Case No: 2YL05508

IN THE COUNTY COURT AT CARLISLE

Date: 12/06/2017

Before:

HIS HONOUR JUDGE PETER HUGHES QC

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Between:

PAUL DICKSON — **Claimant**

- and -

NFU MUTUAL INSURANCE SERVICES LIMITED — **Defendant**

&

BARBER & CO SOLICITORS.

Third Party as to costs

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Craig Ralph (instructed by **Mellor Hargreaves**) for the **Claimant**

Benjamin Morris (instructed by **Browne Jacobson**) for the **Defendant**

Andrew Williams (instructed by **Barber & Co**) for the **Third Party**

Daniel Metcalfe (instructed by **Abbey Solicitors Ltd**) for the proposed **Fourth and Fifth Parties**

Hearing dates: May 15th and 16th 2017

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APPROVED JUDGMENT

His Honour Judge Peter Hughes QC:

Introduction

1. On the 1st June 2011, two vehicles collided head-on on a road in Coalville, Leicestershire. One of the vehicles, a Peugeot car was driven by the Claimant, Mr. Dickson. The other was a tractor insured by the Defendant.
2. Mr. Dickson sustained relatively minor soft tissue injuries in the collision.
3. On the 9th July 2012, proceedings were issued in the County Court on the Claimant's behalf by a firm of solicitors, Mellor Hargreaves. Attached to the Particulars of Claim was a medical report from a Dr Zahir Ali.
4. By that date, the NFU had already agreed to settle Mr.. Dickson's claim with another firm of solicitors based in Preston, Barber & Co (Barber hereafter), for £1,125 on a 50:50 liability basis. Barber had submitted a medical report in support of the claim from a Dr Laxmi Patel, dated the 2nd April 2012.
5. The NFU eventually filed a Defence to the Mellor Hargreaves claim. It included the following paragraph –

   > *"Further, the Claimant has served two different Claim Notification Forms (CNFs) from two different solicitors. The first, from Barber & Co Solicitors, is dated 20th September 2011 and has been signed by the Claimant. The second, from Mellor Hargreaves (the solicitors on the Court Record as acting for the Claimant), is dated 17th January 2012 and has been signed by the solicitors on behalf of the Claimant. There are inconsistencies between those CNF's."*

6. The Defence was not filed until the 30th July 2014, two years after the Particulars of Claim. In the intervening period, attempts had been made to ascertain the facts.

7. It is now accepted by Barber that Mr. Dickson was never their client, that they had no authority to act on his behalf, that he was never medically examined by Dr Patel, and that the report was a forgery. That was not clear, though, when the Defence was filed and paragraph 1 asserted that the claim had already been compromised by Barber on the Claimant's behalf.
8. On the 27th January 2015, the Court directed that the case should be listed for trial on the preliminary issue of compromise. The hearing was supposed to be in November 2015, but the proceedings were further delayed, whilst investigation into the validity of the compromise continued.
9. On the 27th October 2016, the NFU issued an application pursuant to CPR 46.2 to join Barber as a Third Party for the purpose of costs. On the 23rd November 2016, District Judge Dodd granted the application. The hearing of the preliminary issue and issues as to costs were listed together in the multi-track list for the 15th and 16th May 2017, with a Pre-Trial Review before the trial judge on the 13th April, by telephone conference.
10. A few days before the PTR, on the 31st March 2017, Barber issued an application to join two former employees of the firm, Irfan Adam and Sazid Nanlawala, in the proceedings by way of a part 20 claim.
11. At the PTR, Barber sought to be represented by a costs' draftsman. He had no rights of audience and the parties objected to him being allowed to make the application. I upheld their objection. It was, in any event, not appropriate to hear the application by telephone conference, especially, as at that stage the proposed Fourth and Fifth Parties had been given no notice of the application. Accordingly, I adjourned it to the trial.
12. By the PTR, though, one important issue had been resolved. It was agreed, in the light of Barber's admission to this effect, that there had been no valid compromise of the claim through Barber. Judgment was entered for the Claimant in the sum agreed between the NFU and Mellor Hargreaves on behalf of the Claimant in the sum of £2,750. I

directed that the case would remain listed to determine the issue of liability for costs relating to the issue of compromise.

