



Neutral Citation Number: [2025] EWHC 1605 (KB)

Case No: KA-2023-000225

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/06/2025

Before:

THE HONOURABLE MR JUSTICE SWEETING
sitting with Costs Judge Simon Brown as an assessor

Between:

Stephen TURNER

Appellant

- and -

COUPLAND Cavendish Limited

Respondent

Priya Gopal (instructed by **JG Solicitors Limited**) for the **Appellant**
Erica Bedford (instructed by **Kain Knight (North and Midlands)**) for the **Respondent**

Hearing dates: 23 October 2024

Approved Judgment

This judgment was handed down remotely at 10.00am on 26th June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE SWEETING

Mr Justice Sweeting:

Introduction

1. This is an appeal brought by Mr Stephen Turner (“the Appellant”) against two orders of Costs Judge Rowley (“the Costs Judge”), the first dated 31 October 2023 and the second dated 15 November 2023. Permission to appeal was granted by Sir Stephen Stewart on 15 March 2024, but was limited to two specific grounds; the Costs Judge's refusal to order Coupland Cavendish Limited (“the Respondent”) to provide replies to Part 18 requests and the Costs Judge's refusal to order the Respondent to provide information relating to a Gibraltar-based company. Permission to appeal on other grounds was refused.

Assessment

2. The appeal arises from detailed assessment proceedings conducted in the Senior Courts Costs Office under section 70 of the Solicitors Act 1974 and CPR 67. These proceedings were initiated by the Appellant, the former client of the Respondent, a firm of solicitors, following the delivery of a statutory bill by the Respondent on 11 March 2022 in respect of legal work undertaken on his behalf. The bill covered charges for base costs and a success fee, limited to a total sum inclusive of VAT.
3. The abbreviation 'SOCA' stands for 'solicitor own client costs assessment'. A SOCA is initiated by an application to the Court. The primary focus of a SOCA is the assessment of the solicitor's bill of costs, which includes their professional fees ('profit costs') and disbursements. The assessment process involves the Court scrutinising the bill to determine whether the costs were reasonably incurred and are reasonable in amount. This may involve considering factors such as the complexity of the work, the time spent, and the rates charged.
4. The powers of the Costs Judge in a SOCA extend to case management decisions, such as ordering the provision of further information or clarification. However, the jurisdiction of the costs judge is primarily focused on the assessment of the bill and associated cash account.
5. The Civil Procedure Rules (CPR) Part 46 and Part 67 govern the procedure for solicitor and client costs assessments. CPR 67.3 mandates the use of a Part 8 claim form to initiate a SOCA in the High Court. There is then generally a directions hearing when issues, including whether there should be an assessment under section 70, are decided and directions given.
6. The outcome of a SOCA is a certification by the Costs Officer of the amount due to or from the solicitor in respect of the assessed bill and the costs of the assessment itself. This certified amount forms the basis for any final order for payment between the parties. The process is designed to provide a mechanism for clients to challenge the fees charged by their solicitors and ensure that those fees are reasonable.
7. As part of the certification of what is due the Costs Officer, is also required to consider the solicitor's cash account.

The Cash Account

8. The cash account constitutes a comprehensive record of all monetary transactions conducted by a solicitor on behalf of a client during the course of a retainer. Its fundamental purpose is to provide the client with a transparent overview of how their funds have been managed and to ascertain any outstanding balance upon the termination of the professional relationship.
9. The obligation for solicitors to maintain such an account derives from statute. Section 32(1)(b) of the Solicitors Act 1974 (“the 1974 Act”) mandates the Council of the Law Society (now the Solicitors Regulation Authority or SRA) to establish rules governing the keeping of accounts that detail money received, held, or paid by legal professionals for their clients. These rules are further elaborated on in the SRA Accounts Rules and the SRA Financial Services (Conduct of Business) Rules.
10. Typically, a cash account will present a summary of funds received by the solicitor for the client’s benefit and payments made out of those funds on the client’s behalf. It does not include payments made in satisfaction of the solicitor’s own bill for fees and disbursements. In essence, it aims to be a complete financial history of the solicitor’s handling of client money throughout the duration of their instruction.
11. It is important to distinguish between a cash account and a solicitor’s bill of costs. The latter details the solicitor’s professional charges and disbursements, whereas the former records the broader financial transactions involving the client’s money. Notwithstanding this distinction, the cash account has to be considered when the Court comes to certify the final balance between the solicitor and the client.
12. A client has the right to dispute the accuracy of a cash account. The Court must certify the account. It is for the solicitor to satisfy the Court of the accuracy of the cash account. There is no burden of proof, as such, on the client. Disputes can arise from concerns about the omission of receipts, discrepancies in recorded payments, or, as in the present matter, allegations of undisclosed commissions or other financial benefits that ought, arguably, to have been shown in the cash account and credited to the client.
13. In proceedings under section 70 of the 1974 Act and CPR 67 for the assessment of a solicitor’s bill, the determination of the “result” of the cash account is a mandatory step before the assessment can be finalised and a conclusive order made as to the sums due between the parties.

