in these proceedings, which is the award and (if any award is made) summary assessment of the costs attendant on an abortive hearing of an application by the Claimant listed for 1 August 2022, but vacated at his instigation one working day before it was due to be heard. The basis of the application is that I should not be involved in any further proceedings until the Ministry of Justice ("MoJ") has conducted an investigation into my conduct in these proceedings from June 2017.

**Recusal: The Principles**

5. Neither party has referred me to any of the authorities on recusal. I shall attempt to summarise the relevant principles, with some references to authorities of particular importance.

6. The starting point is that a court or tribunal hearing a case must be impartial and that justice should not only be done, but should manifestly and undoubtedly be seen to be done. A judge will be disqualified from hearing a case if it can be positively demonstrated that the judge is biased in favour of a particular party. This is "actual bias".

7. If in some way the judge's conduct or behaviour gives rise to a suspicion that they are not impartial, then the judge will also be disqualified from hearing the case. Not all such suspicions justify the recusal of a judge. The suspicion must be objectively justified by reference to the concept of the "fair-minded and informed observer". If such an observer would consider that there was a real possibility that the judge was biased, then the judge must recuse themself.

8. This is "apparent bias", and as the Claimant made clear on the hearing of this application, it is the principle relied upon by him.

9. Where there is real ground for doubt about the ability of the judge to try a matter objectively, then that doubt should result in recusal (*Locabail v Bayfield* [2000] QB 451, at paragraph 25). There must however be a sufficient basis for such doubt. A recusal application should not be allowed simply because the judge considers it preferable not to hear the case. In *Triodos Bank NV v Dobbs* [2005] EWCA Civ 468, Chadwick LJ (at paragraph 7) summarised the principle in this way:

> "It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved… But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If judges were to recuse themselves whenever a litigant -- whether it be a represented litigant or a litigant in person -- criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised -- whether that criticism was justified or not."

10. The law imposes certain duties upon an applicant for the recusal of a judge. An application for recusal goes to the heart of the administration of justice and must be raised as soon as is practicable (*Baker v Quantum Clothing Group* [2009] EWCA Civ 566, at paragraph 36). For that reason, an application for recusal may be refused on the ground of inexcusable delay alone (*BMF Assets No 1 Ltd and others v Sanne Group plc and others* [2022] EWHC 140 (Ch)).

11. CPR 23.3(1) imposes a general rule that the applicant for recusal must file an application notice. The court may dispense with an application notice under CPR 23.3(2)(b) but this is an act of discretion, not one of generic entitlement (*Miley v Friends Life Ltd* [2017] EWHC 1583 (QB), at paragraph 25).

## Matters Referred to in this Judgment

12. In order to put those applications into context, it is necessary to understand the long history of the proceedings before me. It is also necessary, in particular in setting out the events of 2022, to consider some of the correspondence between the Claimant and the court in some detail.

13. It has not been practicable to provide a complete, detailed narrative of the relevant correspondence, which has, in the usual way, been sent via my clerk. That is partly because of the sheer volume of emails received from the Claimant, who tends to make by email representations that would better be reserved for a hearing or an application. It is also because of the Claimant's seemingly intractable disregard for the requirement of CPR 39.8 that he copy such correspondence to the Defendant and mark it accordingly. I have attempted to reproduce enough of the correspondence to illustrate its character and otherwise to summarise the essential detail.

## The Claimant Solicitor

14. Until December 2016 Mr Naim Lone, the Claimant solicitor, practised under the name of Attiyah Lone & Associates (“AL”). He was subsequently authorised to practice through AL Law & Associates Solicitors LLP but according to the SRA, AL Law & Associates Solicitors LLP ceased to practice on 13 May 2019 and its licence ceased to have effect on that date. It appears that since then the Claimant has been acting in person.

15. In the course of preparing this judgment I have noted that AL is described in some of the records I have seen as an LLP, but in court records it is given as a trading name for the Claimant. My understanding is that the Claimant was, until December 2016, a sole practitioner trading under the name of AL, so that any fees due to AL are due to him. For the purposes of this judgment, accordingly, I do not distinguish between the Claimant and AL.

## The Procedural History

16. In August 2013 the Defendant, Mr Michael Petrou, instructed the Claimant to represent him in ancillary relief and other family proceedings connected with the Defendant’s divorce. The bill delivered to the Defendant on 5 July 2016 relates to that work. As produced to me for assessment, it totalled £134,437.30.

17. At the time of delivery of the bill, a dispute had arisen between the Claimant and the Defendant about the Claimant’s entitlement to costs. The Claimant intervened in the Defendant’s ancillary relief proceedings in order to secure his claimed costs. On the Claimant’s application, DDJ Butler in the Central Family Court made orders on 27 July 2016 and 29 November 2016 the effect of which was to join AL to the family proceedings as a third party “for the purposes of disclosure and enforcement of costs” and to make the following provisions.

18. On the undertaking of the Claimant to apply to the Senior Courts Costs Office for assessment, DDJ Butler’s orders provided that, from monies to be released to the Defendant from the sale of property in the ancillary relief proceedings (which came to £134,241.53), £29,000 would be applied in part payment of the Claimant’s bill of 4 July 2016. Subject to the payment by the Defendant of £5,600 in costs awarded to the Claimant on its application, the balance was to be held on the Claimant’s client account until matters were resolved by an order of the SCCO or by written agreement. The orders provided for the “assessed sum” (meaning, as I understand it, the amount of the Claimant’s Bill as assessed or agreed) to be paid, net of the payment already received, to the Claimant with any residual sum to the Defendant.

19. As a result of a series of events recorded in a decision of the Solicitors Regulation Authority dated 15 January 2021 (Case No. 12120/2020) the monies which were, in accordance with DDJ Butler’s orders, to be held on the Claimant’s client account pending assessment or agreement were eventually held instead by Lester Aldridge, solicitors, on behalf of the Solicitors Regulation Authority (“SRA”).

20. The Claimant on about 20 October 2016 filed an application for the detailed assessment of his bill. The assessment was listed before me on 29 and 30 June 2017. Both parties were represented at the hearing: the Claimant by Mr Avetoom, a costs

draftsman, and the Defendant by Mr Orphanou, a barrister and costs draftsman who has represented the Defendant throughout these proceedings.

21. On 29 June, at the opening of the hearing, the Claimant put to me but ultimately did not pursue an application to amend his bill and adjourn the hearing. After I had made a number of findings, the parties negotiated and agreed the amount at which the Claimant's bill should be assessed.

22. At further hearings on 6 July and 14 July 2017, the parties confirmed that the final agreed figure for the Claimant's July 2016 bill was £104,059.80. Applying the "one-fifth rule" in section 70(9) of the Solicitors Act 1974, I awarded to the Defendant the costs of the assessment process, summarily assessed at £21,285 (reserving some costs in relation to the Claimant's cash account and the calculation of the amount payable between the parties).