13. On the 15th May 2017, Mr. Metcalfe appeared on behalf of Mr. Adam and Mr. Nanlawala to oppose the application by Barber to join them in the proceedings. The application was also opposed by Mr. Ralph for the Claimant and Mr. Morris for the NFU.

14. I heard the application as a preliminary issue and refused to grant it, reserving my reasons to be incorporated into my judgment on the costs of the compromise. The hearing of the Part 46.2 application against Barber then proceeded by way of submissions, at the end of which I reserved my judgment.

The Chronology

15. To decide the issues in the case, it is important to have in mind the sequence of events as it emerges from the correspondence and other records, especially in relation to what has been going on since July 2012 when the NFU first realised that there appeared to be two firms of solicitors representing the interests of Mr. Dickson.

16. For ease of reference, I set it out below in schedule form[1].

DATE	PAGE	EVENT
19.09.11	271	Letter on B's file from B to C informing him that they understand from Imperium Claims that he wishes them to act for him on his claim. The reference on the letter is AB/NE/900013
	31	C says he had no dealings with Imperium or B
02.04.12	166 126	Invoice from Physio Link to B for medical report, later submitted to NFU (see first statement of Steven Kings)
01.06.12	206	B confirms settlement of C's claim by letter to NFU. Requests payment on account of damages and costs in sum of £2,325.76. Reference on letter is AB/SN/900013
09.07.12 16.07.12	127	Phone calls from B to NFU chasing payment
17.07.12	250	NFU write to B informing them that they have received

[1] Barber are referred to as B, Mellor Hargreaves as MH, the NFU solicitors, Brownee Jacobson, as BJ, Mr. Dickson, the Claimant as C, Irfan Adam as IA and Sazid Nanlawala as SN

		a claim in respect of C from a different firm of solicitors supported by a medical report from a different expert and that the injury details are inconsistent. B does not respond to letter but copy of it is in B's file. Neither does B chase payment further.
06.12.12	245	MH writes to B that C instructs them that he has had no dealings with B and requesting copy of their signed retainer with C
24.01.13	244	B replies to MH saying that their file had been closed due to lack of instructions but that "we can confirm that the client did attend a medical appointment with Dr Laxmi Patel on the 02.04.12". The reference on the letter is AB/YMB/900013. By this stage it is admitted in a statement of the 31st March 2017 made by Mr. Arif Barber, as sole practitioner and principal of B that IA and SN had left the firm "in late 2012". YMB is a reference to Yasin Bagas, a solicitor employed by B[2].
25.01.13	449	Mr. Bagas reiterated the content of the letter in response to a phone call from NFU
19.02.13	450	MH, by letter, request B to supply a copy of their complete file of papers including their signed retainer "to resolve any misunderstanding."
29.05.13	452	MH write requesting written confirmation by return that the only documents B hold relate to a computerised file and cannot locate any paper file. MH also request contact information for Physio Link.
10.07.13	454	MH, by letter, threaten to report B to the Legal Ombudsman unless they receive a response.
12.07.13	455	B write to MH saying that they cannot locate a paper file and hold only a computerised file and do not have computerised time records. In reply to the request for information about Physio Link, the letter states "the only document we have is the medical report. The instructions to Physio Link were sent via correspondence." The reference on the letter is AB/SN/900013, notwithstanding the fact that SN is no longer with the firm.
30.07.14	A8	BJ file NFU's defence to the claim alleging compromise
11.08.14	434	BJ write to B requesting, pursuant to Sec 35 of the DPA 1998, confirmation that C was their client, when he became a client, whether they had his express instructions to settle the claim, and whether, and if so, when and how he terminated his instructions.
05.09.14	436	B reply to BJ confirming the C had become their client on the 11th September 2011, stating that they did not have express instructions from him to settle the claim and that he ceased to be a client in March 2013 because of his failure to provide instructions and to co-operate. The reference on the letter is

[2] I understand Mr. Bagas to be still employed by Barber. He has provided no witness statement in these proceedings.