The Underlying Litigation

14. The legal services rendered by the Respondent, and consequently the subject of the bill and the assessment, related to a personal injury claim in which the Respondent acted as the Appellant’s solicitor. From the “Schedule of Work Done” prepared for the assessment the claim appears to have involved the standard elements typical in such litigation, including obtaining a General Practitioner report and an orthopaedic medical report. The claim progressed through the initial stages, and at some point, exited the online portal designed for lower-value personal injury claims concluding in a settlement and the recovery of compensation for the Appellant. From the funds received a net payment of £750 was made to a Gibraltar-based company, a transaction which gives rise to a discrete ground of this appeal but may have a wider significance.

15. The central issues before me, are whether the Costs Judge erred in refusing to order the Respondent to provide replies to specific Part 18 requests concerning the cash account and whether the Costs Judge was wrong to refuse to order the provision of the identifying company number for the Gibraltar-based entity to which the payment was made from the Appellant's compensation.

The Points of Dispute

16. The relevant part of the Points of Dispute served by the Appellant read as follows:

“The Claimant disputes the cash account because he is not satisfied that there has been full and accurate disclosure of the position in relation to (a) undisclosed commissions and / or other secret profits and (b) disbursement of legal fees. It will be noted in relation to (b) that the Claimant entered into a separate express Damages Based Agreement with AJG Limited which provided for the “25% success fee” to be taken by AJG Limited rather than the Defendant. If the Defendant has passed those funds belonging to the Claimant to AJG Limited, as it said it would, the payment should be recorded in the cash account. The fact that it is not is a concern.

[...]

The Claimant invites the Defendant to respond to the Part 18 Request that has already been raised (on 18th July 2022), and to adjust the cash account to reflect any receipts or payments that may have been omitted. Once the Defendant has responded the Claimant will be in a position to take stock and, if the cash account remains in dispute, to propose suitable directions to resolve the point.”

17. The Respondent characterised the Part 18 request as “a fishing expedition” to which no response was required although it identified the payment to AJG as having been made on the 27th of October 2020. The Appellant's concern regarding this payment stemmed from the fact that AJG Limited was a Gibraltar-based company, potentially owned by the Respondent or connected with it, which had undertaken no work for the client. The Appellant wished to investigate AJG Limited and required the company number for such investigations. The Respondent's resistance to providing this information was viewed by the Appellant as “troubling”, reinforcing his concerns over the cash account.
18. The Appellant's “dispute” concerning the After the Event (ATE) premium did not directly challenge the reasonableness or quantum of the £245 premium itself within the Solicitors Act assessment proceedings, consistent with the judgment in *Herbert v HH Law Ltd.* [2019] 1 WLR 4253 (see further below). Instead, it focused on the possibility of undisclosed commissions or other financial benefits received by the Defendant (or an associate) as a result of arranging the ATE insurance.
19. ATE insurance is bought to protect against legal costs if a claim fails. While typically inexpensive for personal injury claims, the issue raised in the Points of Dispute was

whether there was an inflated premium and/or additional payment returned to the solicitor as a "secret commission" either directly or via a third party.

20. The Appellant had served Part 18 requests seeking comprehensive information regarding the ATE insurance arrangements, including details of all intermediaries involved, confirmation of the premium amount paid to the insurer, and specific details of any direct or indirect payments (commissions, discounts, etc.) received by the Defendant or any associate from the insurer or intermediaries. The underlying argument was that any such undisclosed financial benefits would constitute client money and should be credited to the cash account.

ATE Premiums and Disclosure

21. In *Herbert v HH Law Ltd.* [2019] 1 WLR 4253. the Claimant sought an assessment under section 70 of the 1974 Act of her former solicitors' bill. Two principal issues arose before the Court of Appeal: the proper approach to a success fee under a Conditional Fee Agreement and whether the premium for an ATE insurance policy was to be treated as a solicitor's disbursement or merely an entry in the client cash account.
22. On the second of these issues, the Master of the Rolls, Sir Terence Etherton, giving the lead judgment, undertook a detailed analysis of what constitutes a solicitor's disbursement. He referred to established case law, which distinguished between professional disbursements in a bill of costs and cash payments made by a solicitor as agent for the client and held that an ATE insurance premium did not fall within the definition of a solicitor's disbursement. He reasoned that the premium was paid pursuant to a contract of insurance between the insurer and the client, with the solicitor acting as the client's agent. The client's liability to pay the premium arose from the insurance contract, not the retainer with the legal representative. Furthermore, unlike court fees or counsel's fees, a solicitor is not obliged to pay an ATE premium irrespective of being put in funds by the client. The Court also found no established custom within the solicitors' profession of treating ATE premiums as solicitor's disbursements in solicitor and client assessments.
23. The practical consequence of the decision in *Herbert* is that the ATE insurance premium is deemed to be an item in the cash account, reflecting a payment made on behalf of the client, rather than a component of the solicitors' bill subject to assessment under section 70 of the 1974 Act. The Court of Appeal explicitly recognised that this would prevent a client from challenging the amount of the ATE premium through the "convenient mechanism" of a Solicitors Act assessment and noted that if this outcome was considered unsatisfactory, the Solicitors Regulation Authority and the Law Society could consider ways to bring ATE premiums within the definition of a solicitor's disbursement.
24. The decision in *Herbert* has a direct bearing on the Appellant's Part 18 requests concerning the disputed cash account in the present case. Since the ATE premium relating to the underlying personal injury claim is to be placed within the cash account, as *Herbert* dictates, then the scope for challenging the amount of that premium within the section 70 assessment proceedings is significantly curtailed. The focus of a section 70 assessment is on the reasonableness of the solicitor's bill of costs, which, following *Herbert*, does not include the ATE premium.