23. I gave directions with a view to resolving disputes in relation to the cash account, but in the interim the Claimant filed a notice of appeal and obtained an order for the stay of the detailed assessment proceedings pending the outcome of that appeal. The appeal proceedings did not conclude until over two years later, when on 20 December 2019 Mr Justice Williams refused the Claimant's application to adjourn the appeal, which he observed was "already so stale and which has been adjourned several times before because of inadequate preparation".

24. On hearing the parties Williams J refused permission to appeal, awarded the costs of the appeal proceedings to the Defendant and remitted all matters relating to the cash account, or otherwise arising from the bill of costs or assessment process, back to me for determination.

25. Williams J gave his reasons for refusing permission to appeal on the grounds advanced by the Claimant. He has confirmed that I may refer to them in this judgment.

26. Williams J's conclusions included that it was not open to the Claimant to argue that I should have granted an application to amend his bill and to adjourn the detailed assessment hearing when that application ultimately had not been pursued by him; that I did not, as the Claimant argued, force the parties into the entirely legitimate process of negotiation through which the assessed amount of the bill was agreed; that the Claimant had, on the contrary, agreed both to that process and the figures that emerged from it; that he was in consequence bound by the outcome; that the Claimant was not entitled to appeal against the deduction from his bill of items that he himself had conceded; that there was no merit in the Claimant's arguments that I should have awarded the costs of the assessment to him, rather than to the Defendant, or that I should have awarded a different amount; that the Claimant was not entitled in that respect to rely upon allegations of misconduct by the Defendant and Mr Orphanou that he had not put to me; and that there was no merit in the argument that I should have made a different award in respect of the costs of the hearings on 6 and 14 July.

27. Williams J summarised his conclusions in this way:

> "Having regard to all of these conclusions it will be apparent that I do not consider that this appeal had any prospect of success still less a real prospect of success".

28. For reasons that are not known to me neither party, following the conclusion of the appeal, made any immediate move toward the restoration and conclusion of the detailed assessment proceedings.

29. In September 2020 the Defendant filed for assessment his bill of costs of the Claimant's attempted appeal ("the appeal bill"), which had been awarded to the Defendant by Williams J, and which were claimed at £45,152.41. The papers filed included Points of Dispute from the Claimant, dated 29 April 2020. The Defendant did not request that the appeal bill be referred to me and in consequence it was provisionally assessed by an SCCO Costs Officer at £27,362.90, the costs of the provisional assessment being awarded to the Defendant. The provisional assessment was completed on I January 2021, but it does not appear to have come to the attention of the Claimant until June 2021, when he requested a hearing.

30. In the meantime, between August and November 2020 (there were some difficulties with filing) the Claimant filed an application for permission to raise further points of dispute, and for me to recuse. His stated basis for the recusal application was that I had "failed to pick up or act on" the alleged dishonesty of both the Defendant and Mr Orphanou at the hearing on 29 and 30 June 2017; that I should have allowed his bill to stand without reduction due to that alleged dishonesty; that I should not have allowed two hearings to take place on 6 and 14 July 2017 in respect of the cash account; that I caused him substantial loss by refusing to allow him to amend his bill; that I had refused to adjourn the assessment hearing on 29 June 2017, so that the parties "had to engage in an arbitrary process to attempt to end the assessment", to the Claimant's "complete detriment" ; and that these matters demonstrated "a very concerning bias in favour of the Claimant".

31. In short, the application restated the complaints which Williams J had found to have no merit, this time in support of the allegation that I was not just wrong in my decisions but biased in favour of a fraudulent opponent.

32. In what seems to have been an afterthought, the allegations of dishonesty against the Defendant and Mr Orphanou were now advanced by the Claimant not just in support of the proposition that the Claimant should have been awarded the costs of the assessment, but to argue that the Claimant's bill should have been assessed without any reduction at all.

33. Whilst I do not have to hand a record of the proceedings before me on 29 and 30 June 2017, Williams J has already pointed out that no such allegations were relied on before me in respect of the costs of assessment, so it seems clear that they were not offered either to me or Williams J in support of the proposition that the Defendant could thereby be deprived of his statutory right to determination of the amount reasonably payable to the Claimant for his legal services. Even if it had, the proposition would (a) have been insupportable in law and (b) inevitably have fallen foul of Williams J's finding that the Claimant was bound by his settlement agreement.

34. The Claimant, in December 2020, obtained a fee remission for this recusal application but he never properly completed it (in particular in omitting service details from the application form), so it was not listed for hearing.

35. In July 2021, having become aware of the provisional assessment of the appeal bill, I notified the parties of my intention to arrange a directions hearing to address all outstanding issues, including the Claimant's proposed application for me to recuse and, if appropriate in the light of that application, his request for a hearing following the provisional assessment of the Defendant's appeal bill. I asked the parties to offer dates for a hearing. It took until September 2021 to get dates from both parties, with the Claimant advising that due to his involvement in a trial the directions hearing should not be listed until after the end of November.

36. The directions hearing was listed for 6 December 2021. In November, the Claimant asked by email for it to be adjourned until after 1 March 2022 due to his need to consult a bereavement specialist following the death of his father. This was opposed by the Defendant.

37. I advised both parties that as adjournment was not agreed, the Claimant must apply for adjournment and that I could not adjourn a hearing on medical evidence that the Claimant (as he stated at the time) was not prepared to disclose to his opponent. I suggested that I could take into account any written representations the Claimant wished to make on notice to his opponent, or to make any other arrangement that might reduce the stress of the process for him. I also reminded the Claimant that he had made applications, including the application for me to recuse, which remained incomplete.

38. On 24 November 2021, the Claimant thanked me for what he described as my sensitive handling of his request for an adjournment and stated that he did not intend to pursue an application for recusal. He did not make a formal application for adjournment of the 6 December hearing.

39. The hearing on 6 December 2021 should have proceeded by telephone, but through the fault of the Defendant's representatives, who did not do enough to ensure that Mr Orphanou could join the hearing, it was ineffective and had to be adjourned to 18 January 2022.

40. On 6 January 2022 I sent a note to the parties attaching a draft cash account that I myself had prepared, and suggesting ways in which some remaining uncertainties could be resolved. I stated my reasons for doing so in the first paragraph of my note:

> "I have taken the unusual step of sending this note to the parties in anticipation of the adjourned directions hearing now listed for 18 January, because I am concerned that the degree of rancour that has arisen between the parties may present an obstacle to the speedy resolution of a number of matters that have stood unresolved for much too long."

41. On 17 January I sent to the parties a reworked version of the cash account based on further information filed by the Claimant. At the 18 January hearing this cash account was agreed with some reservations, including an assertion by the Claimant that part of the funds held by Lester Aldridge should be paid to a third party. My order of that

date recorded the agreement, and also the fact that the sum held by Lester Aldridge on behalf of the SRA (exclusive of any accrued interest) was £78,528.03.

42. The Claimant sought a hearing date for resolving all remaining issues in June 2022, to allow a course of treatment to be completed which would assist him in dealing with the effects of his bereavement. The Defendant sought the retention of a provisionally listed date on 29 April.

