



Neutral Citation Number: [2026] EWHC 968 (KB)

Case No: KA-2025-000154

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ON APPEAL FROM THE SENIOR
COURTS COSTS OFFICE (Costs Judge Whalan)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24th April 2026

Before:

THE HONORABLE MR JUSTICE KIMBLIN

Sitting with Costs Judge Nagalingam as an Assessor

Between:

VISHAL MEHTA

Appellant

- and -

HOWARD KENNEDY LLP

Respondent

Robin Dunne (instructed by JG Solicitors) for the Appellant
Dan Stacey and Chris Cooke (instructed by Howard Kennedy) for the Respondent

Hearing date: 17th April 2026
Draft circulated 21st April 2026

Approved Judgment

This judgment was handed down remotely at 2:30 pm on Friday 24th April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JUSTICE KIMBLIN

Mr Justice Kimblin:

Introduction

1. Mr Vishal Mehta was subject to a worldwide freezing order. He instructed Howard Kennedy LLP in that litigation. In related civil proceedings a US\$1 billion fraud was alleged. Howard Kennedy delivered 24 invoices to Mr Mehta over the period 22nd June 2022 to 5th May 2023 with a total value of £3,124,674.04, many of which have been paid. If those invoices are interim statute bills which are subject to the time limits in s. 70 Solicitors Act 1974 ('the 1974 Act'), then Mr Mehta is debarred from seeking assessment by the court of the reasonableness of those costs.
2. On 25th April 2025, Costs Judge Whalan handed down judgment on three preliminary issues which arose from Part 8 proceedings issued by Mr Mehta under the 1974 Act, seeking an assessment of the costs billed by Howard Kennedy: [2025] EWHC 1008 (SCCO). He found against Mr Mehta on those preliminary issues. Mr Mehta now appeals against that order to this court. The issues are the same as those before the Costs Judge, namely:
 - i) Were the invoices delivered by the Defendant to the Claimant interim statute bills, or did they comprise a series of interim invoices delivered as part of a 'Chamberlain' bill which became 'final' with the delivery of the last invoice in May 2023?
 - ii) Further, or alternatively, was the retainer a Contentious Business Agreement ('CBA') within the meaning of ss59 to 63 of the 1974 Act and, if so, was it a 'fair and reasonable agreement'?
 - iii) Were some of the invoices 'paid' within the meaning of the 1974 Act? Further, or alternatively, can the Claimant demonstrate 'special circumstances' pursuant to s70(3) of the 1974 Act, such that it would be just to order an assessment?

First Issue: Statute bills?

Law

3. 'Statute bill' is a term which has been adopted to refer to an invoice which is rendered by a solicitor to a client and which falls within the scope of 1974 Act. The Act refers to invoices as 'bills', not invoices. Nothing turns on that difference. S. 70 provides for assessment of bills by reference to three time periods which are set out in the ss. (1) to (4). The scheme of the section is that: (1) there is an absolute right to assessment within one month from delivery of the bill; (2) between one month and 12 months after delivery, an application may be made for assessment, and; (3) after 12 months from delivery, assessment is only available if special circumstances are shown and the bill has not been paid, but if the bill has been paid, then there is an absolute bar to assessment 12 months after payment. The relevant subsections of s. 70 are:
 - (1) Where before the expiration of one month from the delivery of a solicitor's bill an application is made by the party chargeable with the bill, the High Court shall, without requiring any sum to be paid into court, order that the bill be assessed and that no

action be commenced on the bill until the assessment is completed.

(2) Where no such application is made before the expiration of the period mentioned in subsection (1), then, on an application being made by the solicitor or, subject to subsections (3) and (4), by the party chargeable with the bill, the court may on such terms, if any, as it thinks fit (not being terms as to the costs of the assessment), order—

(a) that the bill be assessed; and

(b) that no action be commenced on the bill, and that any action already commenced be stayed, until the assessment is completed.

