



Neutral Citation Number: [2025] EWHC 1681 (KB)

Case No: KA-2024-000232

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

ON APPEAL FROM THE SENIOR COURTS
COSTS OFFICE FROM THE DECISION OF
DEPUTY COSTS JUDGE FRISTON

Claim No. QB-2022-MAN-000248
SCCO REF: SC-2024-BTP000332

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/07/2025

Before :

MRS JUSTICE HILL DBE

(sitting with Cost Judge Leonard as assessor)

Between:

PAUL WARD

Appellant /
Claimant

- and -

GAGANDEEP RAI

Respondent /
Defendant

Thomas Mason (instructed by Ralli Limited) for the Appellant
Andrew Lyons (instructed by Kennedys) for the Respondent

Hearing date: 18 June 2025

Approved Judgment

This judgment was handed down remotely at 12 noon on 3rd July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill:

Introduction

1. This is an appeal against the orders of Deputy Costs Judge Friston (“the Judge”) dated 6 August 2024, made at the end of a two-day hearing for the detailed assessment of costs.
2. The Appellant had been the Claimant in personal injury proceedings and was the receiving party in the detailed assessment. The Judge ordered that (i) Point 23 of the Respondent’s Points of Dispute in relation to the Appellant’s Bill of Costs would not be struck out; and (ii) the Respondent was permitted to rely on an annotated document schedule filed and served shortly before the hearing. He adjourned the assessment to a third day.
3. The Appellant advances five grounds of appeal. The appeal proceeds with permission granted by Sir Stephen Stewart on 11 March 2025.
4. I was assisted by the written and oral submissions from both counsel, both of whom had appeared before the Judge.

The legal framework for detailed assessment proceedings

5. CPR Part 47 and PD 47 govern the procedure for the assessment of costs between parties.
6. Under CPR 47.6, detailed assessment proceedings are commenced by the receiving party serving a notice of commencement together with the accompanying documents on the paying party. Those documents include a Bill of Costs in the form specified by PD 47.
7. By CPR 47.9 the paying party is required to set out any objections to the costs claimed within 21 days in Points of Dispute. Points of Dispute are mandatory. If they are not served within the appropriate time limits, the receiving party can apply for a default costs certificate which grants an order that the costs claimed be paid in full.
8. By CPR 47.13, the receiving party has 21 days to respond to Points of Dispute if they wish. Such replies are optional.
9. Detailed assessment proceedings are unusual in that the court is not involved at the commencement stage or indeed until a request for a detailed assessment hearing is made. Accordingly, I accept Mr Mason’s submission that the intention of the streamlined procedure is to assist the parties in negotiating an agreed sum in settlement

of a claim for costs. If settlement cannot be achieved, a detailed assessment hearing will take place.

10. At such a hearing, the parties' submissions are limited to the objections set out in the Points of Dispute and any response set out in the replies. The parties are not permitted to introduce fresh points unless the court permits them to do so: CPR 47.14(6).
11. The Costs Judge may consider proportionality, because under CPR 44.3(2)(a), costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred.
12. PD 47, paragraph 13.10 addresses variations to points of dispute and other documents in the detailed assessment process, as follows:

“13.10 (1) If a party wishes to vary that party's Bill of Costs, points of dispute or a reply, an amended or supplementary document must be filed with the court and copies of it must be served on all other relevant parties.

(2) Permission is not required to vary a Bill of Costs, points of dispute or a reply but the court may disallow the variation or permit it only upon conditions, including conditions as to the payment of any costs caused or wasted by the variation”.

Cases considering Points of Dispute

13. Chapter 45 of Sir Rupert Jackson's Review of Civil Litigation Costs: Final Report, 2009 addressed detailed assessment. Certain difficulties with Points of Dispute (as well as points of reply) were identified, as follows:

“2.7 Points of dispute are said to be over-long, therefore expensive to read and expensive to reply to. Points of reply are similarly prolix. Both of these pleadings are in large measure formulaic and are built up from standard passages held by solicitors on their databases. In addition, there are lengthy passages in the points of dispute and points of reply dealing with time spent on documents. It would be better if the points of dispute...concentrated on the reasoning of the bill, not the detailed items...

5.11 Both points of dispute and points of reply need to be shorter and more focused. The practice of quoting passages from well known judgments should be abandoned. The practice of repeatedly using familiar formulae, in Homeric style, should also be abandoned. The pleaders on both sides should set out their contentions relevant to the instant cases clearly and concisely. There should be no need to plead to every individual item in a bill of costs, nor to reply to every paragraph in the points of dispute.”

14. These conclusions were implemented in amendments to PD 47, paragraph 8.2 so that, for example, practitioners were directed that they “must” follow Precedent G in the Schedule of Costs Precedents rather than merely that they “should” do so. Paragraph 8.2 now reads:

“8.2 Points of dispute must be short and to the point. They must follow Precedent G in the Schedule of Costs Precedents annexed to this Practice Direction, so far as practicable. They must:

(a) Identify any general points or matters of principle which require decision before the individual items in the bill are addressed; and

(b) Identify specific points, stating concisely the nature and grounds of dispute.

Once a point has been identified it should not be repeated but the item numbers where the point arises should be inserted in the left hand box as shown in Precedent G.”

15. I therefore accept Mr Mason’s submission that the Practice Direction was amended with the policy objective of enforcing compliance with the streamlined procedure for detailed assessment proceedings; and focussing on the reasons for any objections in Points of Dispute.

16. In *Ainsworth* at [37], Asplin LJ considered paragraph 8.2 and held as follows:

“37...47PD.8 para 8.2...makes it absolutely clear that points of dispute should be short and to the point and, therefore, focussed. Furthermore, sub-paragraphs (a) and (b) leave no doubt about the way in which the draftsman should proceed. General points and matters of principle which require consideration before individual items in the bill or bills are addressed, should be identified, and then specific points should be made “stating concisely the nature and grounds of dispute.” Such an approach is entirely consistent with the recommendations and observations made in the Review of Civil Litigation Costs: Final Report, 2009 to which we were referred.

38. Common sense dictates that the points of dispute must be drafted in a way which enables the parties and the court to determine precisely what is in dispute and why. That is the very purposes of such a document. It is necessary in order to enable the receiving party, the solicitor in this case, to be able to reply to the complaints. It is also necessary in order to enable the court to deal with the issues raised in a manner which is fair, just and proportionate.”

17. At [44], Asplin LJ observed that CPR 3.4(2)(b) and/or (c) enable a Costs Judge to strike out non-compliant Points of Dispute. They provide that the court may strike out a statement of case if it appears to the court “(b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings” or “(c) that there has been a failure to comply with a rule, practice direction or court order”.