43. I gave directions with a view to resolving the cash account; completing the solicitor/client assessment; awarding and assessing the reserved costs from the hearing of 14 July 2017 and of the directions hearings of 6 December 2021 and 18 January 2022; and assessing the Defendant's appeal bill. All of that was to be disposed of on 19 May 2022.

44. On 19 May 2022, both parties were represented by counsel: Mr Bentley for the Claimant and Mr Orphanou for the Defendant. The cash account prepared by me on 17 January was, finally, agreed (subject to any claims for interest).

45. I also dealt with the costs of the directions hearings of 6 December 2021 and 18 January 2022 and the post-provisional assessment of the costs awarded to the Defendant by Williams J on the Claimant's attempted appeal.

46. By virtue of section 70(9) of the Solicitors Act 1974, the starting point was necessarily that the Defendant would have the costs of resolving the cash account. Although the Claimant argued that the cash account could have been (and almost was) quickly agreed, I awarded to the Claimant the costs reserved from 14 July 2017, on the basis first that the Claimant had been ordered to serve his cash account by 16 June 2017 but had not served it until shortly before the 14 July hearing (making a hearing inevitable) and second because it had still needed some work before it could be finalised. I awarded the costs of the hearing on 6 December to the Claimant because the hearing had been abortive through the fault of the Defendant's representatives. I refused to make any order for the costs of the hearing on 18 January because I took the view that the Defendant's representatives had not done enough to build upon the work represented by my note of 6 January, and that Mr Orphanou had instead wasted time making allegations of dishonesty against the Claimant that I did not believe to be supported by evidence.

47. This left the post-provisional assessment of the appeal bill. I was required to make one ruling on that assessment. The Defendant's solicitors' charges were claimed for in the bill, in standard fashion, at hourly rates. Those rates, as Mr Bentley rightly conceded, were broadly in line with the 2010 hourly rates and prima facie reasonable. The Claimant however raised an indemnity principle challenge based on the fact that the Defendant had not set out in his bill the basis of his retainer with his solicitors, which was said to be a breach of Practice Direction 47 paragraph 5.11(3); that the Defendant had indicated before me in June 2017 that he could not afford to pay the Claimant over £180 per hour for the conduct of the family proceedings; and that there was a discrepancy between the amount of the Defendant's bill of costs and a schedule produced for summary assessment on the appeal (which, deducting the costs attendant on preparing the bill, is about £6,400).

48. I did not consider any of that to offer sufficient reason to go behind the certificates of the Defendant's solicitor to the effect that the amount claimed in the bill did not exceed those which the Defendant was required to pay his solicitors, and I did not consider it necessary to require the Defendant to produce his retainer to me for consideration.

49. When I had determined that point, the parties entered into negotiations and agreed the figure at which the bill should be assessed, and the costs of assessment, at £30,609.40.

50. Having explained that I did not consider that I had any jurisdiction to order the retention of any of the funds held by Lester Aldridge pending the hearing of a claim made by the Claimant against the Defendant for contractual interest on his costs (which was then due to be heard in the County Court at Bromley on 22 September 2022) I made an order disposing of the issues, based upon a draft supplied to me by Mr Bentley. The order recorded the fact that the agreed cash account showed a balance of £78,512.53 , exclusive of interest, to be due to the Defendant and provided for the release to him, with accrued interest, of the money still (over five years after DDJ Butler's orders) held by Lester Aldridge on behalf of the SRA. The order also incorporated an agreed 42-day period for payment by the Claimant to the Defendant of the balance of £1,045 for the costs of previous hearings due to the Defendant, and of the agreed amount of the appeal bill as assessed.

## Events After 19 May 2022

51. Before continuing my recital of the history of these proceedings, I should explain that listing in the SCCO is managed by Costs Judges rather than court staff. Whilst hearings are normally listed, in the usual way, on the first available suitable date it is possible, at the court's discretion, to accommodate reasonable requests to avoid given dates. The criteria for vacating hearings are standard: listed hearings may be vacated by agreement between the parties (subject to court approval) or by formal application on notice.

52. The hearing on 19 May 2022 should, in the normal course of events, have concluded any proceedings before me. However on 20 May, the day after the hearing, the Claimant sent an email to the court asking for the agreed payment date incorporated in the court's order to be put back to 25 September. The 19 May order had already been sealed, and the Claimant then complained that I should have considered his email before it was sealed. I explained to the parties that the order had already been sealed before I saw the Claimant's email, and even if it had not, I would not have been willing to accommodate a unilateral request to vary its agreed terms. The Claimant stated in response that he would be filing an appeal based on alleged bias and an alleged failure to strike out the Respondent's bill of costs for several breaches of the indemnity principle.

53. On the afternoon of Friday 24 June 2022, the Claimant filed at the SCCO a "without notice" application for a stay of my order of 19 May 2022 pending the Claimant's appeal against that order or the conclusion of the proceedings in the County Court at Bromley, whichever was the later.

54. The Claimant sent an email to the court on the morning of Monday 27 June:

> " I refer to the above application which must be considered today because I need to stay the order before payment, which may be made tomorrow, is made.
>
> It is imperative that an order is made today.
>
> I have no objection to it being considered on paper.
>
> Please be advised that Master Leonard's order is being appealed. Accordingly, it may require the application to be placed before another Master so as not to prejudice the application."

55. On the same date the Claimant attended court and was (I believe) advised by court staff, at my request, that the normal and proper venue for such an application would be the appeal court but that if the application were to be put to the SCCO it would be dealt with by me as the assigned judge. I was informed that having been so advised, he chose to pursue it in the SCCO (as I understand it because he had not been able to obtain a satisfactory response from the appeal court).

56. Upon reviewing the application I found that it exhibited a copy of the Claimant's Appeal Notice, which already incorporated an application for a stay. The Grounds of Appeal which concluded with these words:

> "a copy of these grounds has been sent to the Ministry of Justice to investigate why there is overriding bias towards the Respondent which was to the extent that no matter what the Appellant argued, he made no 'inroads. It is averred that there is some reason for this underlying bias which requires further investigation ie does he know the Respondent or his barrister? Has a third party had an influence on him?"

57. I dismissed the Claimant's stay application on the same day. Having done so without a hearing, I added a proviso to the effect that either party could apply to set the order aside or vary it.

58. Appended to the order were my reasons for dismissal without a hearing, which can be summarised briefly as follows. The stay application had already been made to the appeal court, and it was not for the SCCO to usurp the function of the appeal court; it was not appropriate for me to impose a stay upon terms agreed by the parties before me as to the amount payable and the period for payment; whilst the merits of the appeal would not be determined by me, the Claimant seemed no more likely to succeed in his second attempted appeal against his own agreement, than he had been on his first; and if the Claimant took issue with my conclusion that it was not for me to make an order purporting to delay the release of the funds held by Lester Aldridge his remedy lay in an appeal, not in a further application to the same court.

