SUPREME COURT OF QUEENSLAND

CITATION:	*National Australia Bank Limited v Clanford P/L* [2002] QSC 361
PARTIES:	**NATIONAL AUSTRALIA BANK LIMITED** (ACN 004 044 937) (plaintiff/applicant) **v** **CLANFORD PTY LTD** (first defendant) **JOHN KEITH CAMPBELL** (second defendant) **KIM ELIZABETH CAMPBELL** (third defendant/respondent)
FILE NO:	S2277 of 2000
DIVISION:	Trial Division
DELIVERED ON:	6 November 2002
DELIVERED AT:	Brisbane
HEARING DATE:	5 August 2002
JUDGE:	Mullins J
ORDER:	**Direct Senior Deputy Registrar Houghton to assess the costs statement filed by the plaintiff on 26 April 2002 on the basis that the client agreement between the plaintiff and the plaintiff's solicitors is that dated 25 August 1998 which was signed on behalf of the plaintiff's solicitors on 25 August 1998 and on behalf of the plaintiff on 30 November 1998 with the Annexures referred to in that client agreement together with the letter from the plaintiff's solicitors to the plaintiff dated 22 November 1999 on the basis that the rates to be charged for the work undertaken by the plaintiff's solicitors on a time costed basis are those set out in the letter dated 22 November 1999.**
CATCHWORDS:	COSTS - ASSESSMENT - SOLICITORS - whether client agreement was invalid for non-compliance with *Queensland Law Society Act* 1952 (*Q*), ss48(2) and (3) - whether client agreement discloses basis on which fees and costs will be calculated - client agreement comprises general retainer signed by the client and solicitors and fee estimate letter sent by the solicitors on receipt of instructions as required by the general retainer COSTS - ASSESSMENT - whether court has jurisdiction to review decision made by assessing registrar in the course of

assessing costs before assessment of costs has been completed - application cannot be brought under r791 *UCPR* - administration of justice demands assessment of costs statement proceed on proper basis - unreasonable for assessment to proceed on basis that client agreement is invalid when court has concluded that it is valid - direction given to assessing registrar

Acts Interpretation Act 1954
Queensland Law Society Act 1952
Supreme Court of Queensland Act 1991
UCPR, r 679, r 704(3), r706, r 717, r, 738, r 739, r 741, r 742, r 791

Re Cooke [1997] 1 QdR 15
Maggbury Pty Ltd v Hafele Australia Pty Ltd [2001] QSC 78

COUNSEL: RI Van Witsen *(sol)* for the plaintiff/applicant
PG Lynch *(sol)* for the third defendant/respondent

SOLICITORS: Mallesons Stephen Jaques for the plaintiff/applicant
Lynch & Company for the third defendant/respondent

[1] **MULLINS J:** On 20 August 2001 de Jersey CJ ordered that the third defendant pay the plaintiff's costs thrown away by reason of setting aside the judgment entered against the third defendant on 1 June 2000, including any reserved costs, to be assessed on the indemnity basis.

[2] On 26 April 2002 the plaintiff filed an application for an assessment of the costs statement in respect of the costs ordered on 20 August 2001. The costs were shown in the costs statement as being claimed pursuant to client fee agreement dated 25 August 1998.

[3] On 13 May 2002 the third defendant filed an objection to the costs statement objecting to the entirety of the costs statement on the basis that the amounts claimed were not in accordance with the Supreme Court scale of fees and charges and appeared to be in accordance with a client agreement entered into between the plaintiff's solicitors and the plaintiff and sought a declaration that the registrar would not have regard to that client agreement for the purpose of r 704(3) of the *UCPR*.

[4] As a result of a direction made by Senior Deputy Registrar Houghton (to whom I shall refer as "the assessing registrar") the plaintiff filed the affidavit of Mr Mark Darian-Smith, a partner in the plaintiff's solicitors' firm, who exhibited what he described as a true copy of the relevant fee agreement entered into between the plaintiff and the plaintiff's solicitors together with the fee estimate as set out in the fee agreement.

[5] As a result of the contents of the affidavit of Mr Darian-Smith, the third defendant raised a further objection to the costs statement on the basis that the client agreement put forward by the plaintiff in Mr Darian-Smith's affidavit did not comply with s 48 of the *Queensland Law Society Act* 1952 ("the Act").