25. However, since the determination of the "result of the cash account" is a step required of the Costs Judge following the detailed assessment of the solicitor's bill, as referred to at paragraph 6.19 of the Practice Direction to Part 46, this raises the question of the extent to which disputed items within the cash account, such as the ATE premium, can be scrutinised. Whilst *Herbert* prevents a direct challenge to the quantum of the premium within the section 70 assessment, a dispute may arise concerning the accuracy of the cash account itself, for example, if there is a contention that the amount recorded as paid is incorrect or if there are undisclosed payments or commissions related to the ATE policy.
26. Subsequent cases such as *Edwards v Slater and Gordon UK Ltd.* [2022] EWHC 1091 (QB) and *Brown v JMW Solicitors LLP* [2022] EWHC 2848 (SCCO) have grappled with the issue of whether a Costs Judge can still investigate matters related to the ATE premium through the cash account, particularly in cases of alleged secret commissions. It was suggested in argument that there is some tension between the Costs Judge's decision in *Brown*, which, it was said, favoured a restrictive approach, in contrast to the decision in *Edwards*, which endorsed a broader scope of inquiry into the cash account to ensure accuracy and fairness.
27. *Edwards & Ors v Slater and Gordon UK Ltd.* [2022] EWHC 1091 (QB), was a conjoined appeal heard by Ritchie J concerning several solicitor own client costs assessments. These claims challenged deductions made by the Defendant from the Claimants' damages. The appeals arose from case management decisions made by the Costs Judge. In the *Edwards* claims, the Costs Judge ordered standard disclosure relating to the pleaded issues, rejected the Defendant's applications for a stay of the proceedings and for security for costs, and ordered the Defendant to pay the costs of those applications. In the related case of *Raubenheimer v Slater and Gordon UK Ltd.* [2022] EWHC 1091, the Costs Judge had refused the Claimant's application for an order for replies to Part 18 requests. The Defendant appealed the orders made in *Edwards*, and the Claimant appealed the refusal of the Part 18 application in *Raubenheimer*.
28. A central issue in the appeals was the power of a Costs Judge to order disclosure in Part 8 SOCA proceedings. The Defendant argued that CPR Part 31, concerning disclosure, did not apply to Part 8 claims. Ritchie J rejected this contention, noting that there was no express rule in Part 8 dispensing with Part 31. He concluded that the CPR generally, and the Solicitors Act 1974 at section 68(2)(c), supported the power of the Costs Judge to order a solicitor to deliver documents relevant to the assessment. He found the Costs Judge was correct to conclude that Part 31 applied to the Part 8 claims.
29. Ritchie J allowed the appeal in *Raubenheimer*, finding that the Costs Judge had fallen into error in refusing to order replies to the Part 18 requests concerning the cash account and potential undisclosed commissions. He concluded that the cash account could not be signed off in a SOCA if disputed, and such disputes needed resolution before the final SOCA order could be made. He considered that the Part 18 requests should be answered to properly facilitate the efficient handling of the next case management hearing, allowing the Costs Judge to gain a proper understanding of the issues and the parties to consider their positions. Ritchie J noted that the information sought could help the Claimants to determine the extent of any potential issue and the Defendant to consider settling the claims.

30. It was a feature of the case that Elite Insurance, the ATE insurer, had entered administration so that the routine handling of queries and information requests was no longer conducted by the insurer itself. The communications obtained by the Claimants' legal representatives from the administrators of Elite Insurance provided evidence that supported their suspicions of "secret commissions". These communications revealed details of a "claims handling commission of GBP 30.00" and a "claims fund contribution of GBP 176.13" that would fall due in relation to one of the claims. This information suggested financial benefits accruing as a result of the ATE policy, which were not apparent on the face of the Defendant's cash account. Warby LJ, when refusing permission to appeal the order made by Ritchie J in *Edwards*, noted that the Claimant suspected secret commissions and "that there was evidence to support such suspicions".
31. As Costs Judge Rowley (the same costs judge as in the present case) observed in *Brown* when distinguishing the *Edwards* case:

"The fact that the insurer had gone into administration meant that a third party was answering the Claimant's lawyer's questions rather than the insurer itself. The commercial arrangements between an ATE insurer and other parties would be confidential where the insurer was a going concern and, as such, less likely to be discussed with external law firms".