59. The Claimant applied by email to set the order aside. He also wrote to the Senior Costs Judge on 28 June 2022 with what he described as his third request for my recusal, complaining that I should not have dealt with the stay application; that my having done so was in breach of a rule "that the same Judge is not entitled to engage in a matter that is subject of an appeal" or a principle "that an order subject of an appeal cannot be dealt with by the same Judge"; that I should not have made any

observations on the merits of his appeal, and in doing so had prejudiced the appeal; and that I had throughout the case shown bias which "may well be racially motivated".

60. The Claimant indicated that he would be making a complaint and that he would, if any loss were incurred, make a civil claim against the MoJ for "misconduct in public office under the principle of vicarious liability". The Claimant asked that "the matter" (meaning presumably his application to set aside my order) be listed before another costs Judge, stating that due to other commitments he would be unavailable until the end of July and available from 1 August, except for 18/19 August, but that this could change at any time.

61. The Senior Costs Judge replied to the effect that it was in accordance with normal practice and procedure for any judge to continue to deal with a case where the judge's order was under appeal, and that he did not have the power to recuse me or direct that the case be dealt with by another judge, even if it would have been appropriate.

62. On 30 June 2022 I had my clerk notify the parties that any application for recusal should be made under CPR 23, and of the provisional listing of an appointment on 3 August to deal first with that application and, depending upon whether I recused and referred the matter to another judge, with the application to set aside my order of 27 June. I invited the parties' observations.

63. Both parties responded on 4 July, the Claimant to the effect that 3 August would not be suitable because it coincided with the anniversary of his father's death, which required "religious practicalities over a number of days" and requesting a listing after 8 August. The Defendant responded to the effect that the case had already been delayed by the Claimant's actions and that absent some more specific reason than the Claimant was offering, the application should not be delayed until August but should be heard during July.

64. On the same date I responded to the effect that I had set the provisional listing on a date that the Claimant had indicated, two days earlier, that he would be available; that the court is not under any obligation to list an application at a time which is convenient to both parties, but will give the parties a proper opportunity to attend or be represented; that I had seen nothing to indicate that the Claimant could not do either before 31 July; and that I had listed the applications for 10.30 am on 1 August, a date intended as far as possible, to be convenient to both parties.

65. The Claimant replied on 5 July to the effect that I had shown "complete contempt" for the death of his father and the attendant religious requirements; requesting a listing after 8 August; and stating that he would make a further complaint if the matter were not listed after August. Illustrative of the tone of his email is this passage:

> "There is no point to the Court asking the dates of availability unless it is inclined to observe those. It is noted that the Master appears to be guided by the Respondent as to what he does. If he is going to be biased, he should at least make it more subtle."

66. My response, on 6 July, was this:

> " I can see that I misread Mr Lone's email of 4 July, which properly read extends his stated period of unavailability to 8 August. I am however unable to accept, on current information, that Mr Lone is unavailable until 8 August (or for that matter until 1 August, as originally stated). I appreciate that he does not wish to make himself available before 8 August, but the court cannot allow either party to dictate the listing of a hearing, whether or not that party threatens to make a complaint. Both parties will (or should) be aware that applications are generally listed without any prior consultation as to convenience.
>
> If either party demonstrates that they are unable to attend or be represented at 10.30 am on 1st August, then in accordance with the court's usual practice the hearing will be relisted. If either party demonstrates that they are unable to attend or be represented on any of the alternative dates I have offered in the last week of July, it will not be relisted on any of those dates. It is not sufficient to say "I am unavailable", or to cite prior commitments without further explanation.
>
> I have every sympathy with Mr Lone's wish to observe the anniversary of his father's passing on 3 August, but in the absence of more information about his family and/or religious commitments in that respect I am quite unable to understand how they could have any bearing on his ability to manage a hearing on 1 August or in the last week of July. If they do, and he would care to explain how and why, I will certainly reconsider the listing with a view to accommodating those requirements.
>
> Unless one of the above criteria is met, the listing will stand."

67. Further emails were received from the Claimant, but apart from further allegations of bias and assertions to the effect that he should not be obliged to issue a formal recusal application, I received nothing of substance until 28 July, when he advised the court that the appellate court had finally processed his appeal notice; that he would address all further matters to the appellate court; that there was no longer any application to be heard at the SCCO on 1 August; and that he would not be attending the hearing on 1 August, so as to save costs (there was no further suggestion of unavailability). On 29 July he confirmed that the appellate court had refused his application for a stay of my order of 19 May and that he would be applying to set aside that order, so that all future applications would be made to the appellate court and that he would not be pursuing in the SCCO an application for me to recuse or to vary my order of 19 May.

68. The hearing listed for 1 August 2022 was vacated, but not without some initial misunderstanding. The Defendant's solicitors sent an email on 29 July to the effect that they would await my "confirmation and/or order", which I took to mean that they would not object to a short order simply vacating the hearing. This was quickly corrected by an email explaining that they wished to seek the costs of preparing for the hearing, including consultations with counsel. The Claimant accused them of "cynical cost building" but accepted that my suggestion that I deal with the costs issues on paper was "the only option". The Defendant also agreed to that course.

69. I made an order on 1 August recording the withdrawal of the Claimant's applications and giving directions for the parties to file and serve any submissions they wished to

make in relation to the award and quantification of the costs of the matters listed for hearing on 1 August 2022, to be determined without a hearing. Submissions were to be filed and served by 22 August and responses by 5 September. The order provided for either party to apply, within 7 days of service of the order upon them, to vary it. No such application was made.

70. In accordance with the court's directions, The Defendant filed initial submissions on 22 August. The Claimant filed his submissions a day later, along with a series of emails addressed to the court. I may not have seen all of them, as by this stage court staff had stopped sending to me at least some of the emails that were not copied to the Defendant in accordance with CPR 39.8. They did, however, include this response to the Defendant's submissions:

> "Dear Sirs,
>
> There was no provision in the order for these scoundrels to submit costs as it is rather presumptuous for them to do so. The Court informed them not to submit and they have to wait for the replies to their submissions unless Master Leoanrd has already given them a nod?
>
> All matters are to be stayed pending a complete investigation into misconduct in public office and all the cost orders awarded to these Solicitors who cannot put two sentences together.
>
> Master Leonard has already been informed of the investigation and papers are being filed with the Court for his immediate removal. Master Gordon Sakar has been requested to take custody of the file until the Ministry of Justice asks for it.
>
> I trust that is clear.
>
> No further adjudications of any nature are to be made by Master Leonard."

71. Another email from the Claimant on the same date, sent to an SCCO staff team leader, read:

> "Dear Mr.Tang,
>
> I would be grateful if you would provide an explanation why my opponents were sent an email unilaterally and why the Master has made a decision on the submissions when the parties are supposed to respond to the other's submission within 14 days. How can a decision be made when the process is not yet complete.
>
> A letter before action is being sent to the Ministry of Justice which will no doubt trigger an investigation into the judicial handling of this matter . Accordingly, Master Leonard is not to make any further decisions regarding the above matter.
>
> This was made clear to the Court.
>
> Can I please have an explanation?

> I await your response and your confirmation that custody of the file is given to Master Gordon Saka".