[6] On 13 June 2002 representatives on behalf of the plaintiff and the third defendant attended before the assessing registrar on a hearing to determine whether the agreement between the plaintiff's solicitors and the plaintiff satisfied the criteria for a valid client agreement under s 48 of the Act. The assessing registrar made a determination in favour of the third defendant and directed that a fresh costs statement be prepared based on the Supreme Court scale in reliance on s 48I(1)(b) of the Act. The plaintiff requested written reasons for the determination and those written reasons were provided by the assessing registrar on 10 July 2002.

[7] By application filed on 19 July 2002 the plaintiff sought an order pursuant to r 791 of the *UCPR* for leave to have the decision of the assessing registrar dated 21 June 2002 made for the reasons dated 10 July 2002 reheard by the court. The plaintiff also sought an order directing the assessing registrar to have regard to the plaintiff's client agreement exhibited to the affidavit of Mr Darian-Smith for the purpose of assessing the plaintiff's costs under the order made on 20 August 2002.

[8] That application was opposed by the third defendant on the basis that there was no jurisdiction to grant such rehearing in respect of the relevant decision of the assessing registrar and, if there were jurisdiction, the leave should not be granted as the decision of the assessing registrar was correct.

[9] This application has been brought before the assessment of costs by the assessing registrar has been completed, because the decision made by the assessing registrar in the course of the assessment of costs has fundamental effect on the outcome of the assessment. There is no doubt that the decision of the assessing registrar in respect of the validity of the plaintiff's client agreement with the plaintiff's solicitors would be reviewable after the assessment of costs were completed, subject to compliance with the relevant rules in Pt 2 of ch 17 of the *UCPR*. If the assessing registrar were not correct, however, in the determination made about the validity of that client agreement, the preparation of a costs statement in accordance with the Supreme Court scale, as directed by the assessing registrar, and the assessment of that costs statement would be a futile exercise. Although a jurisdiction question is raised by the third defendant, it would be an odd result to dispose of this application on a narrow question of jurisdiction, if there were good grounds to challenge the assessing registrar's decision. I will therefore consider whether or not the assessing registrar was correct and, if not, what jurisdiction there is, whether under r 791 of the *UCPR* or otherwise, for reviewing the decision of the assessing registrar at this stage.

Basis for the assessing registrar's decision in respect of client agreement

[10] It is common ground that the plaintiff is a public company and as a result of s 48(6) of the Act, ss 48(4) and (5) of the Act do not apply to the client agreement between the plaintiff and the plaintiff's solicitors. Sections 48(2) and (3) which do apply to the relevant client agreement state:

> "**(2)** Within a reasonable time after starting work for a client, a practitioner or firm must make a written agreement with the client expressed in clear plain language and specifying the following matters-
>
> (a) the work the practitioner or firm is to perform;
>
> (b) the fees and costs payable by the client for the work.
>
> **(3)** The fees and costs payable by the client for work must specify-

(a) a lump sum amount; or
(b) the basis on which fees and costs will be calculated (whether or not including a lump sum amount)."

[11] The client agreement which is exhibited to Mr Darian-Smith's affidavit comprises a schedule and a printed document entitled "Terms of the Agreement" which was executed by the plaintiff's solicitors on 25 August 1998 and executed on behalf of the plaintiff on 30 November 1998 (to which I will collectively refer as "terms of the agreement"). The terms of the agreement expressly incorporate the schedule which sets out information that is identified in the printed terms of the terms of the agreement and the schedule is to be read with the printed terms of the terms of the agreement, as the schedule marries up with the printed terms. In relation to the matters described in the schedule such as "work to be performed", the schedule is completed with the information "As per relevant fee estimate letter in the form of Annexure A". The schedule also states that "This agreement incorporates the fee agreement set out in our letter and attachments of 12 August 1998 to David Krasnostein and Don Lawson (Annexure B)". That letter and attachments are also exhibited to Mr Darian-Smith's affidavit. Annexure A is a proforma letter from the plaintiff's solicitors to the plaintiff purporting to be a fee estimate to be read in conjunction with the client agreement dated 25 August 1998 which sets out the details foreshadowed by the schedule to the terms of the agreement to be completed for the purpose of the fee estimate. The letter of 12 August 1998 encloses a summary of the general rates to be charged by each of the plaintiff's solicitors' offices to the plaintiff for the relevant financial year effective from 18 August 1998.