He added:

"The evidence obtained by the Claimant's lawyers must, it seems to me, be unlikely to be obtained in most cases."

32. It was argued in *Brown*, that a claimant's entitlement to Part 18 requests should not depend on the "fortunate" circumstance of an insurer's insolvency for information about potential commissions be obtained. However, Costs Judge Rowley's reasoning in *Brown*, where he refused to order Part 18 replies relied heavily on the absence of any concrete evidence of payments in that particular case, contrasting it with the evidence that had come to light in *Edwards* due to the administration. His reasoning was, as he put it, that "he who asserts must prove" so that the client had to have evidence that an undisclosed commission had been received for such an order to be made.

The Judgment of the Costs Judge

Reasons for Refusing Part 18 Replies

33. In the present case the Costs Judge also relied on his earlier Judgment in *Brown*. The principle that can be distilled from the Judgment is that Part 18 requests concerning alleged undisclosed commissions relating to ATE insurance were not justified in the absence of any evidence from the Claimant to suggest that such commissions had indeed been paid. The Costs Judge considered that without a "positive case" or any supporting evidence from the Claimant, such requests amounted to a fishing expedition as the Respondent also argued in the appeal before me. He considered that it was insufficient to assert that there was a dispute without identifying any facts which gave rise to it. The Costs Judge quoted [40] from his decision in *Brown* including paragraph 31:

“31. But, in my judgment, there must be many situations where a party considers that an opponent has possibly caused him some loss but has no evidence as such. In the absence of any proof to support that suspicion, then proceedings cannot get off the ground. As indicated above, a pre-action disclosure application would need to have evidence of an arguable case and that must be the sort of threshold to apply in respect of Part 18 requests.”

34. It seems to me to be highly doubtful whether Part 18 requests can be regarded as analogous with pre-action disclosure in this context or require anything approaching an arguable case to be made out. What is required in the context of Part 18 requests is the identification of a dispute. Since there is a requirement to certify and an obligation on the solicitor to provide an accurate account, where queries are raised by the Court or the client there is a dispute until such time as they are answered to the satisfaction of the Court. I should add that although the part 18 request was not initially in the appeal bundle it was ultimately provided for the appeal hearing.
35. The Costs Judge was also mindful of the implications of the Court of Appeal's decision in *Herbert*. He was plainly concerned [38] in a general sense that Claimants were attempting to use challenges to items in the cash account (such as the ATE premium) as a gateway to “interrogate” ATE policies otherwise beyond the scope of a s.70 assessment and in a way that might circumvent the principles established in *Herbert*. However, the material requests in this case appear to me to have been directed towards whether a commission had been paid.
36. The Costs Judge also considered submissions based upon the decision in *Yasuda Fire and Marine Insurance Co of Europe Ltd. v Orion Marine Insurance Underwriting Agency Ltd.* [1995] QB 174 which concerns the entitlement of a principal to information from their agent. However, he rejected the submission that *Yasuda* provided a right to access to the Defendant's records or to a response to requests for information on the basis, again, that it was necessary to put forward a positive case to support the Part 18 requests. He therefore determined this argument on the same overall approach to Part 18.
37. He noted that there was no specific Part 18 request before him so as to enable him to consider the substance of the questions being asked. The Appellant had, it appears, made the application without placing a formal Part 18 request before the Costs Judge even though such a request had in fact been served on the Respondent nine months before the hearing and was referred to in the Points of Dispute. The requests were similar to or indeed identical to those made in *Edwards* and other cases. The Appellant's skeleton argument before the Costs Judge included the following:
- “The Part 18 questions relate to any commissions, financial or other benefits that may have been received by the defendant or an associate but for which the Defendant has not accounted to the client (broadly “undisclosed commissions”). They are all but identical to the questions ordered to be answered in *Edwards*...”
38. This may account for the observations made at paragraph 37 of the judgment:

“It seemed odd to me, but seemingly not to the parties, that I was asked to make orders requiring the defendants to respond to Part 18 requests without any of those requests being before the Court. That position was exacerbated by Mr Brighton’s submission that in fact some of the Part 18 requests did not go to the ATE insurance and any undisclosed commissions but concerned other matters. Mr Brighton’s submission was only made after Mr Carlisle had finished on this subject and during which he had made no mention of any Part 18 requests that did not relate to the taking out of ATE policies.”

39. It was pointed out to me in argument that in the lead-up to the hearing, there had been correspondence with the Costs Judge concerning the procedural requirements for the applications the Appellant wished to make. The central question was whether formal applications, with accompanying notices, and potentially witness evidence, were mandatory, or if these issues could be dealt with under the Court's general case management powers under CPR 3.1. The Court had previously indicated that it would do so without the necessity of formal application notices, provided certain provisos were met. The relative informality of the proceedings may account for the approach taken but in any event at the hearing both parties appear to have proceeded on the basis that the Costs Judge knew what information was requested. There is no indication that he asked for a copy of the request during the hearing.
40. The Costs Judge also referred to the decision of the Court of Appeal in *Tankard v John Fredericks Plastics* [2008] EWCA Civ 1375 which established a test, based on the perception of a reasonable person with knowledge of the relevant facts, to determine whether a solicitor has an 'interest' in recommending an ATE insurance policy that must be disclosed to the client under regulation 4(2)(e)(ii) of the 2000 Regulations. He concluded that absent any positive case by the client, the solicitor has to be taken to have followed the law as set out in *Tankard* regarding any declaration of interest in recommending or arranging any particular ATE insurance.