72. I still have no idea why the Claimant had come to conclude that a decision had already been made on the parties' as yet incomplete submissions, or why he alleged that there had been unilateral communications between the Defendant and the court. He seems to have forgotten entirely the directions that had been made on 1 August.

73. Another email from the Claimant to the court on 23 August 2022 read:

> "Dear Sir,
>
> I attach a copy of my application form for the immediate recusal of Master Leonard.
>
> As stated in my previous email all documentation is being submitted by post. However, due to the urgency, it is necessary to give you notice.
>
> I do not appreciate Master Leonard treating me like some idiot with his deceptive behaviour and his obvious bias. He may be a judge but a very poor actor.
>
> Kindly refer this application notice to Master Gordon Saker as he will not be privy to the brutal letter before action to the Ministry of Justice.
>
> I trust he will appreciate that litigants expect complete impartiality. His oath is to treat matters without prejudice or bias and then hide behind the difficult task of showing he is plainly wrong. He has caused substantial loss and rest assured, I will recover every cent that I have lost.
>
> For the purposes of the application for recusal, I will simply summarise why his recusal is required IMMEDIATELY. As stated above, the Court will not be made privy to the letter before action. However, I am quite sure that the Ministry of justice will want to know why they are being sued.
>
> Kindly pass to Master Gordon Saka."

74. The Defendant has supplied to the court copies of correspondence which may help put into context the emails sent by the Claimant to the court on 23 August 2022. It seems to have been prompted by the release by Lester Aldridge of the Defendant's money. Notably the Claimant applied for an order without notice preventing the release of the money to the Defendant, but after this was refused the Claimant wrote to the King's Bench listing office asking for his email to be referred to the judge that had dealt with his application, complaining that the money had been put beyond his reach and saying that he would seek an indemnity from the MoJ for any losses.

75. On about 5 September, the Claimant filed an application for me to recuse and for the variation of my order of 1 August. On being advised that the matter would be dealt with by me on my return from leave, he sent this email to the court on 13 September:

> "Please be advise that I am not available before 6th October 2002 and that is the date of another hearing. Therefore, I would need time to prepare and

> therefore, I would ask that it is not listed until the following week at the very least.
>
> I also have a significant hearing in early November 2022.
>
> I would consider that a date in mid to late November would be more suitable."

76. Bearing in mind what the Claimant had said about not listing the application until at least the week after 6 October and considering a further delay until his preferred time of mid to late November to be too long, I arranged for the application to be listed for 20 October. On being given notice of the date the Claimant responded to the effect that he did not want a hearing before 15 November because he had a "huge and important hearing" in early November. When my clerk responded to the effect that I would need to know what the Defendant had to say about relisting the application, he wrote again to the Senior Costs Judge complaining that I should have consulted the parties before listing the application (and making no mention of his original indication that the application could be listed in or after the second week of October).

77. The Senior Costs Judge responded to the effect that it was not SCCO practice to consult the parties before listing an application and that the appropriate course if a party wished to relist a hearing was to seek agreement to relisting from the Defendant, failing which a formal application could be made. The Defendant did not agree to the relisting and the Claimant did not make a formal application to adjourn. The hearing of the application, accordingly, took place on 20 October 2022 with the Claimant representing himself and the Defendant being represented by Mr Orphanou.

**The September 2022 Application**

78. The application heard on 20 October is dated 2 September 2022 and was sealed by the court on 7 September. It comprises an application for my immediate recusal and an application to stay, alternatively vary, my order of 1 August 2022, so as to extend time to file the Claimant's submissions until after an investigation by the MoJ into my dealings since June 2017 or until after my recusal, "whichever shall be the latter".

79. The stated grounds for the application run to 23 pages and are summarised under the following headings.

80. Under "Original assessment of the Applicant's costs" the Claimant sets out 15 paragraphs. I find it difficult to follow paragraph 1, which appears to refer to events after the detailed assessment of 29 and 30 June 2017. As far as I can tell, it appears to allege that I should have concluded on 19 May 2022 that the £6,400 discrepancy between the schedule of costs produced by the Defendant in the appeal proceedings, and the bill of costs produced by him for detailed assessment, was fraudulent, which was not the Claimant's case as put to me at the time.

81. Paragraphs 2-16 appear (with the exception of his complaint about the costs orders made in the cash account proceedings, which include but appear to extend beyond the hearings of July 2017) to comprise a restatement of the arguments which Williams J,

on refusing permission to appeal on 20 December 2019, found to be without merit and to be without any, much less any real, prospect of success. These same arguments (including that I should have awarded the costs of the assessment to the Claimant based on allegations of misconduct by the Defendant that were not put to me by the Claimant at the June 2017 hearing) are cited in support of the proposition that I have shown "overwhelming bias" and demonstrated "numerous failings" that "have raised the possibility of "cash for orders" and being influenced by a known" (but unidentified) "third party".

82. Paragraphs 17-40 of the grounds fall under the headings "Concerns about the Respondent's appeal costs-19th of May 2022" and "appeal costs-hearing 19 May 2022". They mostly refer to the hearing of 19 May and its aftermath, although they seem to stray back to some of the events of 2017.

83. With all due respect to the Claimant, his submissions are frequently prolix, rambling, vague, unclear and repetitive, so that it is not always easy to understand the point being made. I have attempted however to extract and to summarise the points apparently being made:

i. Inviting the parties to agree issues rather than adjudicating upon them, which is now alleged to have been a means to engineer an outcome disadvantageous to the Claimant.

ii. Giving little or no consideration to supplementary points of dispute which ought to have led to the Defendant's appeal bill being struck out, in particular because of fraudulent claims for costs not incurred.

iii. Ignoring or "refusing without foundation" various Points of Dispute such as duplication and excessive use of counsel.

iv. Not addressing an argument to the effect that the Defendant's claimed cost were disproportionate: "the only plausible explanation is that he either knows the Respondent or is influenced by third parties".

v. Not requiring the Defendant to provide a bundle to the Claimant before the Detailed Assessment hearing.

vi. Failing to take account of indications by the Claimant in interlocutory hearings as to his intention to make applications at the final hearing.

vii. Not penalising the Defendant for the late filing of a costs schedule before the 29/30 June 2017 assessment hearing and before the appeal hearing before Williams J.

viii. Having to be persuaded to award to the Claimant the costs of the abortive directions hearing of 6 January 2022.

ix. Helping the Respondent's barrister, Mr Orphanou, "who has at all hearings, being unable to string two sentences together as observed", in particular awarding to the Claimant the costs of one of the July 2014 hearings in which Mr Orphanou "went round in circles".

x. Failing to notice, until prompted, that the Defendant had claimed costs of £21,000 and of £1,200 for the same item.

xi. Presenting "a false charade" of being concerned about the release of the Defendant's money to him, given that the Claimant hoped that some of that money could be applied to meet his claim for contractual interest, listed to be heard on 22 September.

xii. Making the order of 19 May 2022 too quickly, before receipt of the Claimant's email of 20 May, so as to deny the Claimant the opportunity to set off his claim listed to be heard on 22 September.

xiii. Insisting that I hear the Claimant's application of 24 June 2022 and then dismissing it without a hearing, characterised by him as an attempt to ensure that his arguments were not recorded.

xiv. Appending to my order of 27 June 2022 reasons which included views on the merits of his appeal, so prejudicing the appeal.

xv. Listing the application to set aside the dismissal order on 1 August, so as to ensure that the funds held by Lester Aldridge would be put out of the Claimant's reach.

xvi. Changing my position to allow the Defendant to claim costs attendant on the hearing of 1 August.

xvii. Not making sufficient enquiry into the difference between the schedule of costs apparently produced by the Defendant before Williams J and the detailed bill produced for assessment (compounded by an observation on my part to the effect that "this happens all the time").

xviii. Failing to conclude (notwithstanding an alleged "disparity" in the costs claimed by the parties) from the failure of the Defendants' solicitors to produce a letter of retainer at the detailed assessment hearing, that no retainer existed, the consequence of that being that entire claim for appeal costs should have been struck out. The only explanation for this, says the Claimant, is undue bias and the "possibility it was for reward".