18. Although *Ainsworth* concerned detailed assessment proceedings between solicitor and client governed by CPR 46.10, two recent judgments from the Senior Courts Costs Office confirm the application of Asplin LJ’s observations at [37] and [38] of *Ainsworth* to detailed assessment proceedings between the parties under CPR 47: *Wazen v Khan*

[2024] EWHC 1083 (SCCO) at [5]-[22] per Deputy Costs Judge Roy and *St Francis Group 1 Ltd & Ors v Kelly & Anor* [2025] EWHC 125 (SCCO) at [55]-[56], per Costs Judge Leonard. The Judge in this case also accepted that *Ainsworth* applied to the detailed assessment proceedings between the parties: see [12]-[13] of his judgment, at [40] below. I respectfully agree with all these judges' conclusions on this issue for the reasons comprehensively set out in *Wazen* at [5]-[22].

19. In *St Francis*, Costs Judge Leonard struck out a number of non-compliant Points of Dispute. At [59]-[61], he summarised the underlying principles as follows:

“59. First, the receiving party...must have an adequate opportunity to understand which of the items in their Bill of Costs (or breakdown) have been challenged and the grounds of that challenge, so as to be able adequately to prepare a response. Points of Dispute must be prepared in a way which achieves that.

60. Second, It is not acceptable, at a detailed assessment hearing, for the parties or the court to have to spend time identifying the items in the Bill of Costs that are objected to, or the nature or grounds of the objection. That should be clear from the outset. There must be no element of surprise or “ambush”.

61. Third, Points of Dispute must be prepared in a way that ensures that a detailed assessment hearing can be managed in a fair, just and proportionate way. For example, it is not open to a paying party to insist that the court trawl through every item in a Bill of Costs to ensure that there is no objection to it. It is for the paying party to raise clear and pertinent points upon which the court can adjudicate.”

The procedural history

Events leading up to the 5-6 August 2024 hearing

20. The claim arises from a road traffic accident involving the parties on 18 September 2019. The Respondent admitted liability for the accident. Causation and quantum remained in dispute. The Appellant issued the claim. It was duly settled on 11 January 2023 by way of a Part 36 offer for the sum of £546,984.
21. On 3 August 2023 the Appellant commenced detailed assessment proceedings.
22. Item 39 of the Appellant's Bill of Costs claimed 134.1 hours for work done on documents. This work was itemised in Schedule 2 to the Bill, which was 24 pages long. It comprised 418 individual entries describing the date of the work, the nature of the work, the person who had carried out the work and the time spent on it.
23. On 30 August 2023, the Respondent served Points of Dispute. These advanced 25 points. At Point 23, the Respondent took issue with Item 39 in the Appellant's Bill in the following terms:

“134.1 hours of document time is claimed spanning 24 pages. D refers to criticisms made at Point 1-3 as to the approach taken in costs proceedings

and the aggressive nature of time recording throughout the proceedings. D will rely on an annotated documents schedule of objections in support of [sic] however the following general points are made:

- Extensive, unnecessary time is claimed by the Grade A fee earner considering medical records even before expert evidence had been obtained
- Time is claimed throughout for consideration of incoming correspondence which is not recoverable generally and forms part of the time take to action or respond
- In addition to the above time is claimed 'noting receipt' of various documents which again is not properly progressive or recoverable
- Multiple administrative entries are included, e.g. 'dealing with interim payment' and/or making payments, considering fees etc
- Numerous extensive, excessive and unnecessary entries deal with consideration of the 'loan agreement' the claimant alleged but remained unevicenced and unsubstantiated throughout
- Extensive time is claimed 'collating' various documents, including multiple excessive and duplicative entries 'checking' and 'collating' radiology records (by both Grade A and D fee earners)
- There are multiple entries of varying lengths preparing non-routine file notes.
- various entries are plainly duplicated with reviews of the same documents throughout.

In D's submission, documents / preparation time should be limited to 68 hours 12 minutes."

24. On 4 January 2024, the Appellant served Replies to the Points of Dispute. The Appellant requested that the Respondent's Point of Dispute in relation to Item 39 be dismissed, in the following terms:

"The Claimant does not accept reductions made by the Defendant and would again refer to their arbitrary approach. There are no specific challenges, no bill entries are identified, and neither the nature nor grounds of the dispute are present. A declaration that something is excessive does not make it so. If "excessive" is the "nature" of the dispute as required by PD47 8.2(b), the mandatory grounds of dispute are entirely absent.

While the Claimant appreciates the Defendant's broad brush approach is for the sake of expedition, the Claimant considers that in the absence of any specific areas of reductions identified at this juncture, the Claimant is unable to provide a meaningful response. The Claimant refers to the decision in *Ainsworth v Stewarts Law LLP* [2020] EWCA Civ 178..."

25. The Appellant responded to the general points made by the Respondent at Point 23 of the Points of Dispute. The Appellant offered 130 hours for Item 39, comprising 118 hours of work by a Grade A fee earner and 12 hours by a Grade D fee earner.
26. On 26 March 2024 the Appellant filed a request for a 2 day detailed assessment hearing.
27. On 28 May 2024 a notice of hearing was sent to the parties, listing the detailed assessment for 5-6 August 2024.
28. At around 4.15 pm on Wednesday 31 July 2024, and so technically on the morning of Thursday 1 August 2024, the Respondent filed and served the annotated document schedule referred to in Point 23 of the Points of Dispute. For the first time this identified which individual items in Item 39 were in dispute. The Respondent's objections to individual items were placed into one of the following eight categories: "Duplication; Supervision; Non-progressive; Excessive time claimed; Non-contemporaneous file notes; Case management discussion; Incoming correspondence and routine response out; Lower grade offered, not grade A work". The annotated document schedule offered a primary case of 58.5 hours and an alternative case of 58.8 hours.

The 5-6 August 2024 hearing

29. No transcript of the hearing on 5 August 2024 or the first part of the hearing on 6 August 2024 is available, in part due to poor audio recording. However, Mr Mason's later Skeleton Argument on costs indicates that during this phase of the hearing, the Judge determined preliminary points 1-2 and 4 and general points 5 to 22 and 24 from the Points of Dispute. Mr Lyons took no issue with this proposition.
30. In the latter part of the 6 August 2024 hearing, the Judge heard submissions on the key remaining issue, namely the contentious Point 23.
31. Mr Mason invited the Judge to strike out Point 23 as non-*Ainsworth* compliant and to refuse to permit the Respondent to rely on the annotated document schedule. None of his submissions have been transcribed but it appears from later in the transcript that he referred to, at least, *Edinburgh v Fieldfisher LLP* [2020] EWHC 862 (QB): see [98] below.
32. The transcript begins part-way through Mr Lyons' submissions. He emphasised that whether or not to strike out Point 23 was a matter for the Judge's discretion, which was an "unfettered" one and could involve marking the Judge's displeasure through costs orders. He submitted that a strike out would be a "more than...heavy-handed approach": p.3D-H of the transcript. He advanced as the reason for the delay in serving the annotated document schedule that the parties had been in negotiations and had hoped to avoid the need for the detailed assessment hearing: p.4B-D.
33. In reply, Mr Mason emphasised that it was not possible to discern from the annotated schedule how the two new figures for the total number of hours offered had been calculated, or the number originally proposed in Point 23; and referred to a case the name of which was not captured by the transcriber, but which was almost certainly *Wazen v Khan* [2024] EWHC 1083 (SCCO): p.7B-D. He confirmed the difficulties he would be in during the hearing in responding to the original Point 23 or the schedule, to which there had been no time to draft any reply: p.7F-8E.