Reasons for Refusing Disclosure of the Gibraltar Company Number

41. The Costs Judge concluded that it was not appropriate to compel the provision of the identifying company number for the Gibraltar-based company, AJG Limited, to which a payment had been made from the Claimant's recovered compensation. He relied on a “general principle” that a defendant is not normally obliged to provide information “where such information can be obtained elsewhere”, although he considered that there were cost implications because of the Defendant's non-assistance.

The Appellant’s Arguments

42. It was the Appellant's contention that the Costs Judge was bound by the decision in *Edwards* so that when there is a dispute over items in the cash account within Solicitors Act 1974 assessment proceedings, that dispute must be resolved, and Part 18 requests should be answered. The Appellant argued that a similar dispute to that in *Edwards* exists in the present case concerning the cash account.
43. Further to this, the Appellant maintained that it is settled law that a former client, as principal, is entitled to receive information from their solicitor, acting as agent. The Part

18 questions posed by the Appellant relate to potential undisclosed commissions or other financial benefits received by the Respondent or an associate but not accounted for to the Appellant. The Appellant asserted that, in accordance with the principle established in *Yasuda* the Respondent has an obligation to provide information regarding the handling of the appellant's funds.

44. The Appellant submitted that the questions in the Part 18 request were related to receipts by his solicitors of sums which, if undisclosed, may be repayable to him for breaching provisions of the Financial Services and Markets Act 2000 (FSMA 2000) and specific rules made under that statute. He argued that potentially undisclosed sums ought to appear as a credit in the cash account. The Appellant emphasised in argument that the answer to many of the questions was a binary, yes or no response under a statement of truth, which could potentially resolve his concerns.
45. It was submitted, in the Appellant's written and oral argument, that whether the Part 18 questions should be answered turns on two key tests: first, whether the cash account is a matter in dispute in the proceedings, and secondly, whether the Court has jurisdiction within these proceedings to either approve or adjust the cash account based on the Respondent's answers and the subsequent resolution of any dispute. The Appellant contended that the second test has been conclusively answered in his favour by the *Edwards* decision, which recognised the necessity of resolving cash account disputes within SOCA proceedings before a final order could be issued.
46. The Appellant argued that *Brown* was inconsistent with *Edwards* and wrongly decided or in any event could be distinguished since in *Brown* the Court declined to compel answers to Part 18 requests due to a lack of evidence of anything untoward. The Appellant argued that the mere fact that the cash account is disputed should necessitate the provision of information, whether or not the client's concerns are initially based on a belief or suspicion. He contended that the Part 18 request was not a "fishing expedition" but a legitimate request by the client to verify the accuracy of the information provided about his own financial affairs in circumstances where the client cannot be expected to know whether a commission has been received. In the context of a relationship which is fiduciary in nature with client money held on trust the Costs Judge had imposed too high a hurdle to the provision of necessary information. In support of that contention the Appellant pointed to *Lewis v Tamplin* [2018] EWHC [2018] EWHC 7777 (applying the principles set out in *Schmidt v Rosewood* [2003] EWHC 26) arguing that *Lewis* makes clear that in a claim by beneficiaries for pre-action disclosure of documents held by trustees there is no threshold test for suspicion. The question is just whether it is appropriate for the Court to interfere.
47. The Appellant argued that the Part 18 requests in this case, relating to potential undisclosed commissions, are "all but identical" to the questions ordered to be answered in *Edwards*. He contended that answering these questions, supported by a statement of truth, is not onerous and the requested information is likely to be contained within records the Respondent is required to keep.
48. In summary, the Appellant maintained that the cash account served by the solicitors is a prescribed part of the process under the Civil Procedure Rules and is explicitly disputed in the Points of Dispute. He submitted that the Costs Judge failed to give proper weight to the fact that the cash account was served as a step within the proceedings. He argued that the need to "certify what is due" under section 70(7) of the

Solicitors Act 1974 requires the Court to be satisfied that the information provided in the cash account is accurate and necessitates resolving disputes within the cash account; an approach which Ritchie J's Judgment in *Edwards* supports.