84. Many of these submissions are accompanied by a demand for an explanation from me. Some of them refer to the Claimant's belief, apparently based on a conversation with unnamed court staff, that I had "custody" of the court file relating to his appeal from the hearing before me on 19 May 2022 (another matter for which an explanation is demanded).

85. With all due respect to the Claimant, this last assertion is patently nonsensical. The appeal file is held by the appeal court, not by me. I do not have access to its contents, nor would I expect to have. As I recall, some papers filed by the Appellant for the appeal were misdirected by the appeal court to the SCCO and I had to instruct our court staff to return them. Perhaps that is the source of the Claimant's misapprehension.

86. Paragraphs 41 to 46 of the Claimant's grounds assert that "a detailed complaint and request for an investigation on all matters that have caused concern… Is to be sent to the Ministry of Justice to investigate why there is overriding bias… There is some reason for this underlying bias which requires further investigation." It is said that any further involvement by me would prejudice such an investigation.

## The Defendant's Submissions

87. The Defendant describes the Claimant's conduct as vexatious, not just in these proceedings but in others, making repeated applications and professional complaints against the Defendant's counsel and solicitors.

88. The Defendant complains that the Claimant is an experienced solicitor but claims "privileges" as a litigant in person, refusing to use the court's CE filing system and obtaining fee remissions for his numerous court applications and claims. The Claimant, says the Defendant, has no means to meet costs orders and his home is not registered under his name. He stands to lose nothing. He owes £32,000 in costs which are overdue, not including the costs attendant on either his withdrawn or his renewed applications for stay and recusal. He obliges the Defendant to attend the hearing of his various applications but he never accepts the orders that are made against him.

89. The Defendant's solicitors complain of receiving emails on a regular basis from the Claimant with threats and insults. He has made what they describe as a vexatious negligence claim against the Defendant's solicitors for no other reason than to ensure that the Firm's claim history is negatively impacted and its insurance premiums increased.

## Conclusions on Recusal

90. I should say first that (leaving aside some mutual sniping between him and Mr Orphanou) the Claimant, on the hearing of this application, was as measured and courteous in presenting his case as any judge could reasonably expect. He stated that he was making the application of necessity and with reluctance, and he emphasised that he was not levelling accusations: his case was that an objective observer would conclude that there was a possibility of bias.

91. That is a sensible approach and in accordance with principle, but it is rather at odds with the angry and accusatory tone of the application itself, not to mention the Claimant's correspondence.

92. The question is, however, not what the Claimant himself thinks. Nor does it matter that I myself know that there is no basis for the suggestions of bias and misconduct (not to mention bribery) raised by the Claimant. The question is what a fair-minded and informed observer would think.

93. Before coming to that, I should address the fact that the recusal argument has not been advanced by the Claimant with any degree of consistency or promptness. The Claimant left his first application incomplete for nearly a year before he advised the

court that he was not going to pursue it. He was content, after that, for the matter to proceed before me and did not raise any allegation of bias until after the hearing of 19 May 2022 which should have brought these proceedings to a close. A further demand for recusal, never the subject of a formal application, was again withdrawn two working days before it was due to be heard by me on 1 August 2022. The Claimant agreed to my determining the costs of that abortive hearing, only to change his position on 23 August. He then filed what was effectively his third application, and the subject of this judgment.

94. The obvious conclusion is that the Claimant's application should be dismissed on the ground of delay alone. For completeness, however, I should consider the merits. I should mention that I have no transcripts other than for the hearing of 14 July 2017, but I do not believe that I need them for present purposes.

95. The Claimant's recusal application is based on decisions I am said to have made in my judicial capacity. Self-evidently, it is not open to a party to litigation to require that a judge recuse themselves simply because that party disagrees with the judge's decisions. The Claimant must demonstrate that the decisions I have made are so perverse or unfair as to lead the fair-minded and informed observer to conclude that there was a possibility of bias.

96. It says a great deal about the Claimant's case in that respect that he relies, in respect of the hearings of June and July 2017, upon arguments that were dismissed by Williams J in December 2019 as hopeless. No fair-minded and informed observer would conclude that I might have been biased because I deducted from the Claimant's bill sums that he had actually conceded, or because I did not make decisions which I was not asked to make, or because I encouraged the parties to enter into a binding settlement from which the Claimant subsequently attempted unsuccessfully to escape.

97. As for the proceedings after July 2017, the stated grounds for recusal I have summarised above as grounds i to xviii can be divided into five overlapping categories: complaints that are illogical even on their own terms; complaints about purported decisions I was not called upon to make; complaints based on hopeless legal argument; complaints based on inaccurate factual assertions; and complaints about decisions I did make, but which were (whether right or wrong) wholly unremarkable.

98. As to ground i, I am at a loss to understand how encouraging parties to litigation to reach a negotiated settlement could be cited as an indication of bias on the part of the judge. There is an obvious and inherent contradiction in the suggestion that my encouraging the Claimant to reach his own negotiated settlement was intended to put him in a more disadvantageous position than he would have been in if he had been subjected to my supposedly biased decisions.

99. Grounds ii to iv, which appear to refer to the assessment of the Defendant's appeal bill on 19 May 2022, allege bias on the grounds of decisions that I was not required to make. There can be no reasonable basis for the Defendant's assertion that the only plausible explanation for my not addressing a proportionality argument "is that he either knows the Respondent or is influenced by third parties", when the hearing never reached the point at which the proportionality argument would have been addressed.

100. Ground v alleges bias on the basis that I did not require the Defendant to produce a bundle for the detailed assessment of his bill. As I explained at the time, the Defendant was under no obligation to produce a bundle. Detailed assessment proceedings between parties are governed by CPR 47 and the accompanying Practice Direction, which require only that a Receiving Party file papers in support of the bill. There is no requirement for the filing or service of bundles.

101. I cannot see how ground vi could raise any question of bias. It is for the Claimant to make his points when he wishes to make them, not for me to remind him.