(3) Where an application under subsection (2) is made by the party chargeable with the bill—

(a) after the expiration of 12 months from the delivery of the bill, or

(b) after a judgment has been obtained for the recovery of the costs covered by the bill, or

(c) after the bill has been paid, but before the expiration of 12 months from the payment of the bill, no order shall be made except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the assessment as the court may think fit.

(4) The power to order assessment conferred by subsection (2) shall not be exercisable on an application made by the party chargeable with the bill after the expiration of 12 months from the payment of the bill.

4. I adopt the explanation of the contractual nature of statute bills given by Spencer J. in *Bari v Rosen* [2012] 5 Costs LR 851 at [15]:

“The basic principle is that a solicitor’s retainer is normally an entire contract under which the solicitor is entitled to claim remuneration only when all the work has been completed or the retainer has been terminated. A solicitor is not entitled generally to any payment on account of his costs other than disbursements. However, a solicitor may contract with his client for the right to issue statute bills from time to time during the currency of the retainer. Such bills are known as “interim statute bills”. They are nevertheless final bills in respect of the work they cover, in that there can be no subsequent adjustment in the light of the outcome of the business. They are complete self-contained bills of costs to date.”

5. Therefore, whether a bill is a statute bill or not requires that there is a contract to that effect. The core of the first issue in this case is the interpretation of the retainer documents. In that regard, the principles of interpreting a contract are well known: *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] WLR 896, particularly at [912] per Lord Hoffman. The meaning of the retainer documents is that which a reasonable reader would understand, having all of the background knowledge of the parties at the time that the retainer was entered into on 1st June 2022. The background includes anything which would have been reasonably available to the parties. Of course, the background excludes any negotiations which preceded the contract. In this case, I was not referred to any such background. Rather, the only dispute was as to the proper use of ‘Notes’ which accompanied the retainer documents, to which I shall turn, shortly.
6. In *Ivanishvili v Signature Litigation LLP* [2024] EWCA (Civ) 901; 1 WLR 4636 the cases on statute bills under the 1974 Act were reviewed by Coulson L.J., with whom Lewison and Nugee LLJ. agreed. The Court of Appeal upheld the Costs Judge, finding that a series of interim bills rendered in commercial litigation were not statute bills because they were subject to an agreement for an uplift which depended upon particular outcomes in the litigation. The Court of Appeal reviewed the authorities in respect of statute bills and the effect of s. 70, explaining:
 - i) Either by natural break in the litigation or by agreement, a solicitor may deliver an interim invoice, but it is for the solicitor to demonstrate that an interim invoice is in law an interim statutory bill: see *In re Romer & Haslam* [1893] 2 QB 286, 298—299; [31]
 - ii) A statute bill must be final and complete; [32-35; 48; 52];
 - iii) The timescales are tight and put the client in an impossible position in which he either challenges the very solicitor’s costs who is representing him in hard fought litigation, or changes solicitor with the disruption to his case which that entails (see *Harrod’s Ltd v Harrod’s (Buenos Aires) Ltd* [2014] 6 Costs LR 975, Jacob J.); [27]
 - iv) The effect was impractical and unfair (see *Bari v Rosen*, supra); [27]
 - v) The Court of Appeal has regularly criticised s. 70, which merits consideration of revision so that it reflects modern costs provisions and practices (see *Menzies v Oakwood Solicitors Ltd* [2023] 1 WLR 4495, per the Master of the Rolls at [5], citing *Belsner v Cam Legal Services Ltd* [2023] 1 WLR 1043 and *Karatysz v SGI Legal LLP* [2023] 1 WLR 1071); [28].

The Contract

7. I adopt the summary of the retainer which was set out by the Costs Judge, adding subparagraph numbers to section/paragraph 5 of the Terms of Business which address ‘DELIVERY OF BILLS’:

“8. The retainer is set out in the ‘Engagement or Retainer Letter’ dated 1st June 2022 and the Defendant’s incorporated ‘Terms of

Business’. The Defendant also refers to ‘General Notes Attached To Our Terms Of Business’.