		AB/YMB/900013
16.10.14	18	C, in answer to request for further information, says that he never instructed B and that Dr Ali was the only medical expert he had seen.
27.01.15	21	DJ Dodd orders C to use all reasonable endeavours to obtain Physio Link/Dr Laxmi Patel's file and access to files of Imperium Claims and B by 10th April 2015.
09.03.15	414	MH writes to B requesting facilities to interview the person who had contact of the case, whom they believe to be Mr. Dasu, or failing that the principal of the practice, Mr. B, threatening to issue an application for non-party disclosure.
17.03.15	61	B replies stating that case had been handled by IA and SN, that they no longer worked for B, that Mr. Dasu had not had conduct of the case, and that they were unable to provide any further documentation. The reference on the letter is AB/YMB/900013
22.04.15	464	MH again request interview facilities for Mr. B
23.04.15	465	B declines request. No reasons are given.
19.05.15		MH writes to SRA about conduct of B
12.06.15	38	Dr Patel provides MH with witness statement stating that he did not examine C, that he had never worked for Physio Link, and that he was not the author of the report bearing his signature
22.07.15		SRA informs MH that it has decided not to take any further action against B
02.10.15	53	BJ solicitor provides statement producing Company House searches establishing that IA and SN and members of their families had been directors of Imperium Claims and Physio Link, that both companies traded from the same address, and producing the CNF filed by B showing IA as C's representative at B
15.10.15	A24	DJ Dodd stays the case for three months to enable parties to refer matter to Solicitors' Regulatory Authority
19.10.15		MH inform SRA of the stay and invite SRA to reconsider its decision
22.10.15		BJ write to SRA supporting MH and setting out concerns of NFU
24.1016	A48	SRA make decision to prosecute Mr. B inter alia for failing to adequately supervise unqualified fee earners in personal injury claims and in doing so allowing the creation of false medical reports and other documents.
03.11.16	496	BJ inform B by letter of application to join B and date of next hearing, stating that because of "the serious concerns raised by C and his representatives in this matter, your urgent attention is requested" and asking them to confirm whether it is their intention to attend.
23.11.16	24	B does not attend the hearing. DJ Dodd joins B pursuant to CPR 46.2, directs B to provide disclosure

		by 18th January 2017 and all parties to file witness evidence by 1st March 2015.
09.02.17	A33	B write to BJ letter headed "Extremely Urgent Consideration", reference AB/MD/300013, stating that they will serve a statement in due course setting out "this firm's position" and giving notice of intention to make a Part 20 claim against IA and SN
14.03.17	A38	B supply documents to BJ of which they believe BJ may not have had prior inspection and stating that BJ's "conduct and stance in this matter has prolonged this matter unnecessarily, you are aware that we have confirmed further that this matter has not been compromised, we trust you will deal with this issue without the need of protracted communications."
02.03.17	233	Statement from Mustansar Dasu, described as senior paralegal at B. The statement accepts that C had never been a client of B. It discloses that after investigation by the SRA and by B "concocted medical reports on several files not only at B but at firms elsewhere had been found" for which IA and SN were responsible. The statement also alleges that IA and SN had misappropriated funds in three other cases.
24.03.17	A45	BJ replies stating that until recent service of evidence B had maintained they had instructions to act on C's behalf.

17. Mr. Barber and Mr. Bagas are due to appear before the Solicitors' Disciplinary Tribunal in September. A defence has been filed on their joint behalf settled by leading counsel. In this, certain allegations are admitted by Mr. Barber, relating to failing to maintain accounts, keeping office money in the firm's client account, preparing accounts for 2014 that did not accurately record the financial position of the firm, and making deductions from damages to which clients were entitled in breach of the Solicitors Code of Conduct. Both defendants deny other allegations including allegations of failing to supervise unqualified fee earners and allowing false documents to be created.
18. Mr. Barber filed no statement pursuant to D.J. Dodd's order of the 23rd November 2016. He finally provided a witness statement in support of the application to join the proposed fourth and fifth parties. Nowhere in that statement does he disclose when he first knew of the alleged unauthorised activities of Mr. Adam and Mr. Nanlawala.