[12] It is apparent from the terms of the agreement that the parties contemplated that a letter in the form of Annexure A would be completed in relation to work to be performed by the plaintiff's solicitors for the plaintiff.

[13] Although it was not before the assessing registrar, the affidavit of Ms ES Costello, filed on 2 August 2002 and read on the application before me, exhibits a copy of the letter dated 29 October 1999 from the plaintiff to the plaintiff's solicitors requesting the plaintiff's solicitors to act on behalf of the plaintiff and commence action against the first, second and third defendants for recovery of the residual debt. That letter is shown as being received on 9 November 1999. This instruction resulted in the plaintiff's solicitors despatching to the plaintiff the letter dated 22 November 1999 which is a letter substantially in the form of Annexure A completed in respect of the instruction to recover residual debt owing to the plaintiff by the first, second and third defendants.

[14] The assessing registrar decided that as the letter dated 22 November 1999 was unsigned by the plaintiff and did not come into existence until almost 12 months after the terms of the agreement were executed, the letter was unable to comprise a part of the client agreement that was executed on 30 November 1998 by the plaintiff and could not operate as an amended client agreement, because it was unsigned by the plaintiff.

[15] I am unable to agree with the approach taken by the assessing registrar to this letter dated 22 November 1999. The terms of the agreement provide for a general retainer by the plaintiff of the plaintiff's solicitors in respect of work, for which instructions had not necessarily been given at the time at which the general retainer was entered

into by the parties. Under the terms of the agreement, however, the parties have agreed on a mechanism by which the details required to be specified to enable compliance with ss 48(2) and (3) of the Act will be specified by requiring a letter from the plaintiff's solicitors detailing the information described in the proforma letter. An indication of the general rates to be charged to the plaintiff has been given by the plaintiff's solicitors to the plaintiff in the schedule attached to the letter dated 12 August 1998, against which the plaintiff can consider the details set out in the fee estimate letter. Neither the terms of the agreement nor the proforma letter in Annexure A anticipate that a written confirmation is required from the plaintiff of the details set out in the letter sent in accordance with Annexure "A".

[16] By the terms of the agreement which were signed by both the plaintiff and the plaintiff's solicitors, the parties have therefore agreed that the matters required to be specified under ss 48(2) and (3) will be specified in a fee estimate letter despatched by the plaintiff's solicitors. As that process has been agreed to in writing by the plaintiff, it is not relevant that the fee estimate letter dated 22 November 1999 is not also signed by the plaintiff. This regime for providing the details of the matters required to be specified under ss 48(2) and (3) of the Act would not enable compliance with ss 48(4) and (5) of the Act to be achieved, but (as set out above) it is common ground that is not necessary in respect of the plaintiff's agreement with its solicitors.

[17] The requirement under s 48(2) of the Act is that within a reasonable time after starting work for a client the solicitors must make a written agreement with the client in relation to the matters set out in s 48(2), as expanded upon by s 48(3). In this matter, the general retainer has been entered into by the plaintiff with the plaintiff's solicitors in advance of the specific instructions for the particular work to be performed on behalf of the plaintiff against the first, second and third defendants. The general retainer becomes the client agreement for the particular matter, upon the fee estimate in accordance with the proforma letter in the form of Annexure A being sent by the plaintiff's solicitors to the plaintiff. Although the general retainer was entered into in advance of the instructions for the particular matter, the despatching of the fee estimate letter for the particular matter completes the client agreement for the particular matter. In this case, that was done by the letter dated 22 November 1999 which was sent a reasonable time after the instructions were received from the plaintiff by the plaintiff's solicitors on 9 November 1999.

[18] Sections 48(2) and (3) of the Act refer to "fees and costs". In s 3 of the Act "costs" are defined to include disbursements and "fees" are defined for work of a practitioner or firm as meaning charges, other than costs. Fees are therefore in the nature of professional fees and costs are therefore in the nature of disbursements. Section 48(3) of the Act requires that when the client agreement specifies the fees and costs payable by the client for the work, it must specify a lump sum amount or the basis on which fees and costs will be calculated (whether or not including a lump sum amount). Clauses 4 and 5 of the terms of the agreement deal with calculation of the plaintiff's solicitors' fees and costs, additional to the professional fees, respectively. This is supplemented and given precision by the letter dated 22 November 1999. That letter stated that the plaintiff's solicitors' fees would be determined "on a time costed basis" in accordance with the client fee agreement dated 25 August 1998 and identified each partner, associate and solicitor who would be performing work in respect of the matter and his or her respective charge out rate. A range of charge out rates for an unnamed clerk is also specified of $110-