9. The Retainer Letter dated 1st June 2022 contains the following relevant provisions:

7. OUR CHARGES

...

The Timing of our Bills

We will send you bills on a regular basis. This will generally be on a monthly basis. We may bill you at any time for disbursements or specific expenses incurred already, or shortly to be incurred. The status of our bills is explained in paragraph 5 of our Terms of Business.

As to the Terms of Business:

I attach a copy of our present Terms of Business (March 2020) which now governs all our work for clients. ...The Terms of Business should be treated as incorporated into this letter, and attached to them are General Notes which do not form part of our contract but give you some useful information and explanations.

10. The Terms of Business contain the following relevant provisions:

1. CALCULATION AND SCOPE OF OUR FEES

We are entitled to be paid reasonable remuneration for the work that we do for you. Time spent is usually the most important single element in calculating our fees, but they will take account of the complexity, difficulty and novelty of the matter, the skill, specialised knowledge and responsibility required, the number of documents involved, the place where the work has to be done, the value of the transaction and the importance of the matter to you.

...

5. DELIVERY OF BILLS

(1) Bills will be rendered from time to time during the course of our work, and the timing of bills will depend on the work we have done and the nature of that work. For example, bills may be rendered even if the matter is not completed, when a significant amount of work has been carried out, or if significant disbursements have been incurred. Bills will usually be rendered

on a monthly basis or more often in litigation and in some other matters, where a significant amount of work has been carried out.

(2) Unless otherwise stated, each bill issued to you is a final bill covering the total charge for the work carried out within the stated period. Further, unless otherwise stated, each bill has the status of a statute bill which means that in the event of non-payment we are entitled to issue proceedings for recovery through the courts after the expiration of one month from the date of delivery of the bill. A statute bill also gives you certain rights to have the bill assessed by the court under the Solicitor's Act 1974 if you consider that you have been incorrectly charged. The rights to have a bill assessed are however subject to time limits and lost if action is not taken by you promptly. You should note that your right to have a bill assessed is separate from your right to complain as set out in Section 31 of the Terms of Business. If the "value" or "importance" element is achieved only as a result of the completion or final settlement of the case, and has not been taken into account in earlier bills, we reserve the right to take it into account in our concluding bill. We may also include in a later bill any specific expenses or disbursements incurred in an earlier period but not previously billed.

...

(5) It is usual practise for us to send to you regular statements showing bills that we have raised and that has yet to be paid. This may include recently raised bills. We will usually send a statement to you around the 6th day of the month but this may vary.

11. The 'General Notes Attached To Our Terms Of Business' include the following:

These General Notes do not form part of our contract with you, but we hope they give you useful information about our work for you.

...

C. Our Fees

We may include in our fees a value element based on the amount or value of any money or property involved or the importance of the matter. This might be the case, for example, in property transactions, in the administration of estates and in commercial transactions. This value element (if applicable) will be mentioned in our Engagement Letter or discussed with you in advance. It will never be greater than the scales approved by the Law Society or the courts, where applicable."

