



Neutral Citation No: [2025] EWHC 2071 (SCCO)
Case No: SC-2021-APP-000661

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 04/08/2025

Before :

COSTS JUDGE NAGALINGAM

Between :

DIAGNOSTICS.AI LIMITED

Claimant

- and -

DENTONS UK & MIDDLE EAST LLP

Defendant

Shaman Kapoor (instructed by **Grosvenor Law Ltd**) for the **Claimant**
Jamie Carpenter KC (instructed by **Dentons UK & Middle East LLP**) for the **Defendant**

Hearing dates: 12/06/2025

Approved Judgment

This judgment was handed down remotely at 10.15am on 04/08/2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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COSTS JUDGE NAGALINGAM

COSTS JUDGE NAGALINGAM:

1. Whilst this application arises from an ongoing solicitor and client dispute as to costs, the parties have at various stages made genuine efforts to either settle the dispute or otherwise work collaboratively to progress the matter.
2. It is noteworthy that many of the orders to date have been agreed by consent and requested stays were permitted to allow for periods of negotiation.
3. Unusually, but as a consequence of the consent terms agreed, no inspection stage was directed prior to service of points of dispute.
4. The points of dispute produced run to a combined 72 pages. The replies in response run to 4 pages, seeking to address preliminary points only. The bills in dispute combine to exceed £2m even after accounting for the issuance of a considerable credit note.
5. It seems that the Defendant's failure to provide any replies at all to the item by item points of dispute was an unexpected development. In many instances, the Claimant has made proposals, and/or otherwise asked for more information.
6. The Claimant's expectation was those offers would be responded to, or further information provided where requested.
7. The Claimant argues that absent any form of reply (other than a blanket refusal to accept any reduction) matters are no further forward in terms of breaking the negotiation deadlock.
8. The Claimant also wishes to be clear that their application does not seek to include directions for another round of points of dispute. They have, in some detail, already set out their objections.
9. Instead, the Claimant seeks inspection in circumstances where the alternatives would be further and better replies, or await the detailed assessment hearing – at which presumably the costs judge will be invited to consider the bundle/s of Defendant files in respect of each disputed item and assess the same.
10. The precise terms of the draft order sought are:

“The Defendant shall provide the Claimant's lawyers with facilities for the inspection of the Defendant's files in relation to the work described in the bills.”
11. The Form N244, point 6, sets out:

“The Claimant seeks inspection of the files limited only to the work described within the bills to a) assist with any further settlement negotiations and/or b) to assist with preparation for and ability to assist the Court with relevant submissions at the Detailed Assessment, as well as narrowing any issues or disputed items as far as possible.”
12. The application and draft order, when read together, seek inspection limited to the work described in the bill. The purpose of the application is to narrow the areas of

dispute in order to aid negotiation, and to assist the court and future detailed assessment hearing by avoiding oral submissions which would otherwise be purely inquisitorial in nature.