34. The Judge asked counsel to clarify whether there was any correspondence showing that the Appellant had chased the Respondent for the schedule referred to in Point 23. Having taken instructions to this effect, they confirmed that there was not: p.8E-9D.
35. The Judge then proceeded to give an *ex tempore* judgment explaining that he was declining to strike out Point 23 of the Respondent's Points of Dispute and was going to allow the Respondent to rely on the annotated schedule, adjourning the detailed assessment for a third hearing day.

The Judge's judgment on Point 23 and the schedule

36. At [2]-[6] the Judge set out the procedural history, noting that the Appellant's Replies had cited *Ainsworth*.
37. At [7], he described an issue with the bundles for the hearing, as follows:

"A bundle was prepared on 29 July 2024. To be more accurate, there were multiple bundles that were sent to the court, but two bundles were the important ones, Bundle 1 and Bundle 2. Bundle 1 - we now know - contains all of the documentary items. Bundle 2, however, has been structured in such a way as to group together those attendance notes that the claimant believes are likely to be relevant to the general points of principle made by the defendant in the Points of Dispute. I will not refer to those in any detail, but I am content that the claimant has had regard to their general points and has structured Bundle 2 accordingly. However, it seems that those who instruct counsel for the claimant, Mr Mason, did not inform him until only very recently that Bundle 1 contains the entirety of the documents."

38. At [8], he referred to the Respondent's service of the annotated document schedule late in the afternoon of 31 July 2024, saying as follows:

"I am satisfied that the schedule (although it does broadly reflect the general categories that have been referred to in the Points of Dispute) does go beyond those categories; certainly, it provided significantly more detail than was in the original Points of Dispute."

39. At [9]-[10], he observed that the position was "not a happy state of affairs" for the following reasons:

"9. The court is now presented with...a situation in which the paying party has provided the detail of their arguments on perhaps the most important item (the documentary time) at an extremely late stage, only a few working days before the hearing. This is in circumstances in which the claimant (the receiving party) had already prepared for that hearing and had already prepared a bundle that was based on the general points that were set out in the Points of Dispute (rather than the more specific points set out in the counter-schedule). Those being the circumstances, the claimant says that he would have difficulty in proceeding with the assessment if the entirety of the points taken in the schedule were to stand.

10. Indeed Mr Mason goes further than that and says that, actually, everybody will have difficulty (the court included) in dealing with the documentary item, this being by reason of the fact that, although a number of categories of objection are set out in the original Points of Dispute, they are not particularised (in the sense that they have not been being linked to any specific items)".

40. The Judge observed that there was "no magic" in *Ainsworth* or in the fact that it was a solicitor and client case. He opined that *Ainsworth* "essentially boils down to a question of whether or not there is sufficient particularity in the Points of Dispute for the proceedings to proceed fairly (or, to put it another way, whether or not there is sufficient detail given about the objections to allow the receiving party to respond)": [12]-[13].

41. He then gave two reasons for declining to strike out Point 23 of the Points of Dispute, as follows:

"15. Firstly, while I believe that *Ainsworth* does, in principle, apply in the way that I have just described, the original Points of Dispute would have allowed there to have been a fairly broad-brush assessment in any event; they would have allowed the claimant (the receiving party) to have known the case that was being made against him and to have responded to it. Indeed that must be the case as Bundle 2 has been prepared in such a way as to anticipate those points.

16. Secondly (and perhaps more importantly), both parties knew that there should have been a further document. The court is profoundly disappointed to hear that there has been no correspondence or liaison on that. As far as I am aware, the defendant took no steps at all to serve what must have been known to have been a crucial document until almost immediately before the hearing. And equally, the claimant - as far as I am aware - took no steps to chase that document, this being despite the fact that in their own Replies, they make comments that make it clear that they realise that there was a further document that was awaited. In those circumstances, I think that both parties are significantly at fault for having failed to comply with the overriding objective and to assist the court by essentially 'getting their act together' earlier."

42. The Judge then turned to the question of whether to strike out the annotated schedule, holding as follows:

"18. I have to say that I have not found this an easy point at all. Clearly, the schedule was served unacceptably late, almost to the point that one could say, in other circumstances, that it was an ambush. But I do not think I can say it was an ambush on the facts of this case. This is because it was mentioned right at the very beginning; and both parties are significantly at fault for not having ensured that it was available to them at the time that they were preparing to assist the court on the assessment (such as by preparing bundles). So, I cannot say that it is an ambush.

19. I also think there is some merit in what Mr Lyons says that the types of points that are made on the schedule are those types of points that

would be fairly obvious to any costs practitioner. Indeed, if I had been asked to carry out a provisional assessment, they are the types of points that would occur to me even without reading any Points of Dispute at all.

20. So, I take that into account, but also take into account the fact that this assessment has been unusual in the sense that it has preceded on almost every item on a line-by-line approach. If that is the way that the parties wish to deal with the matter, then that is fine. That is a detailed assessment, and it is the parties' right – in particular the paying party's right - to descend into whatever level of detail they want. That is why it is called a detailed assessment.

21. So, whilst I fully accept the point that Mr Lyons says about the points in the schedule (namely that they are points which the court would ordinarily expect), and whilst I also accept that there is some truth in the fact that many of the points that are set out in the schedule are those which are anticipated in the original Points of Dispute, the fact is that the way in which the paying party wants to carry out this assessment is on a line-by-line basis and, that being so, I again have to express a degree of concern that this schedule was served so late. That may be so, but ultimately, I cannot categorise this as being an ambush."

43. The Judge then turned to the provisions of PD 47, paragraph 13.10, which he set out in full, continuing as follows:

"23. My reading of that is that that gives me very wide powers. I am entitled to either allow or disallow an amendment and I am entitled to impose conditions, including conditions as to payments of costs. I do not read that as meaning that, if I am going to impose conditions, they must be imposed immediately. I read the Practice Direction as giving the court very wide powers.

24. Looked at in the round, I have to say that I am critical of both parties. I think that there is inevitably going to have to be an adjournment. I cannot see that it would be fair to require Mr Mason to proceed on the basis that he has to respond to the schedule. I am mildly critical of his instructing solicitors for having failed to draw to his attention the fact that Bundle 1 contained all of the relevant documents (because I am sure that Mr Mason as a highly diligent and competent counsel would have prepared for all eventualities had he been made aware of that fact). But that criticism pales into insignificance in respect of the criticism I have already referred to earlier, which is that the parties should have got their act together at a much, much earlier stage.