$125 which, in the light of cl 4.3 of the terms of the agreement, would be read as an hourly rate. It is not fatal that a range is given of charge out rates for a clerk, when the bulk of the work will be undertaken by solicitors for whom precise charge out rates have been specified. The letter dated 22 November 1999 gives as an estimate of fees and costs the sum of $1,000 to default judgment and $3,500 - $5,000 to summary judgment, depending on what defences were raised. The plaintiff's solicitors have therefore provided the basis on which fees and costs will be calculated, ie on an hourly charge out rate with most of the rates specified precisely, for professional fees to be determined on a time costed basis and costs in the nature of disbursements to be determined by those actually incurred. An estimate is given of both fees and costs to certain stages of the work. It is submitted on behalf of the third defendant that the terms of the agreement together with the letter dated 22 November 1999 do not enable the plaintiff to calculate with any precision the basis upon which it will be charged fees and costs. What s 48(3)(b) of the Act requires is a specification of the basis on which fees and costs will be calculated. It does not require that those fees and costs can be calculated with precision, prior to the work being undertaken.

[19] The submission was made on behalf of the third defendant that the letter dated 22 November 1999 did not comply with Annexure A as it did not contain the sentence which is set out in the proforma letter "This estimate does not include disbursements". The letter of 22 November 1999 is sufficiently in accord with the proforma letter to be treated as the fee estimate letter required by the general retainer in respect of the plaintiff's instructions to recover the residual debt owing to the plaintiff by the first, second and third defendants.

[20] Another matter which needs to be considered is whether the ambit of the instructions given by the plaintiff to the defendant is sufficient to cover the stage of the work reached for which the order was made by de Jersey CJ on 20 August 2001. The third defendant's application to set aside judgment is an incidental step in the proceeding for which instructions were given by the plaintiff in the letter dated 22 November 1999 which was to recover the residual debt owing to the plaintiff from the first, second and third defendants.

[21] I have therefore concluded that the assessing registrar reached the wrong conclusion when he decided that the collection of documents comprising Ex MDS1 to Mr Darian-Smith's affidavit did not satisfy the criteria for a valid client agreement under s 48 of the Act. I have concluded that the relevant client agreement between the plaintiff and its solicitors which comprises the terms of the agreement with the annexures together with the fee estimate letter from the plaintiff's solicitors to the plaintiff dated 22 November 1999 does satisfy sections 48(2) and (3) of the Act.

Relevant rules

[22] Part 2 of ch 17 of the *UCPR* applies to costs to be assessed under an order of the court. For the purpose of that Part, definitions are found in r 679. One of the defined terms is "registrar" which, relevantly, means the registrar approved to assess costs by the Chief Justice. That approval is found in Practice Direction No 17 of 1999 issued by the Chief Justice for the purposes of Pt 2 of ch 17 of the *UCPR* in which "a registrar, including a deputy registrar, or a person acting as registrar or as a deputy registrar of a central registry of the Supreme Court or of a district registry of a Supreme Court is a registrar approved to assess costs for the Supreme Court".

[23] Senior Deputy Registrar Houghton who is a deputy registrar of the Supreme Court at Brisbane is therefore a registrar for the purpose of r 679 of the *UCPR*.

[24] The powers of an assessing registrar for assessing costs are set out in r 706(1) of the *UCPR*:

> " 706 (1) For assessing costs, the registrar may do any of the following things -
>
> (a) administer an oath or receive an affirmation;
>
> (b) examine witnesses;
>
> (c) direct a party to subpoena someone to attend a hearing before a registrar;
>
> (d) if satisfied there is or may be a conflict of interest between the solicitor and the party - require the party to be represented by another solicitor;
>
> (e) unless the court orders otherwise - extend or shorten the time for taking any step in assessment;
>
> (f) direct or require a party to produce documents;
>
> (g) give directions about the conduct of the assessment process;
>
> (h) anything else the court directs."