49. In relation to the request for the identifying company number for the Gibraltar-based company, to which a net payment of £750 was made by the solicitor, the Appellant argued that this information is also relevant to the scrutiny of the solicitor's bill. The Appellant contended that understanding the nature and ownership of this recipient company is necessary to assess the propriety of this payment within the detailed assessment process. The fact that there was such an unexplained payment also founded the suspicion that a commission may have been received.
50. The Appellant's primary intention in seeking the number was to undertake independent investigations into AJG Ltd.'s constitution under Gibraltar law, its structure, and its accounting for his funds. Should these investigations reveal any unlawful or improper payment, he indicated that he would invite the Court to strike this debit from the cash account.
51. Whilst it was suggested that the requested information could be obtained from Gibraltar Companies House at the Appellant's cost, he argued that the onus rests on the Respondent to make full disclosure. The Appellant suggests that the payment to AJG Ltd. appears to relate to a success fee but was made to this Gibraltar-based company, not directly to the Respondent. This further underscores the need for clarity and a proper justification for the disbursement.
52. The Appellant submitted that the Costs Judge's reliance on a "principle" regarding publicly obtainable third-party information is misplaced. The direct link between AJG Ltd. and the success fee funded by the Appellant's compensation renders information about AJG Ltd pertinent to the scrutiny of the cash account within a SOCA and brings the information request within the Court's jurisdiction in such proceedings.

The Respondent's Arguments

53. The Respondent, submitted that the appeal arises from a case management decision made by the Costs Judge and as such, proceeds by way of a review further to the test set out in CPR 52.21(3). Appeals from case management decisions are subject to a high threshold (see *Royal & Sun v T&N* [2002] EWCA Civ 1964).
54. The Respondent argued that the Costs Judge was correct to refuse the Appellant's two oral applications, albeit foreshadowed by informal correspondence and the Appellant's Skeleton argument.
55. In respect of the Part 18 request application, the Respondent contends that it failed procedurally due to the absence of a formal application notice, supported by evidence, setting out the specific requests and the reasons why answers were required. The Respondent's position now, echoing the observations of the Costs Judge, is that it was not for a court to order questions to be answered that it had not seen. Given the observations made by the Costs Judge to which I have referred earlier this does not appear to have been a point which was pressed upon him by the Respondent at the hearing itself. In oral argument the Respondent sought to rely upon the well-known principle set out in the case of *Ladd v Marshall* [1954] 1 WLR 1489 to argue that

seeking to introduce the request would offend the principles set out in that case. That does not seem to me to be an authority which is engaged in the present case. It simply does not concern the admission of fresh evidence on appeal. The Respondent had received the request in advance of the hearing and took no point about a procedural failing before the Costs Judge. Presumably the relevant document could simply have been shown to the Costs Judge at the hearing.

56. The Respondent asserted that the function of a Costs Judge in an assessment under section 70 of the 1974 Act did not extend to adjusting the cash account for alleged secret commissions in an ATE premium, relying on *Herbert*, so that the information sought via Part 18 was outside the scope of the assessment proceedings; a submission which lies uneasily with the decision of Ritchie J in *Edwards/Raubenheimer*. Further, it was argued, the matters raised in the points of dispute by the Appellant all went to the success fee rather than the ATE premium at which the Part 18 requests were directed. If there had been a secret commission there was a duty on a solicitor to say so and it was sufficient that the Reply to the Points of Dispute asserted that the cash account was complete, that is to say that there was no undisclosed commission. A blanket Part 18 request in the absence of a commission was not permissible and *Edwards* was not authority for the proposition that all Part 18 requests had to be answered as a matter of course. That, it was said, would amount to “tarring all solicitors with the same secret commission brush”.
57. The Respondent submitted that the facts of *Edwards* are distinguishable since in that case the Claimant's representatives had obtained information from the ATE insurer's administrators showing payments to an affiliate of the Defendant solicitor, providing evidence to support the Part 18 request. The Respondent suggested that there is a contrast between that situation and the circumstances of the present case, where no such evidence of any impropriety or undisclosed commissions has been presented.
58. The Respondent drew attention to the comments in *Brown*, to the effect that the circumstances in *Edwards* were sufficiently unusual to limit its application to its specific facts. In more usual circumstances, where there is no evidence before the Court that any commissions are paid by an insurer, it would be inappropriate to require a solicitor to answer generic Part 18 questions, as this would plainly constitute a “fishing expedition”.
59. In relation to the application for information on the Gibraltar company, the Respondent submitted that it also failed procedurally due to the lack of any evidence, including documents, being put before the Costs Judge. Furthermore, the Respondent argued that the decision in *Yasuda* does not provide the Appellant with an entitlement to wide-ranging access to the Respondent's records in the absence of the Appellant putting forward a positive case in support of the application.