19. Mr. Ralph and Mr. Morris opposed Mr. Williams application to admit the statement into these proceedings, as it had not been filed in due time in accordance with the court's order. I decided, though, to admit the statement, because it appeared to me to be material to consider the content of the statement in the context of the history of the matter and the opportunity that had been available to Mr. Barber from at least January 2013 as sole principal of the firm to investigate what had gone on and to take personal charge of handling the matter.
20. In the statement, he described Mr. Adam as a "consultant fee-earner" and Mr. Nanlawala as an "employed para-legal". He says that it was not until March 2016 when he received a letter from the forensic investigation department of the SRA, requesting facilities to visit the firm's premises, that he discovered that Mr. Adam and Mr. Nanlawala had "gone so far" as to prepare a false medical report. He says that it was much to his "surprise and annoyance" that the application was made to join Barber as a party pursuant to CPR 46.2. His statement continues – "That was the first time that I became aware of the detail of the claim." His statement makes no mention of the role of Mr. Bagas or of the post January 2013 correspondence.

Discussion and Analysis

21. By January 2013, at the latest, after Mr. Adam and Mr. Nanlawala had left the firm, anyone examining the file in the light of the letter of the 6th December 2012 from Mellor Hargreaves, would have been given serious cause for concern. It would have been apparent that the firm had obtained a medical report, negotiated settlement of the claim, and been awaiting a cheque from the NFU for the agreed damages and the firm's costs.
22. The most telling point is that never, then or later, does it appear that Barber wrote to the Claimant or tried to contact him to find out how it came about that another firm had been instructed to make a claim on his behalf in respect of the same accident.

23. Why not? How could whoever was dealing with the matter write to Mellor Hargreaves that the file had been closed due to lack of instructions? According to the letter to the NFU of the 1st June 2012, Barber were owed almost £1,400 in costs and were out of pocket to the tune of £495 for the medical report. It is blindingly obvious that no commercial undertaking is going to write off what it is owed in such a casual fashion without good reason.
24. It is reasonable to assume that before the file was closed, the matter would have been duly considered, in the case of a large firm, by a partner or at least a fee earner, or in the case of a sole practitioner, by the proprietor of the firm himself.
25. The letter of the 24th January 2013 bears the reference of both Mr. Barber and Mr. Bagas. The letter claimed that the file had already been closed, although nowhere does there appear to be any recording of this or when it occurred, and the letter of the 5th September 2014, bearing the same reference, states that the file was only closed in March 2013.
26. If Mr. Adam and Mr. Nanlawala were acting covertly and alone, I would expect anyone, on discovering the fraud committed in the name of the firm, to be outraged, concerned to investigate what had happened, and anxious to ensure that those affected by it were not further disadvantaged.
27. Unless they also had control of the firm's finances, there are indications that Mr. Adam and Mr. Nanlawala could not have been acting covertly. This is because the NFU had been asked to make the settlement cheque out to Barber, and so it would have had to pass through the firm's accounts. This is a feature that, no doubt, the SRA will wish to consider.
28. What is abundantly clear, though, is that Barber have constantly stalled and obfuscated, and have failed to assist those acting for the Claimant and the Defendant to resolve the position. This has materially delayed the resolution of the claim and added significantly

to the costs. Where the responsibility for this lies within the firm is unclear from Mr. Barber's statement.

29. It is no part of my task to make findings about the culpability of Mr, Barber or Mr. Bagas. That is a matter for the SRA. My task is to review the available material and to draw such inferences from it as are logical and reasonable in all the circumstances.

30. I turn therefore to consider the claim under CPR 46.2 and the application by Barber to join Mr. Adam and Mr. Nanlawala.