25. Equally, if (contrary to my findings) I had disallowed the amendment (namely, the schedule), I get the strong impression that Mr Mason would still have been in difficulties as he would have had to proceed by reference to what is said in the original Points of Dispute. It was always obvious that the defendant ought to have at least provided a breakdown of which items are being referred to in each of the categories, and I think it would be unfair to require Mr Mason to try to deal with those categories

almost in a vacuum without the benefit of the amendment. Therefore, either way, it would be putting Mr Mason in a very difficult position.

26. So I believe that there has to be an adjournment. I think that, in those circumstances, I have to take a view as to what is going to help the parties to resolve this matter (and what is going to help the court resolve this matter). On balance, I think that it probably is going to be the case that the court is going to be assisted by the schedule.

27. So, very reluctantly, I am not going to strike out the schedule, but I am going to order that (unless the parties invite me to take a different course, such as by way of a very broad-brush assessment now)...there be an adjournment, but this is going to be on the basis that there will be cost sanctions. Those cost sanctions will not be imposed now, but they will be imposed at the end, and the court, at that stage will expect to know more about the reasons why there was such a delay in getting this schedule before the court.”

44. He concluded by reminding himself of an observation made by HHJ Gosnell (sitting as a Judge of the High Court) in *O’Sullivan v Holmes and Hills LLP* [2023] EWHC 508 (KB) at [52]-[53], to the effect that it was not enough that a judge was able to carry out an assessment: in the interests of the receiving party the judge had to ensure that there was a fair process even when the court was trying to adopt a proportionality approach. He indicated that that was one of the reasons why he had found that there had to be an adjournment: it may well have been that he could have “come up with a figure”, and that that figure would have been close to what he was likely to allow after having heard point-by-point submissions, but that would not be an appropriate or fair approach: [28]-[29].
45. The Judge concluded by saying that he was adjourning the detailed assessment and reserving the matter to himself, reiterating that “there will be consequences in terms of costs in respect of this”: [30].

The 8 November 2024 hearing

46. On 8 November 2024 the adjourned detailed assessment hearing took place. This addressed solely the issues relating to Item 39 of the Appellant’s Bill of Costs, Point 23 and the annotated schedule.
47. The Judge conducted a “line-by-line” assessment of around 10% of the constituent parts of Item 39: see p.6E-39C of the transcript. The remaining 90% was assessed using a “coffee break option” suggested by the Judge. The parties had a break, and when they returned, the Judge gave them a provisional view on which the parties made submissions, with the option of them having a “detailed assessment item by item” still open to them if they wished: p.38H-39A. This was also still a relatively lengthy process, as the transcript makes clear and as the Judge himself accepted, observing at the end that “we have actually taken quite a long time today even though we have dealt with the matter on a broadbrush basis”: p.71G.

48. The Judge gave separate judgments explaining his assessment of Item 39 of the Bill and on interest. He assessed the Claimant's Bill in a total sum of £89,032.62 with £8,234.91 in interest.
49. The Judge then turned to the issue of the costs of the detailed assessment. The Respondent had made a Part 36 offer which the Appellant had not "beaten". The parties therefore agreed that the Respondent would pay the Appellant's costs up to the date on which the offer expired (3 July 2024) and that the Appellant would pay the Respondent's costs thereafter. This was subject to an argument about whether the Respondent should pay the Appellant's costs of the adjourned detailed assessment in any event.
50. In written and oral submissions Mr Mason argued that the Respondent's conduct in serving the annotated schedule so late had led to the need for an adjournment, such that the Respondent should be ordered to pay the Appellant's costs of the adjourned detailed assessment. He cited *Barton v Wright Hassall LLP* [2018] UKSC 12 and *Woodward & Anor v Phoenix Healthcare Distribution Ltd* [2019] EWCA Civ 985 in support of the proposition that while the Appellant was under a duty to assist the court for the purposes of the overriding objective, the Appellant was under no duty to remind the Respondent that they had failed to file the schedule: p.71B-75C.
51. At one point the Judge asked "...is it not the reality that we just lost the tail end of the hearing because we would have tipped over into another day in any event, would we not?". Mr Mason responded that the parties had only "tipped over" into a third day because of the Respondent's late service of the schedule: p.73B-C.
52. It appears that although the Appellant had obtained a copy of the transcript of the judgment from 6 August 2024, this was not shared with the Respondent. The Judge noted that he had not seen the final version of the transcript but indicated that he had reviewed the draft of it. The Judge recollected that he had been critical of the Appellant in two respects: for failing to chase the schedule and, I emphasise, "more importantly" because "although it came to light that you did in fact have all the papers in your bundle your instructing solicitor only told you that you had all the papers in bundle one during the course of the hearing". The Judge said that this was "one of the reasons I had to adjourn": p.73E-F. Pausing there, the use of the phrase "more importantly" reflects the Judge mis-remembering the terms of his judgment. His judgment made clear that his relative criticism of the Appellant was the other way around: the issues over the bundle "pale[d] into insignificance" compared to the schedule issue: see [24] of his judgment at [43] above.
53. Mr Mason sought to persuade the Judge that neither of these factual criticisms should sound in an order for costs and developed his arguments based on *Barton* and *Woodward*: p.73G-75B.
54. Mr Lyons submitted that the issue over the Appellant not chasing the Respondent for the schedule was a "minor thing" and that the "much more significant point" was the difficulties over the Appellant's bundle. He therefore reinforced the Judge's flawed recollection set out at [52] above. Mr Lyons contended that it was "six of one, half a dozen of the other on the last occasion" and that the Appellant was at fault in only seeking a two-day listing in the first place. On that basis he contended that there was no good reason why costs should not follow the event: p.75D-F.

55. The Judge gave a separate judgment on the costs issues raised.

The Judge's judgment on costs

56. The Judge found, “without hesitation”, that the Appellant should not be paid his costs on the basis that he could have avoided all the costs by accepting the Part 36 offer. This was a “generous” offer by the Respondent which the Appellant had not accepted: [6] of the costs judgment.

57. He then turned to the issue of “blame” which he said was “not quite as clear cut as Mr Mason points out”. As to the argument based on *Barton* and *Woodward*, he held that “there is a fine line between failing to assist the court and failing to assist an opponent”; and that “if one is preparing for a detailed assessment (and if one is preparing the bundles), the Court would expect the parties to liaise to make sure the bundles contain that which is going to be relevant; in those circumstances I would expect a degree of liaison”: [7.a].

58. He then held as follows:

“7...b. But in any event...that is only half the story. One of the main reasons why there was an adjournment on the last occasion was because it became apparent during the course of the hearing that (through no fault of his own) Mr Mason was unaware of the fact that documents that he needed to take the Court to were contained in a particular bundle (which the parties have been referring to as being ‘Bundle 2’), and that they therefore were available for the assessment. So, had Mr Mason been told of this (I find that he should have been told of this) and had the Court dismissed the *Ainsworth* point (as in fact it did), then there would have been no need for an adjournment, as we would have been able to do the first items in the documentary schedule.