13. On behalf of the Defendant, leading counsel set out an argument that the circumstances as presented give rise to only one procedural mechanism by which I may order inspection, and that the application has been drafted in terms which are too broad to give rise to that mechanism such that the application should be dismissed and the Claimant may try again with a fresh application if they wish.
14. There is no evidence before me that the Defendant has ever expressed any willingness to engage in how inspection may proceed. In this regard the Defendant has adopted an all or nothing response, suggesting that not only does the court not have the procedural tools available to it to make the order sought (in these circumstances), but that even where those tools were available, the court should not exercise its discretion to make any such order.
15. In terms of discretion, I am not persuaded by any of the Defendant's arguments, having had regard for Ms Caswell's witness statement dated 6 June 2025 and leading counsel's skeleton argument dated 9 June 2025.
16. Whilst I accept that the breakdowns of costs descend into *some* detail regarding work done on documents, there are also large amounts of time in the main body of the bill where it is only clear what date the work was done and how long it took.
17. Paragraph 17 of Ms Caswell's statement does nothing more than state what is required when preparing *any* file for inspection. The fact that some time will be consumed in filleting the papers for documents which (for a variety of reasons) the Claimant (or their appointed legal representative) is not entitled to see, is not of itself justification to deny an opportunity for inspection.
18. Amongst the reasons given against ordering inspection are "...that some emails and documents pertaining to other client matters have been filed on the File in error". If that is the case, clearly removal of the same would be at the Defendant's own expense.
19. The Defendant's time estimate of how long it will take them to isolate those parts of their file described within their own breakdowns is troubling. Clearly those very same parts must have been identified to prepare the breakdowns, and one would not ordinarily expect a practice of the Defendant's stature to keep disorganised files.
20. Thereafter, the categories of documents the Claimant is not entitled to are uncontroversial. The application does not seek to override the "Confidentiality Order" (as since amended). Further, one would expect documents to which the Confidentiality Order applies to have been kept in a separate, confidential file.
21. Further, privileged documents relating to the parties' costs dispute clearly fall outside of the remit of the application as drafted, and ought not to be a time consuming removal exercise in any event.

22. Contrary to any concern of the Defendant, the application does not seek “documentation which does not relate to the Claimant”.
23. Finally, if there are “confidential (and potentially privileged) internal working documents” then those too would be excluded from inspection unless the very production of those documents were for the Claimant’s benefit and charged for accordingly.
24. In any event, even if I were to accept the higher of the Defendant’s estimated costs of inspection then I observe that those sums are dwarfed by the principal fees in dispute. I also observe that those same costs would by and large be incurred in preparing the file for detailed assessment.
25. I also consider that the Defendant is either hugely pessimistic or otherwise adopts an entirely unrealistic stance as to their anticipated costs in providing facilities for inspection.
26. Further, I do not share the Defendant’s optimistically held view that were I to direct a preliminary issues hearing at this stage that it would lead to the compromise of the dispute. The parties have been in negotiations for years at this stage, and if anything it is the Claimant’s application which presents a realistic way forward.
27. Inspection may either demonstrate to the Claimant that their prospects of achieving reductions are low, or cause the Defendant to reflect on the extent to which their work can be demonstrated at all.
28. Leading counsel quite rightly observed that replies are optional, and that where a response was not forthcoming it is taken to mean no concession is accepted. However, a refusal to agree to inspection in combination with a refusal to provide any response to the item by item objections does not serve the overriding objective and in my view makes the requirement for a very lengthy detailed assessment hearing inevitable.
29. In other words, I consider the Defendant’s stance and conduct to be somewhat obstructive whilst claiming in correspondence a desire to compromise.
30. Leading counsel helpfully confirmed that for the purpose of this application the Defendant was not exercising a lien over its papers. However, that is not particularly surprising in circumstances where the Defendant holds sufficient payment and monies to cover the sums to be assessed.
31. Without speculation or inference, it appears that the instruction of leading counsel has caused the Defendant to focus submissions today on jurisdiction. I suspect leading counsel has no doubt recognised the weaknesses in the Defendant’s merits arguments and thus focused on attacking the quality of the drafting of the application and the procedures available to the court.
32. It is of course not the role of the court to fix a defective application. However, nor is justice served by striving to find reasons to interpret an application only in a way which might result in its dismissal.
33. In the first instance, I do not consider the application to be defective.