CPR 46.2

31. Section 51 of the Senior Courts Act 1981 gives the court wide powers to determine by whom and to what extent costs are to be paid. CPR 46.2 regulates the making of costs orders pursuant to Section 51 for and against non-parties.

32. It is important to note that it is intended to be a summary process, following the determination of the litigation between the parties, conducted by the trial judge.

33. The non-party is added as a party to the proceedings, for the purpose of costs only, and must be given a reasonable opportunity to attend a hearing at which the making of an order is considered (CPR 46.2(1).

34. The jurisdiction is limited to making an award of costs incurred in the proceedings before the court. The use of the power is regarded as exceptional, in the sense of "out of the ordinary run of cases", and guidance as to the circumstances in which it is appropriate to invoke it has been given by the Court of Appeal in **Symphony Group PLC v Hodgson [1994] QB 179** and by the Privy Council in **Dymocks Franchise Systems (NSW) Pty Ltd v Todd (Costs) [2004] UKPC 39, [2004] 1 W.L.R. 2807.** The general principles are set out extensively in the 2017 edition of the White Book.

35. Many of the reported cases concern situations where a non-party has intermeddled in, controlled, or funded the litigation, but whilst orders under CPR 46.2 are unusual, the circumstances in which they may be

made are wide-ranging. In **Petromec Inc v Petroleo Brasileiro SA Petrobras [2006] EWCA Civ 1038**, Longmore L.J. observed that the exercise of discretion was in danger of becoming over-complicated by authority, and this message has recently been reinforced by the Court of Appeal in **Deutsche Bank A.G. v Sebastian Holdings Inc and Alexander Vik [2016] EWCA Civ 23**. In this case, Moore-Bick L.J. ended his judgment with the observation that *"since the decision involves an exercise of discretion, limited assistance is likely to be gained from the citation of other decisions at first instance in which judges have or have not granted an order of this kind"* [para 62].

The Application to join Mr. Adam and Mr. Nanlawala

36. The application was made under CPR 20.5. This provision enables a defendant to apply to the court for an order that a person against whom that defendant has a claim be added as an additional party. In the alternative, the application was also made under CPR 46.2
37. The basis of the claim, for breach of duty in contract and in tort, is that as a former self-employed consultant and a former employee they engaged in activities outside the scope of their duties.
38. Mr. Williams, who appears for Barber, settled the particulars of the proposed claim It alleges that they, without authority or instructions, purported to act for the Claimant and submitted a bogus claims notification form and subsequently forged a medical report to support the claim. Barber claims an indemnity and damages.
39. Mr. Williams indicated that the claim was intended to include not only costs incurred in these proceedings but also the costs of defending the SRA proceedings.
40. In my judgment, it would be wrong to accede to Barber's application to join the proposed Fourth and Fifth Parties. I say that for three main reasons: -
    (a) The application is made too late in the current proceedings. The consequence of allowing it would have been to delay the resolution

of the costs issues between the parties and Barber. The case would have had to be adjourned to an indefinite date in the future after the final hearing before the SRA. Further, Barber had from November last year to make the application but left it till the end of March this year, and then attempted to make the application through someone without rights of audience;

(b) Joining the proposed additional parties under CPR 20.5 would considerably widen the scope of the case. It would involve a full-scale trial involving the Third, Fourth and Fifth Parties in which the Claimant and the Defendant would have no direct interest.

(c) The procedure under CPR 46.2 is intended to be a summary process at the end of the litigation. If it is inappropriate to make an order summarily against the party who has been joined purely for the purpose of costs then no order should be made, and the parties should be left to pursue any other remedy they may have against that party through conventional proceedings. The procedure is not intended to provide a means by which the costs party can join other parties to obtain indemnity or contribution from someone else if the judge decides that it is just and appropriate to exercise jurisdiction under CPR 46.2 to make a costs order. The CPR 46.2 procedure is inappropriate for the resolution of the serious and highly contentious issues between Barber and its former employees.