8. Therefore, whilst it is certainly true to say that the defendant was significantly at fault for having served a schedule very, very late in the [day], the claimant was also at fault.

9...I have to remind myself that I did make it very clear that there would be costs consequences.

10. I think there ought to be costs consequence and I think the need for that does in fact justify a departure from the usual rule in CPR r36.17. Put another way, the injustice test is met. Therefore I am not going to award the defendant the entirety of their costs.

11. But the amount by which I am going to reduce the course is really not going to be that great (because to my mind, yes there was an unnecessary adjournment, but all we lost was the tail end of the last hearing, which is probably an hour or so). So, I propose that rather than making a percentage order, what I will do is when I assess the costs, I am going to marginally reduce the defendant’s costs relating to the second day of the hearing to take account of the fact that a small part of the afternoon of the second hearing was thrown away. I will do that when I come to the

assessment of costs, but it is only going to be a very small disallowance a very small reduction”.

59. By his order sealed on 22 November 2024 the Judge made various orders reflecting the outcome of the detailed assessment process. He summarised his reasons for ordering that the Appellant pay the Respondent’s costs of the assessment from 3 July 2024 to the date of the order, subject to an exclusion to reflect “the costs relating to the time spent on 6 August 2024 dealing with the aforesaid annotated schedule”, as being that “it would be unjust for the [Appellant] to pay the [Respondent]’s costs of that issue where the [Respondent] had caused those costs to be incurred by reason of having filed and served the schedule so late”.

Legal principles applicable to this appeal

60. CPR 52.21(3) provides that the appeal court will allow an appeal where the decision of the lower court was (a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
61. In CPR 52.21(3)(a), “wrong” means that the court below (i) erred in law or (ii) erred in fact or (iii) erred (to the appropriate extent) in the exercise of its discretion: White Book 2025, at paragraph 52.21.5.
62. When a matter of judicial discretion is engaged, before an appeal court can interfere “it must be shown that the judge has either erred in principle in his approach, or has left out of account, or taken into account, some feature that he should, or should not, have considered, or that his decision is wholly wrong because the court is forced to the conclusion that he has not balanced the various factors fairly in the scales”: *Roache v News Group Newspapers Ltd* [1998] EMLR 161 at 172, per Stuart-Smith LJ.
63. Put another way, the question is whether the judge’s exercise of discretion has “exceeded the generous ambit within which reasonable disagreement is possible”: *Tanfern Ltd v Cameron-MacDonald (Practice Note)* [2000] 1 WLR 1311, CA at [32].
64. In a similar vein, in *Broughton v Kop Football* [2012] EWCA Civ 1743 at [51], Lewison LJ observed as follows:

“Case management decisions are discretionary decisions. They often involve an attempt to find the least worst solution where parties have diametrically opposed interests. The discretion involved is entrusted to the first instance judge. An appellate court does not exercise the discretion for itself. It can interfere with the exercise of the discretion by a first instance judge where he has misdirected himself in law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree. So the question is not whether we would have made the same decisions as the judge. The question is whether the judge’s decision was wrong in the sense that I have explained.”

65. These observations were approved by the Supreme Court in *Global Torch Limited v Apex Global Management Limited (No 2)* [2014] UKSC 64 at [13]; and see, to similar effect, *BPP Holdings v HMRC* [2017] UKSC 55 at [33].

The grounds of appeal

66. The Appellant advances five grounds of appeal. Grounds 1-3 challenge the Judge's refusal to strike out Point 23 of the Respondent's Point of Dispute. Grounds 4-5 challenge his decision to permit the Respondent to rely on the schedule.

Ground 1

67. Under Ground 1, the Appellant argues that the Judge's refusal to strike out Point 23 failed to give proper effect to the correct interpretation of PD 47, paragraph 8.2(b) and in doing so, wrongly applied *Ainsworth*.
68. In *Ainsworth*, Point 10 of Mr Ainsworth's Points of Dispute, also reflecting time on documents, contained points that were "general in nature", provided a "general overview" that was "not exhaustive" and simply stated that "all items were disputed". They "did not contain cross references to the numbers of the items disputed on any particular grounds" and "did not state why any item on the bill was disputed". On that basis, Asplin LJ concluded that Point 10 was not compliant with paragraph 8.2(b) and that the Chief Master's decision to strike it out was justified: [6] and [42]-[44].
69. Mr Mason relied on several other decisions in which Points of Dispute were struck out for non-compliance or where it was held on appeal that this course should have been followed:
- (i) *O'Sullivan*, where HHJ Gosnell concluded that Points 7.1 and 7.2 in the respondent's Points of Dispute should have been struck out by the District Judge because although they made proposals as to the appropriate hours per different grade of fee earner, they "did not give the appellant a fair opportunity to discern the nature and grounds of the dispute in respect of the various entries on the schedule which were not identified in any way either as unreasonable in amount or unnecessarily incurred" and failed to "set out the nature and the grounds of the dispute": [7], [8], [52] and [54];
 - (ii) *St Francis*, where elements of Points of Dispute which linked each item back to certain preliminary points but which were otherwise not particularised were struck out by Costs Judge Leonard: [38]-[40] and [112]; and
 - (iii) *Christodoulides v CP Christou LLP* [2025] EWHC 214 (SCCO), where, subject to some limited exceptions, Points of Dispute which were "prolix...discursive...and unfocused", "[did] not identify the items in dispute", "[did] not identify, or least not in any coherent or comprehensible fashion, what reductions in costs the points raised are said to generate, and why" and which were "in no way cured or ameliorated" by written submissions provided just before and during the detailed assessment hearing were struck out by Deputy Costs Judge Roy KC: [35], [40] and [43].