[25] Rule 706(3) of the *UCPR* provides expressly for an assessing registrar to refer to the court any question of law arising in relation to the assessment. This overcomes the doubt that previously existed in the absence of such an express provision, as to whether there was jurisdiction for a taxing officer to refer a question to the court that arose in connection with the assessment of a bill of costs: *Re Cooke* [1997] 1 QdR 15, 17. In that case, however, White J did conclude, at 18, that the court in the exercise of its supervisory function over its officers and for the better administration of justice may entertain such a reference from the taxing officer.

[26] The assessing registrar could in this matter have exercised his discretion under r 706(3) to obtain a ruling from the court on whether or not the plaintiff's solicitors' letter dated 22 November 1999 was part of the relevant client agreement and otherwise in relation to the validity of what the plaintiff relied on as the client agreement.

[27] Division 7 of Pt 2 of ch 17 of the *UCPR* provides for the review of an assessment by an assessing registrar. Rule 738 of the *UCPR* identifies who may apply for reconsideration of the assessment as a party who has objected under r 717 or attends an assessment and objects to any decision of the registrar. Rule 739 of the *UCPR* provides the procedure for applying for reconsideration of the assessment. If there is an application for reconsideration, the registrar is precluded by r 736(3) from signing the order which states the amount at which the costs statement has been assessed until after the reconsideration procedure ends. Upon the application for reconsideration, the registrar is required by r 741 of the *UCPR* to reconsider a decision objected to having regard to the statement of objections and reply provided

for by rr 739 and 740, state the reason for the decision on reconsideration and sign and file an order in accordance with the decision on reconsideration.

[28] Rule 742 of the *UCPR* provides for a party dissatisfied with the decision of the registrar on reconsideration under r 741 to apply to the court to review the decision. The review by the court therefore does not take place until the registrar has assessed the costs statement and the application for reconsideration of the registrar's assessment has been decided. It was therefore not open to the plaintiff to seek a review of the assessing registrar's decision dated 21 June 2002, as the assessment of the costs statement had not taken place.

[29] Rule 791 of the *UCPR* provides:

> "791 (1) A party to an application who is dissatisfied with a decision of a judicial registrar or registrar on the application may, with the leave of the court, have the application reheard by the court.
>
> (2) If the court grants leave, it may do so on condition, including, for example, a condition about -
> (a) the evidence to be adduced; or
> (b) the submissions to be presented; or
> (c) the nature of the rehearing.
>
> (3) This rule does not apply to a review under r 742."

[30] The reference to "registrar" in r 791 is to that expression, as defined in the dictionary in schedule 4 to the *UCPR*:

> **"registrar"**
> (a) for chapter 9, part 4, see rule 313; and
> (b) for chapter 17, part 2, see rule 679.
> (c) otherwise, for a court, includes a deputy registrar of the court or person other than the registrar who discharges the duties and performs the functions conferred on the registrar under these rules."

[31] This definition of "registrar" confirms that the use of the term as defined in r 679 has a discrete purpose for Pt 2 of ch 17 of the *UCPR* and is not incorporated in the use of the term "registrar" when it occurs generally throughout the *UCPR*.

[32] Under s 32A of the *Acts Interpretation Act* 1954 the definition of "registrar" in schedule 4 to the *UCPR* applies to the *UCPR*, except so far as the context or subject matter otherwise indicates or requires. There is nothing in the context or subject matter of r 791 which would require the definition of "registrar" to be other than that defined in schedule 4 to the *UCPR* for that purpose. The definition of "registrar" in schedule 4 to the *UCPR* which applies to r 791 is that set out in para (c) of the definition.

[33] The distinction between a registrar for the purpose of Pt 2 of ch 17 of the *UCPR* and a registrar for the balance of the *UCPR* (other than Pt 4 of ch 9) is made clear by the use of a separate definition of "registrar" in r 679. In strict terms, reliance on the definition of "registrar" is sufficient to show that r 791 applies to the decision of a registrar on an application, other than an assessing registrar under Pt 2 ch 17 of the *UCPR* or a registrar under Pt 4 ch 9 of the *UCPR*.

[34] The question arises, however, whether the reference in r 791(3) to the fact that r 791 does not apply to a review under r 742 supports a construction of "registrar" for the purpose of r 791 that is wide enough to include an assessing registrar under Pt 2 of ch 17. It is so clear from the definition of "registrar" in schedule 4 to the *UCPR* as to an assessing registrar being excluded from the term "registrar", except under Pt 2 of ch 17, that r 791(3) must have been included to emphasise that r 742 provides for the procedure of reviewing an assessing registrar's assessment. The existence of r 791(3) does not affect the construction of "registrar" in r 791(1) as excluding a registrar approved for the purpose of r 679.