The Merits of the Substantive Application under CPR 46.2

41. Mr. Williams contended that, were either the Claimant or the NFU to sue Barber for damages incurred in consequence of the conduct of Mr. Adam and Mr. Nanlawala, Barber would have a strong defence on the basis that the firm could not be held vicariously liable for their dishonest conduct.

42. This contention was challenged by both Mr. Ralph and Mr. Morris. They submit that, in the light of the clarification of the Supreme Court

in the recent case of **Mohamud v Wm Morrison Supermarkets PLC [2016] UKSC 11**, the "close connection" test is plainly met.

43. In applying the close connection test, the Supreme Court held that the critical question is the closeness of the connection between the employee's duties and his wrong-doing. What functions had been entrusted to him? Was there a sufficient connection between his wrongful conduct and the position in which he was employed to make it right for the employer to be fixed with vicarious liability? If such a close connection is established, it is immaterial whether the employee's act was unauthorised or expressly forbidden, or even criminal, the employer is vicariously liable.
44. Had I to resolve this issue, I would unhesitatingly hold on the evidence before me that the close connection test was met. The power to order costs under CPR 46.2 is, though, a much broader and discretionary one.
45. In exercising that power what is of most relevance, in my view, is not the question of what happened before Barber purported to settle the claim, but how Barber responded once the issue of compromise was raised by both Mellor Hargreaves and the NFU. This has nothing to do with vicarious liability.
46. It is abundantly clear from the chronology and analysis above that the conduct of Barber substantially delayed and complicated the resolution of the compromise issue, and added significantly to the costs incurred by both the Claimant and the Defendant.
47. Had Barber conceded in early 2013 that the Claimant was not their client and that the firm had no authority from him to negotiate a compromise of his claim, the costs on the compromise issue could have been largely, if not entirely, avoided.
48. Mr. Williams tried to argue that the Defendant ought to have been satisfied from the terms of the letter of the 5th September 2014 that Barber had not entered any compromise on behalf of the Claimant. I do not agree. The letter contained no clear and unequivocal statement that the Claimant had never been their client and that they had no

authority to negotiate on his behalf. It persisted in maintaining that he had been their client, and, inconsistently with what had been stated in the earlier letter of the 24th January 2013, asserted that his file was not closed until March 2013.

49. The first clear admission that the Claimant was never a client of Barber, and that the firm had no authority to act for him, was only made in the statement of Mr. Dasu, dated the 2nd March, one day late for the filing of evidence pursuant to the order of District Judge Dodd. Barber could hardly have left it any later, without being clearly in breach and having to apply for relief from sanctions.

50. From the time that the issue of compromise was first raised in 2012 right through to the beginning of March 2017, the way that Barber handled the matter was obstructive and incompatible with the proper professional conduct of a firm of solicitors.

51. In my judgment, in principle, Barber should pay the costs of both Claimant and Defendant on the compromise issue on an indemnity basis.

The Form of the Order

52. The Claimant's position is that costs should be ordered against the Defendant in the usual way, and that the NFU should seek its costs on the compromise issue against Barber. The weakness in that position is, as Mr. Ralph recognised, that there is no proper basis for ordering the Defendant to pay the costs of the issue on an indemnity basis.

53. Mr. Ralph submitted that the Claimant's conduct in the proceedings was not open to criticism and that there was no basis, applying, the factors set out in CPR44.2(4), on which to make any costs order adverse to the Claimant. He said, in his skeleton argument, that it would be unjust to the Claimant "to mire him into a multiplicity of costs proceedings against two or more paying parties".