Discussion and Conclusions

60. The purpose of Part 18 is to clarify or provide additional information about matters in dispute “whether or not the matter is contained or referred to in a statement of case.” The threshold requirement that there should be a dispute is set out in CPR rule 18.1(1). For the purpose of Part 18, a non-admission requiring the other party to prove its case is capable of giving rise to a “dispute” (see CPR 16.5). Indeed, in some situations it may be appropriate to request information under Part 18 to ascertain whether a dispute

exists (see *Harcourt v FEF Griffin* [2007] EWHC 1500 (QB)). The existence of contentious or missing items within the cash account may constitute a matter in dispute potentially requiring clarification in a costs assessment (*Edwards*) since the Court has to be satisfied that the cash account is accurate in order to certify it. It does not seem to me to be appropriate to analyse this situation as akin to one where a party considers that “...an opponent has possibly caused him some loss” but would be unable to “get proceedings off the ground” in the “absence of any proof to support that suspicion” (see paragraph 31 in *Brown*). Nor do I think it is sufficient to assume that the cash account is accurate because the solicitor says it is, which would go well beyond the ratio in *Tankard*. Whilst I accept that it is generally unnecessary and disproportionate to ask a party with a compliant but concise Statement of Case to provide more detailed information (see *Al Saud v Gibbs* [2022] 1 WLR 3083), applying this approach in the costs arena is problematic. Points of Dispute, Replies and cash accounts are not Statements of Case. Neither are they, as a matter of practice, regarded as such. There is no compliant statement of truth so they could not be. They are often drafted by staff who are not legally qualified. Points of Dispute and Replies are not treated with the rigour applied to Statements of Case for the purposes of the CPR. The Costs Judge did not conclude otherwise. I note that in *Edwards*, Ritchie J observed:

“I did offer the Parties a way out of the secret commission issue by suggesting that a partner in the Defendant firm sign a statement of truth on the Cash Account in *Raubenheimer*, but no agreement could be reached on whether that would fully bite on the issues, so the parties did not accept that this suggestion would resolve the issues.”

61. I acknowledge that the Costs Judge, as an experienced specialist judge, was well-placed to assess the issue before him but he appears to have done so on the basis that the threshold was equivalent to establishing an arguable case of the sort that would be needed for pre-action disclosure and by reference to the observation [38]:

“a practice has grown up of stating that the cash account is in dispute as a means by which to interrogate the circumstances in which the ATE policy was taken out.”

62. While some of the requests in the Part 18 request of the 18th of July 2022 did relate to the ATE insurance policy most were aimed at direct or indirect commission or remuneration. Even if there is a practise of the sort referred to, the Costs Judge also acknowledged [57] that he was aware that relationships between solicitors and ATE insurers have resulted in some solicitors obtaining a payment for referring business to the insurer. If there was a practice of ‘interrogating’ ATE policies of which the Costs Judge was aware there was equally recognition of a practice of receiving commissions either directly or through an entity in common ownership. In *Bendriss v Nicholson Jones Sutton Solicitors Ltd* [2024] EWHC 1100 (SCCO) the nature of the arrangement appears to have emerged as a result of a Part 18 request being answered by the solicitor:

“I think it is true to say that the disclosure hare was set running by (i) the defendant agreeing to respond to a Part 18 Request regarding the ATE policy (ii) stating in the Response that an insurance intermediary (WGAL) “may well have received a

commission”, and (iii) it conspiring that there are common owners of that intermediary and the defendant firm of solicitors.”

63. The fact of a commission payment in *Raubenheimer* emerged through the diligent inquiries of the Claimant's legal representatives, prompted by a *suspicion* of undisclosed financial benefits. Although the Defendant subsequently denied that this constituted a "commission" as properly understood, characterising it instead as a "legitimate claims-handling fee for services payable to a separate group company", the very existence of the payments only came to light because a third party, rather than the insurer itself (whose commercial arrangements would typically remain confidential), was able to disclose details which had not been revealed by the solicitor.
64. The Costs Judge observed [40] that *Raubenheimer* was an unusual case because: “The evidence obtained by the Claimant's lawyers must, it seems to me, be unlikely to be obtained in most cases”. However, that comment serves to make the point that where there may have been a “secret” commission the client will most likely be unaware of whether or not any sum has been paid. There was no suggestion that the arrangement which surfaced in that case was in itself such an unusual one that ordering further information to be provided was unnecessary or disproportionate in other cases; what was unusual was that the client received information, which would otherwise probably not have been disclosed, from an unusual source.
65. In relation to the Appellant’s argument by reference to agency principles, the Costs Judge considered the *Yasuda* decision and thought there might be a distinction to be drawn with the situation before him. In *Yasuda*, the High Court found that a principal is entitled to sight of the agent’s records relating to the transactions entered into on the principal's behalf, even after the agency relationship ceases. The rationale was that the principal, being a participant in the transactions, is entitled to the records. The Cost Judge noted the factual context of *Yasuda*, where the Claimant was a participant in a syndicate of underwriters (the principal) and the Defendant was the managing agent responsible for entering into contracts of insurance on behalf of the syndicate. He concluded that the relationship between a solicitor and client in the context of arranging ATE insurance was significantly different from the principal-agent relationship in *Yasuda* on the basis that the "vast majority" of ATE insurance is arranged by solicitors via a block policy. The Costs Judge did not determine whether in this situation the solicitor was acting as the agent of the insurer or the client and did not consider that he had “the materials” which would allow him to do so. I note that in *Herbert* the Court of Appeal observed [68] “In the present case, it was an insurance contract effected by HH as Ms Herbert’s disclosed agent, and it specified Ms Herbert as the Policyholder.” Presumably establishing the fiduciary capacity in which the solicitor was acting would, in itself, be a good reason for seeking further information through a Part 18 request. In so far as the solicitor might have been characterised as acting as the client’s agent the Costs Judge considered [55] that the scope of the agency was limited to the ATE policy; a point that was pertinent to the wider disclosure application in relation to call records, on which permission to appeal has not been granted. The overall position appears to be that the Costs Judge did not come to a firm conclusion on the agency point being advanced by the Appellant, falling back on the conclusion [57] that the application of *Brown* and *Tankard* and the absence of “any evidence whatsoever” that commissions had been paid meant that the arguments by reference to *Yasuda* could not make “any difference”.