8. The Costs Judge held that each of the invoices was a statute bill. The key factors in his analysis were as follows. First, the Terms of Business state clearly that “each bill issued to you is a final bill covering the total charge for the work carried out within the stated period”. Second, the Terms of Business state that “each bill has the status of a statute bill”, unless otherwise stated. Third, the Terms of Business refer to the solicitor’s right to sue.
9. The Costs Judge went on to consider Mr Dunne’s submissions. Mr Dunne drew particular attention to the terms at Part 1 as to fees being set by reference to value and importance and at Part 5(2) which provided that “If the ‘value’ or ‘importance’ element is achieved only as a result of the completion or final settlement of the case, and has not been taken into account in earlier bills, we reserve the right to take it into account in our concluding bill.” This term was central to Mr Dunne’s argument. By retaining a right to revisit the charges raised in the invoice, the solicitors have effectively qualified the finality and completeness of these bills, so that they ceased to be interim statute bills, per *Ivanishvili*.
10. The Costs Judge rejected this submission. He found that the reservation at Part 5(2) was not relevant on the facts. He accepted Mr Stacey’s submission that there never was a value or importance element in the case. There was no agreed uplift nor any conditional fee (cf *Ivanishvili*).
11. I agree with the Costs Judge’s reasons, to which I would add that value and importance term within Part 5(2) is conditional on two matters. First, it is conditional on ‘value’ or ‘importance’ being achieved only as a result of the completion or final settlement of the case. This is a term of the contract which may or may not apply, depending on the type of work being undertaken and the way in which the fee structure is agreed. In this case, the retainer was not concerned with a particular outcome which would amount to ‘success’, nor were there any conditional or contingent fees of payments. Second, it is conditional on the ‘value’ or ‘importance’ not being taken into account in earlier bills. Per Part 1 of the Terms of Business, the level of fees is explained as reflecting a number of factors, *including* value and importance. An hourly rate may be set having regard to these factors and so be included in monthly bills.
12. I would also add that Section 8 of the retainer letter concerns “Payments on account”. It asks for £40,000 and makes clear further payments will be requested. It warns Mr Mehta that “We are bound to apply funds received from you on account to settle any bills we may render to you.” It is therefore clear that funds on account would be used to pay bills which would be delivered, usually monthly. The terms and details of those bills was not a disputed issue in this case. Rather, the focus was on the agreement rather than the bills, which Costs Judge Nagalingam advises is a common dispute.
13. Mr Dunne’s submissions proceed on the basis that there is a reservation of a right to bill again and for additional fees in respect of work which has already been billed, and that such reservation applies to all retainers. In my judgment, that is not correct. The conditions for the value and importance reservation were not a part of the retainer in this case. There is no hint of any type of reservation in the retainer letter, and Part 30 of the Terms of Business state that the retainer letter prevails in the event of conflict. There is no conflict, in my judgment, but this does serve to emphasise the point that the retainer letter does not suggest any conditionality in the fee agreement.

14. The Costs Judge considered the significance of the Notes. Consistent with the clear statement at the top of that document, the Notes were not a part of the contract. They were however relevant to the interpretation of the terms of the contract. Mr Mehta was accordingly aware from the outset that the additional fee reservation was only applicable if it was discussed in advance or referred to in the Engagement (Retainer) Letter and, insofar as no such discussions took place with the solicitor, it did not apply.
15. Turning to the invoices which were delivered to Mr Mehta, they contained the necessary features of a statute bill, being both detailed and stating the rights available under the 1974 Act. Taken together, the terms and the facts of the case established that the invoices are statute bills.
16. In my judgment, the Costs Judge applied the principles of contractual interpretation correctly, in the context of the 1974 Act. He was correct to hold that the Notes did not form part of the contract, but that they were relevant to its interpretation because they comprised material on which Mr Mehta elected to sign the retainer and enter the contract. There was no error of approach. I do not accept Mr Dunne's submission that the Notes were extrinsic material which was irrelevant because that submission is contrary to the established approach in *West Bromwich*.
17. The Costs Judge was correct to find that this was not a case in which there was a value or importance uplift or similar arrangement which rendered the invoices to be requests for payment on account rather than final and complete statements of the work done and the payment sought.
18. I do not find the retainer to be ambiguous by reason of the statement that each bill is a statutory bill but is not necessarily a final bill in the matter. This term is simply a consequence of billing every month. It explains that the bill is final for the month but not for the case. This is obvious for any case which lasts for more than a few weeks. Another way of putting it would be that it is not necessarily the last bill in the matter, as is reflected in Part 5(2) by use of the phrase "...we reserve the right to take it into account in our concluding bill."
19. Mr Mehta accepted the terms of a retainer which explained the way in which he would receive invoices and which stated that they would be statute bills. The invoices themselves explained that this was so. For the reasons which the Court of Appeal has stated several times, consistent with first instance observations, the scheme of s. 70 is problematic from the point of view of somebody in Mr Mehta's position. The scheme of access to independent review of a solicitor's fees is impeded by the need for the client to maintain a positive relationship with the lawyers who are dealing his case. However, those policy issues were not for the Costs Judge to resolve, nor do they form a part of this court's role. The Costs Judge answered the preliminary point before him correctly and by cogent reasons. Therefore Ground 1 of the appeal fails.