54. The Defendant's position is that Barber should be ordered to pay the costs of both parties on the compromise issue. The advantage of this course is that it would involve just one taxation of the costs payable by Barber to both parties on the same indemnity basis, rather than taxation of the costs on the issue payable by the Defendant to the Claimant on the standard basis, followed by taxation of the costs payable to the Defendant by Barber.
55. In his skeleton argument, Mr. Ralph said that the "compromise point" was a product of the stance taken by the Defendant from as early as July 2012. He, implicitly, criticises the Defendant for not joining Barber before last November. "Thus the 'Compromise point' is of the Defendant's insistence from 2012. The Third Party is a costs indemnifier from 2016. The costs in issue are costs back to 2012."
56. Mr. Ralph's approach fails to have due regard to the realities of the situation. Any responsible insurer would have questioned how it had come about that the same claimant could, apparently, be represented by two different firms of solicitors, and have been medically examined by two different doctors. It would be reasonable for insurers presented with such a situation to be concerned that the Claimant might not be genuine and the claim fraudulent. The onus lay on the Claimant to establish that he was a legitimate claimant and had not engaged the services of Barber. As the chronology shows, it was Mellor Hargreaves who properly took the initiative in the early stages and it was the attitude taken by those dealing with the matter at Barber that prevented the position from being resolved much sooner.
57. In considering the question of liability for costs under CPR 46.2 the role played by the non-party and the consequences of it are central to the court's exercise of discretion. The court has jurisdiction to make an order for costs under CPR 46.2 where no order for costs between the parties has been made; see **Nordstern Allgemeine Versicherung AG v Internav Ltd [1999] 2 Lloyd's Rep. 139.**
58. In other words, there is no requirement for the Defendant to pay the successful Claimant's costs of an issue where those costs have been

incurred in consequence of the conduct of a non-party to the litigation. If the circumstances of the case warrant it, the court is entitled to order the non-party to pay the costs incurred on both sides relating to that issue.

59. In my judgment, it is just and equitable that Barber should be required to pay the indemnity costs of both the Claimant and the NFU on the compromise issue. I do not consider it necessary or appropriate to make any order for costs on that issue between the parties.

60. I have considered whether I should limit the extent of Barber's liability to a percentage of either party's indemnity costs. I do not see any justification for such a course. Barber's conduct throughout was evasive, and its lack of appropriate response to legitimate enquiries after Mr. Adam and Mr. Nanlawala had left the firm is reprehensible and cannot be condoned. Of course, if the Costs Judge finds that either party incurred costs unnecessarily or inappropriately, the judge will be at liberty to disallow that part of the bill.

Reserved Costs Orders

61. I was told during the hearing that there were several interlocutory orders where costs were reserved.

62. I had understood that the parties would provide me with a list of those orders after the hearing, but I do not appear to have received it[3].

63. I have tried to identify the relevant orders myself. They appear to be: -

(a) 27th January 2015

(b) 15th October 2015

(c) 2nd March 2016

(d) 23rd November 2016

(e) 5th April 2017

64. All save the last of these hearings preceded the unequivocal admission that the Claimant had never been a client of Barber, and would not

[3] After issuing the judgment in draft, it emerged that the list had been emailed to the court but not forwarded. It corresponded to the orders listed at paragraph 63.

have been necessary had that admission been made earlier, as it ought to have been. It is right that Barber should bear the costs of those hearings of both parties.

65. The last hearing dealt with the consequences of the admission Barber finally made. At that hearing Barber were not properly represented to make their own application to join Mr. Adam and Mr. Nanlawala. It is right that Barber should bear the costs of that hearing also.

Outcome

66. I hold that Barber should pay the costs of both main parties on the issue of compromise on an indemnity basis to include the reserved costs of the hearings listed above.
67. If I have failed to identify any other costs reserved orders, if these are brought to my attention, I will give a further ruling on them
68. Otherwise, I propose to hand down judgment on a date to be arranged and it will not be necessary for any of the parties to attend on that occasion unless there are further issues that need to be considered.
69. Finally, from the admissions that have now been made, it appears that a number of criminal offences may have been committed through the firm of Barber. These include fraud in making a false claim for compensation, forgery of a medical report, and engaging in acts tending to pervert the course of justice. These are serious allegations, if substantiated. I am going to direct that copies of this judgment be supplied to the Lancashire Police and to the Crown Prosecution Service for Lancashire so that they can decide whether the matter merits further investigation.