34. The application is not seeking or asserting any right to inspect documents which are the solicitor's property.
35. Leading counsel, at paragraph 17 of his skeleton argument, states "There appears to be no example in the case law of a court ordering disclosure or inspection of the entirety of a solicitor's file in Solicitors Act proceedings under CPR Part 31.". However, that is not the application before the court.
36. The Claimant is very clear that they are only seeking inspection limited to the work described in the bill. That is work for which the Defendant has either already been paid for or otherwise holds sufficient client monies to discharge any balance following a detailed assessment of fees. Further, and in any event, leading counsel has confirmed the Defendant is not seeking to exercise any lien over its papers.
37. As to directions in Solicitors Act assessments "often" providing for inspection, the Defendant presents no evidence as to why they say such orders are "invariably made by consent".
38. Further, the fact that the commentary in 'Friston on Costs' and 'Cook on Costs' doesn't address inspection *after* points of dispute is not persuasive in terms of leading counsel's binary invitation to conclude that the application is justified under CPR 31.12(1) or not at all.
39. In terms of the application now before me, seeking a direction for inspection in assessment proceedings under the Solicitors Act 1974, I agree with the approach of Master Brown in the matter of *Swain*, as summarised at paragraph 41 of *Hanley v JC&A*:

"41. In particular (i) the court had the power in the course of a s 70 assessment to order the inspection of relevant documents held by the solicitors. This was commonly ordered before preparation of Points of Dispute; and was not limited to documents belonging to the client; (ii) it would be odd if there were a pre-action limitation on the power under the inherent jurisdiction, as it would frustrate potential settlement; (iii) s 68 should be seen in the context of the court's jurisdiction under Part III of the Act; (iv) "in the spirit of CPR 31.16" there was a reasonable basis to consider that transparency would improve the prospects of settlement; (v) the decision in Taggart was consistent with practical considerations. It was doubtful that clients, particularly those bringing low value personal injury claims, would appreciate the need to retain documents for any length of time; (vi) by analogy with the rationale for the requirements of a "statute bill" (Gwillim), copies of the requested documents were reasonably needed in order to make an informed decision as to whether or not to issue a s 70 challenge; (vii) the client would be at a further procedural disadvantage without a copy of the CFA: PD46 para 6.4."
40. Whilst I acknowledge leading counsel argued this decision was fact sensitive, with a central dispute arising as to the retainer, I consider the principles are sound in terms of the court's authority in a Solicitors Act assessment to order inspection.
41. It is an entirely different question as to the exercise of that discretion to make an order for inspection, and on what terms.

42. The detailed analysis of Ritchie J in *Edwards v Slater & Gordon UK Ltd* [2022] EWHC 1091 (QB) recognises that disclosure (and by extension inspection) is a “case management decision.. and if they arise in a Part 8 claim, issued in the SCCO before the assessment order (or after), they still need to be case managed fairly, proportionately and efficiently.”
43. At paragraph 114 of *Edwards* (note SOCA is a solicitor-own client assessment):
- “114. After the issue of the Part 8 claim form, at a case management hearing or on paper, an order for an assessment (which in these claims will be a SOCA) will be made by the CJ (for Part 8 claims issued in the Costs Office). The usual procedure for SOCAs is set out in CPR r 46.10. The solicitor serves a bill of costs with the breakdown thereof; the client usually inspects the file and then must serve points of dispute; the solicitor serves a reply and either party then requests a hearing date for the assessment.”
44. See also paragraph 19 of *Edwards*:
- “119. Once a SOCA has been ordered, CPR r 46.10 gives the general procedure as set out above. But I see and know of no reason why pleadings or other case management directions should not be given after the SOCA order, should the CJ consider them necessary then.”
45. The Court, at paragraphs 124 and 125, set out the route by which an assessing court may order disclosure in a Solicitors Act assessment:
- “124. I note here that in the CPR there is no express rule set out in Part 8 dispensing with the disclosure provisions of CPR Part 31. So the defendant’s submission that Part 31 does not apply to the claimants’ Part 8 claims for SOCAs rests on the exclusion of CPR Part 31 by an implication of some sort.
125. I take into account that the CPR generally and the Solicitors Act 1974 (as amended on countless occasions) do not expressly exclude the court’s powers given under CPR Part 31 to order disclosure in Part 8 claims or in SOCAs.”
46. For the purposes of this application, the Claimant is seeking facilities to inspect and is not seeking disclosure in unconstrained terms.
47. It seems to be, put at its highest, the Defendant seeks this application be dismissed merely because the Claimant omitted a reference to Part 31 in their N244. I do not consider that to be fatal to the application. Further, the Defendant proceeds on the misapprehension that the Claimant is seeking unfettered disclosure. They are not.
48. In my view, the Court of Appeal in *Edwards* has confirmed that the court’s powers under CPR 31 may be utilised to order disclosure / inspection in solicitor-own client assessments.
49. In addition, and if necessary to be considered exclusively rather than mutually with the authority above, CPR r.3.1(2)(p) provides the Court with general powers of management, including the power to “take any other step or make any other order for the purpose of managing the case and furthering the overriding the objective,