Second Issue: Contentious Business Agreement?

20. The Costs Judge held that the retainer was not a Contentious Business Agreement under s. 59 of the 1974 Act, to which the time limits under s. 70 do not apply. Ground 2 on the Appellant's Notice is that the judge was wrong to find that the retainer is not a Contentious Business Agreement within the meaning of the Solicitors Act 1974.

21. The Court of Appeal is to hear an appeal on the issue of whether a retainer containing an hourly rate is a contentious business agreement, listed for 13th May 2026: *Barnes v BDB Pitmans* (CA-2025-000773). Having heard submissions on how to proceed in this appeal, given that the Court of Appeal will shortly hear argument on issues which at least strongly overlap with the issues in this appeal, I decided to stay consideration of this issue behind the *Barnes* case. I do not see any impediment to informing the parties of my decision on the first and third issues and I should not delay communication of those decisions without good reason.
22. I deal with the future conduct of this appeal in my Interim Conclusions.

Third Issue: Payment and Special Circumstances

Payment (Ground 3)

23. The first part of this issue is concerned with the meaning of ‘payment’ in s. 70(4) of the 1974 Act. The Supreme Court in *Oakwood Solicitors Ltd v Menzies* [2024] UKSC 34; 1 WLR 4745 held, at [71]:

“...the authorities show a long established understanding as to what payment by deduction or retention requires in this context both generally and with specific reference to section 70 and its statutory predecessors. The need for a settlement of account has been consistently stated in cases from *In re Bignold* in 1845 to *Harrison v Tew* in 1987. This requires an agreement to the sum taken or to be taken by way of payment of the bill of costs. Such an agreement may in an appropriate case be inferred from the parties' conduct and in particular from the client's acceptance of the balance claimed in the delivered bill. The authorities therefore provide strong support for the Client's case of the need for an agreement as to the amount to be paid in respect of the bill of costs and that mere delivery of the bill does not suffice.”

24. A payment by a third party at the direction of or with the knowledge of the client can indeed be payment for the purpose of s. 70: *Re Jackson* [1915] 1 KB 371 14, cited at [67] of *Menzies*.
25. Mr Dunne’s argument is founded in the fact that some invoices were paid from a variety of sources including third party companies and by Hogan Lovells in respect of an adverse costs bill. These, Mr Dunne submits, do not amount to Mr Mehta paying Howard Kennedy’s bill. Only Mr Mehta is a signatory to the retainer and he is the party chargeable for s. 70 purposes.
26. A further example is Bill 445657 which is said to be paid in full yet payment of £80,000 is said to have been made on the same day as the bill being raised. That cannot satisfy the *Menzies* criteria. It is not explained how or why they were part paid from client account and part paid from office and which entity paid which elements of each. This issue was not considered at all by the Costs Judge.
27. The Costs Judge held that all payments were made in accordance with the court’s provision and scrutiny in the WFO. He found nothing irregular or ineffective in

payments from a third or nonchargeable party, so long as these payments were made with the knowledge and consent of the client. The witness statement adduced in support of Howard Kennedy's position established these payments were made with Mr Mehta's knowledge and consent.