102. As for ground vii, (a) Williams J has already found that there was no merit on the Defendant's attempts to challenge the decisions I made as to the costs of assessment in 2017; (b) even if it would have been appropriate to penalise the Defendant for the late filing of a costs schedule for a summary assessment by Williams J that never took place, I was not called upon to do so.

103. Ground viii appears to be a complaint that I allowed Mr Orphanou to offer an explanation for his failure to attend the hearing of 6 December 2021 before rejecting it and awarding the costs of that hearing to the Claimant. That is scarcely an indication of bias. This can be considered together with the hopelessly vague allegation (ground ix) of "helping" Mr Orphanou. It is true that some of Mr Orphanou's advocacy, for reasons discussed below, is open to criticism but he has a right to be heard, whether the Claimant likes it or not.

104. I am afraid that I have not been able to make any sense of ground x. It is said that until prompted I overlooked an alleged discrepancy between £21,000 allegedly claimed by the Defendant in relation to the cash account exercise and £1,200 certified "for the same item". It is not said exactly where these figures appear or when this is said to happened. I have no recollection of this event, and I cannot correlate what is said with the records in my possession. The figure of £1,200 may be a reference to the costs reserved from 14 July 2017, which were awarded to the Defendant and for assessment purposes conceded as claimed at £1,245. The figure of £21,000 is said to constitute "approximately 50% of the Respondent's bill", which must mean the appeal bill, but I was not called upon to make any findings on the figures in that bill, it does not appear to contain a figure of £21,000 and it does not extend to the cash account exercise. As far as I can tell, what the Claimant says cannot be right. What I can say is that the complaint seems to be that the Claimant had to draw my attention to a point that I had not myself picked up. That is not a ground for suspecting bias. If judges were omnipotent we would not need advocates.

105. Ground xi is, I believe, a product of the Claimant's imagination. Mr Bentley suggested on 19 May 2022 that it was open to me to make a direction that part of the funds held by Lester Aldridge on behalf of the SRA could be retained pending the outcome of the Claimant's claim for contractual interest against the Defendant, which was to be heard in Bromley County Court. My conclusion was that I had no jurisdiction to make such an order. I do not believe that the potential merits of such an order were discussed, or that I expressed any view on it.

106. There can be no substance in Ground xii. When a hearing is over, and the court has made an order, that order is sealed. It is not incumbent upon the court to delay the

process in case one of the parties wants to reopen the issues that have already been decided or agreed.

107. With regard to ground xiii the Senior Costs Judge has already explained to the Appellant that it was for me, and not any other judge, to deal with his application of 24 June 2022. The Claimant had stated in writing that he was content for that application to be dealt with without a hearing, and he accepted that it would be put to me. It does not lie with him now to complain that someone else should have heard the application and that there should have been a hearing.

108. Ground xiv is based upon the proposition that it was not appropriate for me, in appending my reasons to my order of 27 June 2022, to comment upon the merits of the Claimant's appeal from the agreed outcome of the assessment on 19 May. As a matter of law, that is plainly wrong. It is part of the day to day work of a Costs Judge to refer to the merits of a proposed appeal against the judge's own decisions, in particular when refusing permission, in which case the judge is required to give reasons. Those reasons will be reviewed by the appeal court, which will be perfectly capable of deciding whether to agree or not. This will not, as the Claimant maintains, prejudice the appeal.

109. Similarly, when considering any application for a stay pending appeal it is entirely appropriate for the court to address the merits of the proposed appeal. As Potter LJ put it in Leicester Circuits Ltd v Coates Brothers PLC [2002] EWCA Civ 474 (at paragraph 13): "The normal rule is for no stay, but where the justice of that approach is in doubt, the answer may well depend on the perceived strength of the appeal." It is, with due respect, nonsense to say that a judge considering an application for stay pending appeal is not allowed to consider the merits of the appeal or to express any conclusions in that respect.

110. Ground xv is based upon the proposition that I showed bias in allowing the Claimant's set-aside application to be listed on a date when the Claimant had said he was available. It seems to me that the that the fair-minded and informed observer would take note of the Claimant's practice of offering dates of availability and then changing them as soon as a hearing was listed; would query why the Claimant would say on 28 June 2022 that he was available for a hearing from I August except for 18 and 19 August and, within a week, complain that a listing before 8 August would interfere with important personal commitments of which he would surely have been aware on 28 June; and would notice that when invited to identify more clearly his commitments with a view to relisting, he did not.

111. Ground xvi appears to be based upon the fact that I had first understood the Defendant to agree to my vacating the hearing of 1 August without an order for costs, whereas in fact the Defendant's solicitors quickly made it clear that they wished to claim costs attendant on the abortive hearing. They were perfectly entitled to do that, and the suggestion that "I changed my position" is a patent distortion of the facts.

112. I have left grounds xvii and xviii to the end, because at least they refer to the merits of decisions I actually made. The suggestion, nonetheless, that the decisions raise the possibility of bias is plainly wrong.

113. The certificate of a solicitor on a bill of costs creates a presumption that the indemnity principle has not been breached. That presumption is rebuttable, but there must be a real reason to go behind the solicitor's certificate; otherwise, the certificate is meaningless.

114. On many occasions a paying party, at a detailed assessment hearing, has complained of the fact that a detailed bill of costs has come out at a larger figure than a more broad-brush schedule previously produced, whether for the purposes of negotiation or for a proposed summary assessment, by the receiving party, and my answer is always the same.

115. A schedule of costs in form N260 carries a certificate to the effect that what is claimed is no more than the receiving party has to pay. It does not carry a certificate to the effect that it is the maximum that the receiving party has a right to claim. Discrepancies between costs schedules and detailed bills are undesirable but commonplace, and the correct course is usually (in my view) to consider whether the detailed bill, on its own merits, stands up to scrutiny or not. A relatively minor discrepancy between a detailed bill and a costs schedule, as in this case, gives no real ground for challenging a solicitor's certificate. That has consistently been my approach, and I believe the approach of other Costs Judges: it cannot give rise to any reasonable suspicion of bias.

116. Similarly, the Claimant misrepresents both the status of a written retainer for costs purposes, and the issues I determined on 19 May 2022. Absent some very specific arrangement such as a conditional fee agreement or another contractual arrangement that must comply with statutory requirements (and there was no suggestion of that) it is not necessary, for the purposes of recovering costs, for a retainer to be in writing at all. If no written retainer exists, and there has been no specific agreement between solicitor and client as to the hourly rates to be charged, then the solicitor will be entitled to charge reasonable hourly rates and the client will be entitled to recover them.

117. Mr Bentley, rightly, made it clear that it was not the Defendant's case that the retainer arrangements between the Defendant and his solicitors were in any way untoward and he accepted that the hourly rates claimed by the Defendant were reasonable. There was no ground, as the Claimant seems to think, for the Defendant's bill of costs to being struck out entirely, and no suggestion from Mr Bentley that it should be. He simply suggested that there was sufficient reason for me to require the Defendant to produce its retainer for inspection, and I concluded that there was not. Such decisions are made by costs Judges on a day-to-day basis. They can if appropriate be challenged on appeal, but they can offer no proper basis for allegations of bias. I would add that the Costs Officer, on undertaking the provisional assessment of the appeal bill, had already certified that she had seen the retainer and found no breach of the indemnity principle.