including hearing an Early Neutral Evaluation with the aim of helping the parties settle the case.”

50. I do not consider it would be a misuse of court powers to order inspection at this stage procedurally, provided the exercise of that power is well founded and sufficiently explained.
51. Having concluded that I have the authority to make an order for inspection, I turn to the question of whether to make that order and on what terms.
52. I have no concerns that the application is seeking anything other than limited inspection. The application specifies it seeks inspection “limited only to the work described in the bills.”
53. Addressing the section of leading counsel’s skeleton argument marked “Exercise of the power”, I consider the application is justified and I disagree it is unnecessary.
54. As to proportionality, it is a matter for the Defendant what resources they might wish to devote to preparing their papers for inspection. I have already passed comment above as to the manner in which I would have expected the Defendant’s files to already be arranged, and I would be surprised if the actual cost of inspection was anything near to the sums the Defendant has suggested.
55. I reject the assertion that this is an application “for inspection of D’s entire file”. I also reject the assertion that an application in terms “limited only to the work described in the bills.” can be construed as “far too wide”.
56. Leading counsel speaks of the inclusion of “documents which C has no reasonable need to see”. That is not what the Claimant has applied for and I heard no compelling argument why it would be unreasonable to see documents which are “limited only to the work described in the bills.”
57. In so far that might include documents already in the Claimant’s possession that has been addressed below and in the draft order attached to this judgment.
58. The Defendant seeks to criticise the Claimant for not making “any attempt to identify the particular issues raised by the Points of Dispute for which it is said that inspection is required.”. This line of argument completely ignores the fact that the replies are limited to the preliminary points only, and run to just 4 pages despite a claim for fees exceeding £2m and points of dispute with a combined length of 72 pages.
59. Had this been an application for inspection pre-points of dispute, the obvious answer would be that inspection is required in order to identify or narrow the issues. In this instance, the point of dispute provided the Defendant with an opportunity to narrow the issues. The Defendant’s stance has been to reject that opportunity at the replies stage, and then to frustrate the alternative of permitting inspection.
60. I consider the Defendant is reading too much into the impact of a change of representation for the Claimant. Yes, the Claimant’s original representatives consented to an order that points of dispute be prepared without an inspection stage first. However, that was at a stage where the parties still shared optimism for a negotiated settlement and a shared desire to minimise assessment costs.