28. I asked Mr Dunne about the consequences of his submission. If his argument is correct, does it create an easy mechanism to avoid the terms of the agreement which the client has entered into, namely to ensure that payments are made by some legal entity other than the person signing the retainer? I think that there is such a risk and that would have a large impact on the scheme of s. 70. For this further reason, I do not accept Mr Dunne's argument.
29. I have no good reason to interfere with the Costs Judge's findings of fact, nor his application of the law. Moreover, they are in my judgment correct. Mr Dunne's argument is artificial and unsupported by any factual context which suggests anything other than Mr Mehta causing his liabilities to be discharged from the variety of sources at his disposal. It would produce counter-intuitive results, contrary to the scheme of s. 70. Ground 3 and this part of the third issue is without merit and fails.

Special Circumstances (Ground 4)

30. The second aspect under this issue is whether the Costs Judge was correct, or not, to hold that there were no special circumstances which warranted assessment of the bills: s. 70(3) of the 1974 Act.
31. The Costs Judge set out the law and the essence of Mr Mehta's case in this way:

“In *Falmouth House Freehold Co. Ltd. v. Morgan Walker LLP* [2010] EWHC 3092 (Lewison J, having reviewed the case law relevant to special circumstances, stated (at paragraph 13) that:

Whether special circumstances exist is essentially a value judgement. It depends on comparing the particular case with the run of the mill case in order to decide whether a detailed assessment in the particular case is justified, and despite the restrictions contained in section 70(2).

Special circumstances do not have to be exceptional circumstances. As CJ Rowley confirmed in *Masters v. Charles Fussell & Co. LLP* [2021] EWHC B1 (Costs) (paragraph 60), they can be established by something out of the ordinary course, sufficient to justify departure from the general position under s.70 of the 1974 Act. The assessment requires invariably consideration of the circumstances of the particular case.

In *Raydens Ltd v. Cole* [2021] 7 WLUK 539, CJ Leonard, in citing with approval the guidance of Lewison in *Falmouth*, added (paragraph 20) that:

In many ways, a helpful test is to consider whether there is something in the fees claimed by the invoices, or in the circumstances in which they were charged, which “call for an explanation”. If they do call for an explanation or further scrutiny, that is a strong indication where there should be an assessment. This is not the time for the explanation to be given and evaluated in detail. That is the purpose of the assessment procedure and the scrutiny it provides.

The Claimant cites three potential special circumstances, defined as (i) estimates, (ii) size of the bill(s), and (iii) the fact of significant interim statute bills.”

32. The Costs Judge did not find that special circumstances existed because Mr Mehta received regular, itemised invoices with detailed accounts of the work done and so understood his ongoing liability. He paid almost 80% of the invoices.
33. Mr Dunne submits that the Costs Judge did not address whether the fact of rendering interim statute bills was itself a special circumstance. Likewise, the Costs Judge did not address the size of the bills nor updating on estimates of costs.
34. I am not persuaded that the Costs Judge failed to consider whether the fact of rendering interim statute bills was itself a special circumstance. The Costs Judge stated that Mr Mehta was neither unaware nor disadvantaged by the size of the payments demanded by the Defendant, as invoices were delivered on a regular, monthly basis. Those are sufficient reasons to address the point raised by Mr Dunne on behalf of Mr Mehta.
35. Further, in my judgment, Mr Mehta did receive appropriate estimates of future costs. On 30th June 2022 the Partner with care and conduct sent an email to estimate costs and to highlight how high they were: £11,000 plus VAT per day plus counsel’s fees. On 26th January 2023, in response to a request for a projection of costs, a summary estimate was provided in a total sum of £486,983 excluding VAT. There are other similar types of estimate such as that of 24th March 2023. In the light of these materials, the submission that there was a special circumstance which derived from the lack of estimates is not sustainable.
36. Whether or not there are special circumstances is an evaluative judgement. It is for the Appellant to show that the Costs Judge was wrong, and in my judgment that has not been shown. Accordingly, Ground 4 fails.

Interim Conclusion

37. We have not heard argument on the second issue. That issue will be heard, if needs be, after the Court of Appeal has handed down its judgment in the *Barnes* case. I invite the parties to seek to agree draft directions or an order within 14 days of judgment in the *Barnes* case.