70. In *Ainsworth* one of the reasons why the strike out was considered appropriate was that Mr Ainsworth had had 5 months' notice that his opponent considered that Point 10 was defective for want of itemised points of dispute, but had failed to amend it: [6] and [44]. Similarly in *O'Sullivan*, HHJ Gosnell acknowledged that the strike out produced a rather draconian result, but, citing *Ainsworth* at [44], observed that the party in question had had "ample opportunity" to seek to amend the Points of Dispute to make them compliant. Their failure to do so had presented the District Judge with a "stark choice".
71. Despite Mr Lyons' attempts to persuade me otherwise, Point 23 of the Respondent's Points of Dispute was not compliant with paragraph 8.2(b) or *Ainsworth*. Point 23 made general assertions without indicating which item they related to. It failed to identify the specific items in the Bill of Costs which were challenged and make clear in each case the reasons why the individual items were in dispute. Accordingly, Point 23 did not comply with the requirements from paragraph 8.2(b) and *Ainsworth* at [37]-[38] that it set out "specific points, stating concisely the nature and grounds of dispute" and to ensure that the opposing party could determine "precisely" what was in dispute and why.
72. In my judgment Point 23 was directly comparable to the contentious Points of Dispute in *Ainsworth* and *Christodoulides* and even less specific than those in *O'Sullivan* and *St Francis*.
73. Indeed, it is relevant that the Respondent had always made clear that a further document schedule would be provided to support Point 23; and that when the schedule was provided, it set out specific objections to individual items for different reasons and arrived at a different, lower total figure, of 58.5 hours and an alternative case of 58.8 hours. Both these actions by the Respondent indicate a tacit acceptance that without the schedule, the Points of Dispute were not compliant.
74. In *O'Sullivan* at [36] and *St Francis* at [49] it was accepted that the question of whether Points of Dispute are compliant or not is a binary question, rather than a matter of discretion: as HHJ Gosnell observed in *O'Sullivan* at [36], it is "...not a situation where a number of different responses [are] available...some of which might be considered objectively justifiable...Either the Points of Dispute [are] sufficient to comply with the Practice Direction or they were not".
75. Here, the only proper answer to that binary question was that the Points of Dispute were not compliant with paragraph 8.2(b) or *Ainsworth*. However, this finding is not sufficient for the Appellant to succeed on Ground 1, for the following reasons.
76. *First*, I cannot see that the Judge ever specifically held that Point 23 was compliant. Rather, his focus was on whether any defects in it could be "cured" by the annotated document schedule.
77. *Second*, if, as appears to be the case, the Judge did consider that Point 23 was not compliant, that was not the end of the matter: whether to proceed to strike it out was an evaluative, discretionary question that was inextricably linked with the similarly evaluative, discretionary question of whether to permit the variation to Point 23 which the Respondent sought to effect through the annotated document schedule. I return to this issue at [114] below.

Ground 2

78. This ground takes issue with the first of the Judge's reasons for declining to strike out Point 23, namely his finding that the original Points of Dispute would have allowed there to have been a "fairly broad-brush assessment in any event": see [15] of his judgment at [41] above.
79. The Appellant contends that the Judge misdirected himself in applying a test of whether or not a broad-brush assessment could be carried out: it would be inappropriate to carry out a broad-brush assessment in "detailed" assessment proceedings; and a broad-brush assessment could not have been carried out here in any event.
80. I cannot accept this submission, primarily because, in fact, the Judge accepted that it would be inappropriate to carry out the detailed assessment on a broad-brush basis. He recognised that the process is called a "detailed" assessment because "it is the parties' right – in particular the paying party's right - to descend into whatever level of detail they want" and if the parties wish to deal with the assessment on a "line-by-line approach", they can: see [20] of his judgment at [42] above. He reminded himself of the observation in *O'Sullivan* to the effect that the process needs to be fair such that for him to merely "come up with a figure" would not be appropriate: see [28]-[29] of his judgment at [44] above. He did not anticipate the remaining time on 6 August 2024 being used for the kind of "on the hoof" assessment described in *Ainsworth* at [43]-[44]: he expressly recognised at [25] (see at [44] above) that it would be "unfair" to require counsel for the Appellant to respond to Point 23 at the hearing. Rather, his focus was on whether to adjourn the case to allow the Appellant more time to consider how to respond to the annotated schedule.
81. I consider that what the Judge was saying at [15] was that the Appellant had been provided with sufficient information in the original Point 23 to understand, broadly, what the case against him was. He was not saying at [15] that Point 23 complied with paragraph 8.2(b) or *Ainsworth*.
82. Further, I accept Mr Lyons' submission that the fact that the "fairly broad-brush assessment" described by the Judge was possible is clear from the following: (i) the Appellant had been able to make a broad proposal of a number of hours in his Reply to Point 23; (ii) Bundle 2 had been prepared in such a way as to anticipate the points that would emerge from such an approach; and (iii) when the matter came back on for hearing before the Judge, the Appellant agreed to a broad-brush approach in the form of the "coffee break" option referred to at [47] above.
83. The Judge also observed that the types of points raised in the annotated schedule were all ones that would be "fairly obvious" to any costs practitioner, and indeed would have been the types of points that would have occurred to him without reading any Points of Dispute at all: see [18] of his judgment at [42] above.
84. I therefore do not consider that the Judge misdirected himself in the way alleged in Ground 2 and so dismiss it.

Ground 3

85. This ground challenges the second reason the Judge gave for declining to strike out Point 23, namely his view that the Appellant was also to be criticised for taking no steps to chase the Respondent for the annotated document schedule: see [16] of his judgment at [41] above. The Judge was of the view that both parties were at fault for failing to comply with the overriding objective and to assist the court. He maintained this view in his judgment on costs on 8 November 2024 at [7.a]: see [57] above.
86. The Appellant contends that the Judge was wrong to not give proper effect to the correct interpretation of CPR 1.3 and in doing so, misapplied the principles derived from *Barton* and *Woodward*.
87. In *Barton* at [22], the Supreme Court held that a party and their legal representative was “under no duty to give [the other party] advice about service of a claim form” not least because to do so might be to deprive the first party of a limitation defence. In *Woodward* at [42], the Court of Appeal applied this principle to hold that although the parties are required to help the court to further the overriding objective, they are not required to help each other. At [48], the Court held that the duty not to engage in technical game-playing, discussed in *Denton v T H White Ltd* [2014] EWCA Civ 906 at [41], was directed at inappropriate resistance to applications for relief from sanctions which are bound to succeed. More recently, in *Thiscompany Ltd & Ors v Welsh & Ors* [2024] EWHC 2159 at [22], HHJ Cadwallader concluded that to require one party to respond to a particular request would be to “re-introduce a duty by the back door”.
88. Accordingly, this ground raises the interesting issue alighted upon by the Judge of where the lack of a duty to assist an opponent identified in *Barton* and *Woodward* begins to conflict with the duty to assist the court. Mr Mason’s position is that, logically, if there is no duty to alert an opponent to the need to serve a claim form, for want of denying a client a limitation defence, there should be no duty to “chase” for a schedule, for want of denying a client the ability to seek a strike out order.
89. For my part, there is an inherent logic in, and attractiveness to, Mr Mason’s submission. However, the fundamental difficulty with this ground is that the evidence strongly suggests that the Judge was not taken to *Barton* and *Woodward* before he made the decision under appeal.
90. Mr Lyons said in terms that these authorities were not so raised.
91. Although the transcript of the 6 August 2024 hearing is incomplete, there is nothing on the transcript which is available to suggest reference had been made to these cases. There are various references to which Mr Lyons took me which suggest they were not.
92. Further, had these issues been raised during the 6 August 2024 hearing, Mr Mason would be unlikely to have felt the need to set the principles out in detail in his skeleton argument on costs for the 8 November 2024 hearing or in his oral submissions at that hearing; and the Judge would not have said “...take me through that? I do not quite understand it” as he did during the hearing: p.73G-75C.
93. Accordingly, it is more likely than not that the argument based on to *Barton* and *Woodward* was only advanced at the costs stage, after the judgment on appeal.