118. In summary, applying the principles outlined by Chadwick LJ in *Triodos Bank NV v Dobbs* it is my duty to take these proceedings to their final conclusion, despite the Claimant's litany of complaints, threats and accusations. There is no proper ground for recusing myself, and I decline to do so.

## The Application for Stay

119. Leaving aside the fact that the Claimant's complaints of bias have no foundation, the obvious and in itself fatal obstacle to Claimant's application for a stay pending an investigation by the MoJ into the conduct of these proceedings since 2017 is that the MoJ is not responsible for judicial decisions and has no jurisdiction to undertake any investigation into them. Complaints about the behaviour of a judge can be made to the Judicial Conduct Investigations Office ("JCIO"), but the JCIO cannot accept complaints about a judge's decision or the way a judge has managed a case. The only way to challenge such decisions is by appeal.

120. It is a cause for concern that the Claimant seems consistently to disregard all of the reasoning and the conclusions reached by Williams J in December 2019 on refusing permission to appeal from the decisions made by me in June and July 2017.

121. On the hearing of the recusal application, the Claimant explained to me that it was informed to a substantial extent by his belief that the outcome of the June and July 2017 assessment proceedings was wrong, and had cost him a great deal of money. In the course of preparing this judgment I have received further emails from the Claimant, characteristically not marked as copied to his opponent in accordance with CPR 39.8, requiring that in this judgment I revisit my decision on the costs of the 2017 assessment and even (yet again) points conceded by him at the time.

122. In short, the Claimant seems to harbour the belief that by raising allegations of bias and demanding an investigation by the MoJ into judicial decisions, he can somehow reverse the outcome of the entire six-year assessment process; escape binding agreements entered into by him; reverse concessions made by him; and revive a hopeless appeal for which permission was refused four years ago. He cannot do any of those things. The notion that he can is pure fantasy.

123. As there is no ground for staying these proceedings pending an investigation that the MoJ cannot and will not undertake into complaints that have no substance, the application for a stay pending such an investigation is refused.

## The Merits of the Recusal and Stay Applications

124. At the hearing on 20 October, Mr Orphanou complained that the Claimant's conduct in these proceedings was vexatious, and asked that I make a civil restraint order. I told him that I did not think that I had jurisdiction to make any such order, but that I would look into it.

125. When I did so, I found that I had been quite wrong in believing that I did not have jurisdiction to make any such order. I do have some limited jurisdiction.

126. CPR 23.12 provides that if the court dismisses an application and it considers that application to be totally without merit, the court's order must record that fact, and the court must at the same time consider whether it is appropriate to make a civil restraint order. Practice Direction 3C provides that a limited civil restraint order (the effect of which would be to prevent the Claimant from making any further applications in these proceedings without the permission of a named judge) may be made by a judge of any court where a party has made two or more applications which are totally without merit.

127. I have no doubt that both of the Claimant's applications for recusal and for a stay are totally without merit, and that I have a duty to certify that fact in my order dismissing the applications. The former is based upon a litany of imaginary wrongs, and the latter upon an investigation procedure that does not exist.

128. It is also fair to say that the Claimant's conduct in these proceedings is frequently and regularly vexatious. I have already referred to his utter disregard for the findings of Williams J: even as recently as January 2022 he was proposing that Mr Avetoom and Mr Orphanou be called to give evidence on the negotiations of 2017, the outcome of which he still does not accept, notwithstanding Williams J's unequivocal finding that it is binding upon him. There are other aspects of the Claimant's conduct which give cause for concern.

129. I have yet to deal with the parties' submissions on the costs attendant on the Claimant's withdrawal of the stay and recusal applications to be heard on 1 August 2022, his acceptance of the directions aimed at disposing of the remaining costs issues and his abrupt reversal of his position on 23 August. I must not anticipate the outcome of those submissions, but it is evident that his conduct made another hearing necessary and engendered significant delay.

130. The Claimant's gross discourtesy to both his opponent's representatives and the court on 22 and 23 August 2022 speaks for itself.

131. The Claimant has persistently, over a period of years, refused to comply with CPR 39.8. Reviewing the correspondence in the course of preparing this judgment, I attempted a count of the number of emails sent to the Claimant reminding him that he must comply with that rule, but stopped when I got to fifteen. He continues to ignore it. He complains of an alleged unilateral communication between the court and his opponent, but repeatedly attempts such communications himself. As for listing hearings, his constant changes of position as to his availability and his attempts to dictate hearing dates have wasted both the court's time and that of his opponent.

132. The Claimant's treatment of the Defendant's representatives can go beyond discourtesy and descends into abuse. An email, for example, saying "It would appear that I would need to translate the replies in M.Offeneau's native language for him to understand" is inexcusable.

133. Of yet more concern is the Claimant's practice of constantly accusing his opponents of fraud and misconduct. I do not overlook the fact that, as I have mentioned, he has at least once been on the receiving end of such accusations himself, to my mind unfairly. My concern however is the Claimant's apparent willingness to make persistent and repeated allegations of dishonesty against his opponents on flimsy grounds or none at all. At the hearing on 20 October he assured me that as a solicitor and an officer of the court he would never make allegations of serious misconduct without adequate grounds, but plainly he does.

134. The Claimant has, by way of one example, accused the Defendant's solicitors of inventing non-existent conferences with counsel with regard to the hearing listed for 1 August 2022, although he could not possibly know that and it is entirely logical that they would have had some consultation with Mr Orphanou prior to a hearing which was vacated on a day's notice. The allegation that the £6,400 difference between the

schedule of costs produced for summary assessment by Williams J and the detailed bill produced for assessment is fraudulent is another example. There is simply no reason to draw that conclusion.

135. I am well aware that there are grounds for criticising the presentation of the Defendant's case by Mr Orphanou, whose submissions can from time to time be muddled, argumentative and factually inaccurate. I have had some fairly sharp exchanges with him as a result, in particular on the occasion when he himself levelled allegations of dishonesty against the Claimant which I did not believe to be justified.

136. If however there is any proper basis for alleging any serious misconduct on Mr Orphanou's part or that of his instructing solicitors in these proceedings, the Claimant has not established it, and it is telling that the Claimant raises such accusations after the event without having put them to the test in the hearings of June and July 2017 or 19 May 2022.

137. I do not, nonetheless, think it appropriate for me to make a limited civil restraint order against the Claimant, at least at this time. That is first because I am not sure that it would be entirely fair to the Claimant when the two applications upon which the order would be based have been made at the same time, and second because the proceedings before me are almost over. All that remains to be determined is the award and (if awarded) the assessment of the costs of the abortive hearing of 1 August 2022 and of these latest applications.

138. As discussed with the parties on the hearing of the Claimant's application, this judgment will be accompanied by an order giving directions for the determination of those issues in writing. I cannot see that a adding a limited civil restraint order would achieve anything other than embarrassing and humiliating the Claimant, and I decline to make such an order.