61. However, I doubt very much the Claimant, whomever they instructed, could have anticipated such brief replies. Indeed, whether an inter partes or solicitor and client assessment, a four page response to 72 pages of objections (relating to fees in excess of £2,000,000) is highly unusual.
62. It is the absence of informative replies that has led to this application. Absent some intervening step, it is difficult to estimate how many days would be required for the detailed assessment hearing because the Defendant's position regarding all of the item by item challenges is simply unknown.
63. At present, a multi-day assessment seems inevitable. The Claimant considers that avoidable, subject to an inspection stage in lieu of better and more detailed replies.
64. I accept the bills as produced are, in part, detailed in the descriptions provided, and that this has no doubt assisted in the preparation of points of dispute. However, many of the objections necessarily raise enquiries (even in light of those descriptions) and/or making counter-proposals.
65. In either case the Claimant has been met with silence, hence they seek inspection to answer those questions for themselves.
66. There is no evidence that this application is tactical, as suggested by the Defendant. The Defendant is already in sufficient funds to discharge the sums owed and the Claimant, *if* their arguments for reductions are well founded, has nothing to gain in being kept out of their monies for any longer than necessary.
67. As to the fact that any negotiations have taken place at all, that is not a reason to dismiss this application. Clearly an impasse has been reached, and the court is invited to direct inspection on the dual bases that it may assist in achieving a compromise or otherwise narrow the issues at a detailed assessment hearing.
68. The Defendant is absolutely right to reflect that negotiations to date have taken place without any inspection whatsoever. However, it is also right that negotiations to date have failed, despite an apparent genuine appetite on the part of both parties to achieve a compromise.
69. In this context, the making of this application is not a "volte-face", as the Defendant would have it. Nor is it a "tactical step".
70. Further, the Defendant is plainly incorrect to say "the parties are presently a long way from any detailed assessment hearing" simply because a request hasn't been filed yet.
71. The Defendant is clearly ready for a detailed assessment hearing because not only do they invite me to dismiss this application, but at the same time they sought directions for the listing of a preliminary issues hearing.
72. In so far as leading counsel expressed concern as to the utility and proportionality of an inspection stage if inspection is ordered and the dispute is then settled, I do not share that concern.
73. It seems to be that the work the Defendant describes in the witness statement of Ms Caswell dated 6 June 2025 will either aid in settlement discussions, or otherwise be

necessary to prepare the Defendant's papers for filing in advance of a detailed assessment.

74. For the sake of avoiding any confusion, a preliminary issues hearing (which the Defendant has declared they are ready for) would represent the start of the detailed assessment. In that regard, the Defendant is wrong to assert that "the hearing of the General Points which D submits is appropriate would require considerably less in the way of documentation than a single hearing of all issues".
75. In advance of any hearing of the preliminary points of dispute and replies, I would still direct the Defendant's full supporting papers be filed with the court. In any event, the question of whether a preliminary issues hearing should be directed is yet to meaningfully arise.
76. I acknowledge the Defendant's criticism of the Claimant's failure to request a detailed assessment hearing to date. However, that criticism ignores the factual reality of the mutually expressed desire of both parties to exhaust settlement discussions, and further ignores the fact there is nothing preventing the Defendant having made the request.
77. Indeed, the Defendant is reminded that the original directions agreed between the parties included an express provision that *either* party may request a detailed assessment hearing after points of dispute had been served.
78. The much later consent order dated 1 August 2024 may have included a provision for the Claimant to "file Request for Hearing Date" but crucially, that is not an express term to request a 'detailed assessment hearing' and certainly did not prevent the Defendant filing such a request.
79. Further still, even if there were an arguable case that the Defendant was somehow precluded from making the request, there was nothing to prevent the Defendant from making an application for an unless order.
80. In all the circumstances my decision is to order inspection on the basis that the application may be interpreted as seeking inspection, that I have authority to exercise a discretion to order inspection, and I have elected to exercise that discretion.
81. Further, and contrary to the Defendant's arguments, I do not consider that inspection "should be limited to matters put in issue by the Points of Dispute".
82. Instead, I set out the parameters of the order below and direct the parties to a draft order my clerk has been directed to attach when sending out the draft version of this judgment.
83. There is a reasonable expectation that the Claimant will already be in possession of all written correspondence received from the Defendant, as well as any written responses to the same prepared by the Claimant. Whether by delivery or inspection, the cost of isolating for inspection copies of documents already in the Claimant's possession ought to be borne by the Claimant.
84. Otherwise, the costs of inspection will be costs in the assessment.

85. The costs of the Claimant's application for inspection shall be paid by the Defendant, to be summarily assessed if not agreed. In that regard, a short remote hearing may be listed upon a written invitation of either party for that summary assessment exercise to take place.