94. Given this background Mr Lyons relied on *Allen v Bloomsbury Publishing Limited* [2011] EWCA Civ 943 at [17], where Lloyd LJ questioned the fairness of an appellate court criticising a judge for having “failed to take into account a factor which, if relevant, was known or available to all parties and which no party invited him to consider as part of the process of exercising his discretion”. Observations to similar effect were made by Males LJ (with whom Snowden LJ and Lewison LJ agreed) in *Samsung Electronics Co Ltd v LG Display Co Ltd* [2022] EWCA Civ 423 at [5]; and both these judgments were cited and applied by the Court of Appeal in *Secretary of State for Transport and another v Cuciurean* [2022] EWCA Civ 661, [2022] 1 WLR 3847 at [5]-[6].
95. In my judgment the same principle applies here: it would be wrong to criticise the Judge for failing to take into account a point not raised with him at the relevant time. I therefore dismiss Ground 3.

Ground 5

96. I consider Ground 5 first because it relates to the overall legal approach the Judge took to the question of whether to permit the Respondent to rely on the schedule, whereas Ground 4 is more fact-specific argument about the issue.
97. Under Ground 5, the Appellant contends that the Judge was wrong to find that PD 47, paragraph 13.10 provided a Costs Judge with “very wide powers”: see [23] of his judgment at [43] above. It is argued that this statement did not reflect the interpretation of paragraph 13.10(2) set out in the authorities, which make plain there are limits on the power inherent in it.
98. In *Edinburgh v Fieldfisher LLP* [2020] EWHC 862 (QB), Chamberlain J refused permission to appeal against a judge’s decision to disallow supplemental Points of Dispute which were referred to less than 3 working days before a detailed assessment hearing and produced 90 minutes before the hearing: [6], [8] and [24].
99. In so doing, he considered PD 46, paragraph 6.15 which addresses the variation of Points of Dispute in solicitor/client proceedings in the same way as paragraph 13.10: as with paragraph 13.10(2), paragraph 6.15 provides that while permission is not required to vary Points of Dispute but the court “may disallow the variation or permit it only upon conditions, including conditions as to the payment of any costs caused or wasted by the variation.”
100. At [15] Chamberlain J held as follows:
- “I accept...that the default position under that paragraph is that parties may vary points of dispute if they so wish. That default position is, however, subject to a general discretion to disallow the variation or to allow it upon conditions. This is an important discretion, without which it would be possible for parties to ambush their opponents by waiting to the last minute to file supplemental points of dispute raising points not previously heralded. This would be productive of unfairness. Paragraph 6.15 does not prescribe how the discretion to disallow supplemental points of dispute should be exercised, but the overriding objective

(enabling the court to deal with disputes of this kind) “justly and at proportionate cost” should be borne in mind”.

101. In *Celtic Bioenergy Ltd v Knowles Ltd* [2022] EWHC 1223 (QB) Foster J upheld a judge’s decision to disallow Supplementary Points of Dispute provided around 1 month before the detailed assessment hearing: [13], [15] and [52]. At [16], she accepted the characterisation of the paragraph 13.10 power advanced by counsel for the Appellant (coincidentally, the Judge in this case) as follows:

“...the Practice Direction is expressed in terms of a discretion to exclude, and thus the default position is that documents will be admitted. The discretion to exclude protects the other party from an ambush”.

102. At [35], she returned to this theme:

“I do not accept, as was sought to be said at one point by the Paying Party that there is a presumption under the rules that documents will be accepted, no matter how late nor how many new points they raise. The rules, understandably, give a wide discretion to the costs judge to decide, in all the circumstances of the case, whether it is in furtherance of the overriding objective, namely, to decide cases justly, that the particular document ought to be received. It cannot be gainsaid that there will come a time when it is...“just too late”...”.

103. In my judgment *Edinburgh* and *Celtic* do not support the Appellant’s criticisms of the Judge.
104. The combined effect of *Edinburgh* and *Celtic* is that despite the permissive nature of paragraph 13.10(1), there is no presumption that variations will be permitted; that the powers to disapply variations or permit variations on conditions can be used to protect the other party from being ambushed; and that the CPR provides no guidance as to how the power should be exercised beyond the fact that it must be exercised in accordance with the overriding objective, including that cases should be dealt with “justly and at proportionate cost”.
105. Accordingly, the Judge was not wrong to say that paragraph 13.10 permitted him to “either allow or disallow an amendment”, “to impose conditions, including conditions as to payments of costs” and to impose conditions on costs at a later stage. These were all accurate statements.
106. He was therefore not wrong to say that paragraph 13.10(2) afforded him “very wide powers”: on the contrary, his words chime closely with Foster J’s reference in *Celtic* at [35] to “a wide discretion”.
107. This aspect of Ground 5 therefore fails. I return to the second aspect of Ground 5 – namely whether or not the Judge nevertheless misapplied the paragraph 13.10(2) power – at [114] below.

Ground 4

108. Ground 4 takes issue with the Judge's finding, in permitting the Respondent to rely on the schedule, that the service of it did not involve an "ambush": see [18] of his judgment at [42] above.
109. Mr Mason argued that Point 23 and the schedule were fundamentally different documents. The former included generalised assertions; the latter took issue with specific items. The lack of any particularity in Point 23 meant that it did not enable the Appellant to anticipate what points would be made in the annotated document schedule. The schedule advanced a fundamentally new cases in terms of the detailed points it made and a different overall figure for hours it offered.
110. Further, the Respondent had been on notice of the Appellant's objection to the Points of Dispute, and reliance on *Ainsworth*, since January 2024. He contended that the Respondent's conduct, in serving the schedule just 2 working days before the hearing, was the "very definition" of an ambush.
111. The Judge was plainly critical of the Respondent for the "extremely" and "unacceptably" late service of the schedule: see [9], [16] and [18] of his judgment at [39], [41] and [42] above. However, he took the view that this was not a "typical" ambush situation because the Appellant was aware from the reference to it in the original Point 23 that a schedule was going to be served, and because the Appellant was partly responsible for not chasing for it.
112. This finding is therefore closely linked with the issues underlying Ground 3. It is not, therefore, one with which it would be fair to interfere on appeal, for the reasons given under Ground 3.
113. For these reasons, Ground 4 is dismissed.