66. For myself I am not persuaded that it can be assumed for the purpose of a Part 18 request that there was no agency or that it would not be a relevant factor in so far as it gave rise to a duty to account as agent in relation to the receipt of commission and hence a distinct basis for the provision of information as to the performance of that duty where queries were raised. As the Court of Appeal stated in *Belsner v CAM Legal Services Ltd* [2022] EWCA Civ 1387 [72]: “There is no doubt that solicitors acting for a client in relation to a RTA portal claim owe that client fiduciary duties from the moment they start to act.”
67. In relation to requests directed at commission I conclude that the only threshold condition is that the information must relate to a matter in dispute in the proceedings. There is no requirement for a witness statement or a "positive case" to be established by the party seeking information. There is no requirement on a party to "prove" something that is not within their knowledge, especially when it lies within the exclusive knowledge of the other party. Part 18 requests are precisely designed for circumstances, amongst others, where clarification is needed, and the facts are not within the knowledge of the requesting party. It is not correct to equate the threshold for ordering further information under CPR Part 18 with the more stringent requirements for specific disclosure or pre-action disclosure. It is, and always has been, incumbent upon the solicitor to satisfy the Court as to the accuracy of the cash account, not for the client to disprove it. Queries raised by the client or the Court itself place the account in dispute. Even if a threshold of "reasonable suspicion" were required, that threshold has been met in this case. The fact that undisclosed commissions are acknowledged to be a feature of some litigation arrangements which involve ATE insurance, coupled with the unusual payment arrangements for the success fee in this case, provides ample grounds for a query to be raised. "Points of Dispute," "Replies," and "Cash Accounts" are not Statements of Case within the meaning of CPR 22.1, due to the absence of a statement of truth and so cannot be regarded as an explicit statement that no commission has been received.
68. The information sought by the Claimant can be easily provided. Ordering the provision of this information would not result in disproportionate expenditure or effort. Indeed, if no commission was received, the response will be simple. If a commission was received, it ought, arguably, to have been disclosed previously. I therefore allow the appeal in relation to the provision of answers to the Part 18 requests served by the Appellant. In the event that I did so the parties agreed that I should determine the substantive application to which the appeal related in this respect. Whilst the first three requests relate to the inception of the policy and the payment of the premium they nevertheless appear to me to relate to matters in issue. Thereafter the requests are squarely directed at commissions or payments. In those circumstances the requests should be answered in their entirety.
69. As to the application for information regarding the Gibraltar-based company, AJG Ltd, to which a payment was made from the Appellant's recovered compensation, the Costs Judge considered that such information, if obtainable elsewhere, did not necessitate a response from the Respondent.
70. Since, the Respondent included a debit for client money sent to this offshore entity within its cash account the Appellant, in my view, had a legitimate interest in understanding the nature and basis of the payment. While the Appellant has since obtained the company number, the initial refusal to provide basic identifying

information was, I consider, unwarranted. Solicitors are officers of the Court and generally act as fiduciaries and agents for their clients. This relationship imposes a clear obligation to provide their principal with full information regarding their dealings as an agent. Client accounts are held on trust, further underscoring the need for transparent and complete disclosure of all financial benefits received. Case law establishes that for beneficiaries seeking documents held by trustees, no threshold of suspicion is required; the question is simply whether it is appropriate for the Court to intervene. This principle supports the need for such information where a solicitor acts as a fiduciary.

71. As the Costs Judge observed the query in relation to the Gibraltar company did not impose any onerous obligation on the Respondent, merely requiring it to provide information of a limited sort which must have been in its possession. Transferring the onus onto the client to independently obtain fundamental details regarding a payment initiated by the solicitor is, in my view, inconsistent with the solicitor's duty to explain an otherwise inexplicable transaction appearing in the cash account relating to the client's money.
72. In light of the foregoing, the Costs Judge erred in dismissing the applications for information concerning the Gibraltar company notwithstanding that he took a dim view of the Respondent's conduct which he proposed to reflect in costs. The matter was largely academic by the time it came in front of the Costs Judge, but he nevertheless determined it, as must I in the appeal. I therefore allow the appeal in respect of the Costs Judge's refusal to order the provision of information regarding the Gibraltar company.
73. I acknowledge with gratitude the substantial assistance and guidance I have received from Master Brown in this appeal. The conclusions reached are however entirely my own.

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