[35] Chapter 12 of the *UCPR* provides for the jurisdiction of a judicial registrar and a registrar. The definition of "registrar" in schedule 4 to the *UCPR* applies to the term "registrar" used in Ch 12. The rules in ch 12 relating to the jurisdiction of a registrar and the involvement of the court in an application for which a registrar is given power to hear and decide pursuant to r 452 has no application to the decision of the assessing registrar dated 21 June 2002.

Jurisdiction

[36] The plaintiff's submissions at the hearing of this application did not advance a basis for making the application as an alternative to r 791. In view of the conclusion I have reached that the client agreement is valid, it would be unreasonable for the assessment of costs to proceed on the basis that the client agreement was invalid.

[37] A similar predicament was addressed in *Maggbury Pty Ltd v Hafele Australia Pty Ltd* [2001] QSC 78 where the plaintiffs were ordered to pay the second defendant's costs. The second defendant had retained Victorian solicitors who engaged Queensland solicitors to be their agents. The costs statements were prepared on the basis that the fees were the professional charges of the Queensland solicitors and outlays included the professional charges and disbursements of the Victorian solicitors drawn in accordance with the Victorian *Supreme Court Rules.* An acting deputy registrar directed the second defendant to redraw the bills to reflect that the Victorian solicitors were the principals and the Brisbane solicitors were town agents. At this stage the plaintiffs asserted that the second defendant could not recover professional charges and outlays because no solicitor at the Victorian firm was admitted to practice in Queensland. Wilson J ordered that questions arising in connection with the assessment be referred to the court for determination including whether the second defendant was entitled to have assessed and recovered the fees paid to the Victorian solicitors and, if so, on what scale should those fees be assessed and whether the directions made by the acting deputy registrar should be set aside. Wilson J concluded that the costs statements had been properly drawn and that the directions made by the acting deputy registrar should be set aside and made directions in respect of the assessment of those costs statements. It was not necessary for Wilson J to deal with the jurisdiction to make those orders and directions, as that does not appear to have been in issue.

[38] In the absence of submissions dealing with the jurisdiction to make an order or direction which gives effect to the conclusion which I have reached about the client agreement which is contrary to the assessing registrar, I have identified the following possible bases:

(a) r 706(1)(h) of the *UCPR*;

(b) s 118E(1) of the *Supreme Court of Queensland Act* 1991; and

(c) the inherent jurisdiction of the court.

[39] I have formed the view that the administration of justice demands that I make a direction which reflects the conclusion which I have reached about the client agreement, so that the assessment of the costs statement filed on 26 April 2002 proceeds on a proper basis. This is consistent with the approach of White J in *Re Cooke* and the approach of Wilson J in *Maggbury Pty Ltd v Hafele Australia Pty Ltd.* It may be that if r 706(1)(h) of the *UCPR* cannot be relied on, the gap is filled by s 118E(1) of the *Supreme Court of Queensland Act* 1991 or the inherent jurisdiction of the court.

[40] I therefore direct senior deputy registrar Houghton to assess the costs statement filed by the plaintiff on 26 April 2002 on the basis that the client agreement between the plaintiff and the plaintiff's solicitors is that dated 25 August 1998 which was signed on behalf of the plaintiff's solicitors on 25 August 1998 and on behalf of the plaintiff on 30 November 1998 with the annexures referred to in that client agreement together with the letter from the plaintiff's solicitors to the plaintiff dated 22 November 1999 on the basis that the rates to be charged for the work undertaken by the plaintiff's solicitors on a time costed basis are those set out in the letter dated 22 November 1999.

[41] Although the plaintiff was mistaken in seeking relief under r 791 in respect of the assessing registrar's decision dated 21 June 2002, it was not unreasonable for the plaintiff to endeavour to seek relief at that stage of the assessment, in view of the consequences of complying with the directions made by the assessing registrar on 21 June 2002, as a result of the decision reached by the assessing registrar on that date. The view taken by the assessing registrar in respect of the client agreement was that put forward on behalf of the third defendant. On that basis, I would be inclined to order that the third defendant pay the plaintiff's costs of the application, subject to hearing submissions from the parties on what the appropriate costs order should be.