Overall conclusions

114. The combined effect of my findings from the preceding paragraphs is that the Judge:
 - (i) Appears to have accepted that Point 23 of the Points of Dispute alone was not compliant with paragraph 8.2(b) or *Ainsworth* (Ground 1);
 - (ii) Did not misdirect himself by finding that a "fairly broad-brush assessment" could have taken place based on Point 23 alone (Ground 2);
 - (iii) Cannot fairly, in this appeal, be criticised for finding that the Appellant had a duty to chase the Respondent for the annotated document schedule and thus for his related finding that there had not been an "ambush" (Grounds 3 and 4); and
 - (iv) Correctly identified that his powers under paragraph 13.10(2) were wide (Ground 5).
115. It remains necessary to consider the Appellant's residual, overarching argument from Grounds 1 and 5 to the effect that the Judge's approach was wrong, and involved a failure to give proper effect to paragraphs 8.2(b) and 13.10(2).
116. *Edinburgh* and *Celtic* make clear that in exercising the paragraph 13.10(2) powers, a judge must seek to further the overriding objective, including that cases should be dealt

with “justly and at proportionate cost”: [104] above. I accept Mr Mason’s submission that as part of this exercise, regard must be had to the fact that detailed assessment is intended to be a streamlined process to assist the parties in negotiating an agreed sum in settlement of a claim for costs, underpinned by mandatory requirements such as those in paragraph 8.2(b): see [9] and [15] above. I accept this submission because in seeking to further the overriding objective, it is necessary for any judge to have regard to the nature of the hearing and issues in hand.

117. Mr Lyons sought to persuade me that in taking the course he did, the Judge had in mind that it was always going to be necessary for the detailed assessment to go into a third day, ie. that there was going to have been an adjournment in any event. He referred to the Judge’s observation that there was “inevitably going to have to be an adjournment”: see [24] of his judgment at [43] above. He argued that the need for an adjournment had come about because of the issues with the Appellant’s bundle.
118. I do not consider that the evidence supports this assertion. Rather, I prefer Mr Mason’s analysis, to the effect that the adjournment was only necessitated by the Respondent’s conduct with regard to Point 23 and the late schedule.
119. In my judgment, when [24] is read in full, it is clear that the Judge was using the word “inevitably” in the context of him permitting the Respondent to rely on Point 23 alone or to rely on Point 23 and the schedule: it was these two scenarios which he concluded could not fairly take place on 6 August 2024 and would, “inevitably”, need to be dealt with at further hearing: see [24] and [25] of his judgment at [43] above.
120. Accordingly, the Judge was not saying that if Point 23 was struck out and the schedule was disallowed, an adjournment would still be required. Indeed, the hearing on 5-6 August 2024 had addressed all the issues on the detailed assessment save for that relating to Point 23: see [29] above.
121. It follows that if the Judge had decided to strike out Point 23 and disallow the schedule, the assessment would have concluded on 6 August 2024.
122. Moreover, it is clear that the issues over the Appellant’s bundle were not determinative on 6 August 2024. Insofar as there were issues with the bundle on 6 August 2024, they only manifested themselves in the ways in which Mr Mason and the court were going to struggle to respond to Point 23 and the schedule, not participate in the other aspects of the assessment process: see the Judge’s comments at [24] and [25] of his judgment at [43] above.
123. The Judge specifically held that his criticism of the Appellant’s solicitor in this regard “pale[d] into insignificance” compared to his frustration at the parties’ lack of communication about the schedule; and the issues over the bundle did not prevent all the issues on the detailed assessment save for that relating to Point 23 being concluded on 6 August 2024 (notwithstanding the Judge and Mr Lyons mis-remembering this, as noted at [52] above).
124. This point is underscored by the Judge’s 8 November 2024 judgment on costs, where he observed that the issues over the schedule had led to “an unnecessary adjournment”: see [11] of the costs judgment at [58] above.

125. For these reasons I do not consider that the Judge's decision to permit the Respondent to rely on Point 23 and the schedule can be buttressed by the argument that there was a need for an adjournment in any event. The only reason the detailed assessment went into a third day was because the Judge declined to strike out Point 23 and allowed the Respondent to rely on the schedule.
126. The Respondent had been on notice that the Appellant's position was that Point 23 was not compliant with paragraph 8.2(b) or *Ainsworth* since 4 January 2024, some 7 months before the detailed assessment hearing: see [24] above. The Respondent had taken no steps at all to remedy the position until 2 working days before the hearing. This breach of paragraph 8.2(b) is even more egregious than that in *Ainsworth*, where there had been a period of 5 months' notice of the issue, without it being remedied; and that in *Celtic* where the Supplementary Points of Dispute had been provided around 1 month before the hearing: see [50] and [101] above.
127. The reason given by the Respondent for the delay in serving the schedule – namely that he hoped that the parties would achieve settlement and avoid the need for a hearing – was, with respect, entirely circular: settlement was surely much more likely to be achieved if the Appellant understood the case against him in detail. Indeed, as Asplin LJ observed in *Ainsworth* at [38], that is “the very purpose” of Points of Dispute and thus of paragraph 8.2(b): see [16] above.
128. The Appellant had sought a 2 day listing for the detailed assessment hearing. But for the issues over the schedule, that would have been adequate.
129. The Judge's decision meant that the detailed assessment process continued into a third day, leading to additional costs and delay. It is hard to see how that was consistent with the requirement in the overriding objective to deal with the case “justly and at proportionate cost”. I say this bearing in mind that this requirement includes “saving expense”, dealing with cases “expeditiously” and “enforcing compliance with rules, practice directions and orders”: CPR 1.2(2)(b), (d) and (g). The streamlined nature of detailed assessment proceedings was also relevant: see [116] above.
130. The overriding objective, of course, requires that cases be dealt with “fairly”, but here, the unfairness to the Respondent that would be caused by Point 23 being struck out and the schedule disallowed was entirely of his own making. It has been specifically recognised in *O'Sullivan* and *Ainsworth* that parties conducting the detailed assessment process in such a way face those risks: see [70] above.
131. The decisions in *Ainsworth*, the other authorities summarised at [69] above, *Edinburgh* and *Celtic* are, of course, fact-specific. However, they illustrate the importance attached to the mandatory elements of paragraph 8.2(b) and the purpose of the detailed assessment procedure. So does the fact that Mr Lyons was not able to take me to a single other case in which a substantial variation to Points of Dispute, this late in the day, has been permitted.
132. I have been very conscious in my deliberations of the limited role for an appellate court when considering an appeal against a discretionary case management decision, as reflected in the authorities summarised at [62]-[65] above. I have nevertheless concluded that the Judge's refusal to strike out Point 23 and his decision to allow the Respondent to rely on the schedule was wrong.

133. For the reasons set out at [114]-[131] above, the Judge’s decision failed to give sufficient weight to the requirements of paragraph 8.2(b) and *Ainsworth*. It failed to ensure that the paragraph 13.10(2) power was exercised in accordance with the overriding objective as required by *Edinburgh* and *Celtic*.
134. In my judgment, therefore, the Judge erred in principle in these various respects and did not balance the various factors “fairly in the scales”, such that it is appropriate for this court to intervene.
135. These aspects of Grounds 1 and 5 therefore succeed.

Conclusion

136. For all these reasons this appeal is allowed.

Judgment amended under CPR 40.12 on the afternoon of 3 July 2025 to correct the name of the Appellant’s solicitor