Claim No: J76YX743

IN THE COUNTY COURT AT CENTRAL LONDON

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

Date: 20 March 2026

Before :

RECORDER GRAEME ROBERTSON

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Between :

No.5 CHAMBERS LIMITED

Claimant

- and -

MR PAUL MARSHALL

Defendant

- - - - - - - - - - - - - - - - - - - -

John Churchill (instructed by Simon Burn Solicitors) for the **Claimant**
Oliver Segal KC and **Damian Falkowski** (instructed by W Legal) for the **Defendant**

Hearing date: 6 March 2026

Draft judgment circulated 12 March 2026

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Approved Judgment

I direct that pursuant to CPR 39.9 no recording shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Recorder Robertson

Recorder Robertson:

Introduction

1. This is my written judgment on the Claimant's application dated 7 November 2025, and the Defendant's application for the costs of an adjournment application dated 28 January 2026, following the hearing of the pre-trial review. There was insufficient time for delivery of judgment at the hearing, and the application required a proper review of the materials, so I reserved judgment. Other than the determination of these applications, the case is ready for trial on 20 to 22 April 2026 and I have amended and approved the trial timetable to include time for pre-reading.

2. The Claimant's application seeks two orders:

    a. The striking out of certain paragraphs of the Defendant's trial witness statement exchanged on 10 October 2025 for what the Claimant says is non-compliance with CPR PD57AC.

    b. That the Defendant either provide a response to the Claimant's Part 18 Request dated 3 February 2025 detailing whether the Defendant has received certain monies as fee income (and if so, how much and when); or give specific disclosure of all bank statements which relate to accounts held by the Defendant and into which the Defendant received payments in relation to work done while a member of No.5 Chambers in the period 1 October 2016 to 31 May 2019.

3. I had a hearing bundle of 670 pages, detailed skeleton arguments and an authorities bundle. I have had regard to all of those and have drawn on the skeleton arguments where appropriate. I have also drawn from an earlier interim judgment of HHJ Saggerson for a summary of the claim.

4. I am grateful to Mr Churchill and to Mr Segal KC leading Mr Falkowski for their skeleton arguments and oral submissions.

The Claim

5. The Claimant is a management company that runs a set of barristers' chambers known as No.5 Chambers based in Birmingham ("the Chambers"). The Claimant operates the Chambers for each of the self-employed barristers who are members of chambers, which includes the running of the premises, negotiation and collection of fees and the provision of other clerking services. Each barrister member of chambers is intended and entitled to be a shareholder in the Claimant.

6. The Defendant, Mr Marshall, is a barrister practising in commercial and contractual litigation with over 30 years' experience. He was offered a tenancy at the Chambers on 17 July 2012 and became a member by accepting the offer on 18 July 2012. He completed a direct debit mandate for the efficient collection of contributions due from new tenants.

7. The administrative arrangements were that members of the Chambers had to pay a basic 15% of their receipts (but on a reducing sliding scale), plus £200 per month as a contribution towards communal premises, expenses and an additional sum if a member of chambers had the benefit of an office within the Chambers' premises. Specifically, "*Contributions*" are defined in the relevant Chambers' constitution as meaning and including "*rent, charges and sums owed to [the Claimant] for services and goods supplied by Chambers or obtained on the Member's behalf*". Members are required "*to make payment of contributions due to [the Claimant] on demand*".

8. On 30 May 2016, the Defendant gave three months' written notice of his intention to leave chambers, and he resigned and moved elsewhere. His notice period expired on 30 August 2016.

9. The Claimant issued proceedings on 17 October 2022 against the Defendant. The Claimant claims that the Defendant has failed to pay contributions (including percentage rent) on payments received in relation to work on in respect of instructions received when he was a tenant, and other elements of Chambers' rent. It also claims that the Defendant failed to inform the Claimant when he received payments on which contributions were due, and that the Claimant is aware that the Defendant received such payments from around 1 October 2016 to 1 May 2019.

10. The Claimant claims the sum of £71,191.05 in respect of unpaid invoices plus interest, and an order for an account from the Defendant for all payments he received in relation to which contributions were payable to the Claimant.

11. The primary issue in this case appears to be a question about the legal identity of the claimant party (i.e. whether the entity to which Mr Marshall is obligated to pay his chambers' expenses is properly represented by the Claimant or the heads of chambers).

The Witness Statement Issue

12. The Costs and Case Management Conference was heard by Recorder Midwinter KC on 4 April 2025, which led to an order dated 8 April 2025. He made the following directions in relation to evidence of fact:

> "*4. Evidence of fact will be dealt with as follows:*
>
> *4.1 by 4pm on 12 September 2025 all parties must serve on each other copies of the signed statements of themselves and all witnesses on whom they intend to rely and all notices relating to evidence.*
>
> *4.2 Oral evidence will not be permitted at trial from a witness whose statement has not been served in accordance with this order or has been served late, except with permission of the Court.*
>
> *4.3 The witness statements must comply with CPR PD 57AC as though the trial were one in the Business and Property Courts (the exemptions in paragraph 1.3 of PD 57AC apply unless there is a specific direction in these proceedings to the contrary.*"

13. I have read the witness statement that the Defendant filed on 10 October 2025 in full. It contained numerous paragraphs that were not, on any view, compliant with PD 57AC and the Statement of Best Practice appended to it. There was no certificate of compliance from the Defendant or his legal representatives (as required by paragraphs 4.1 and 4.2 of PD 57AC). Parts of the statement rehearsed the content of documents or set out a narrative derived from those documents, consisted of argument and included commentary on other evidence in the case (all contrary to paragraph 3.6 of the Statement of Best Practice).

14. The Defendant accepts that certain paragraphs, some 30 of them, were non-compliant, and he subsequently agreed to remove those paragraphs and served an amended statement. Remarkable as it may seem, it is said that the Defendant's legal advisers simply overlooked paragraph 4.3 of Recorder Midwinter's order. The Defendant offered his apologies to the Court in Mr Segal's skeleton argument, and he has expressed his regret to the Claimant.

15. The Claimant says that this is not good enough: several paragraphs remain that it says are on the wrong side of the line for the purposes of PD 57AC and it pursues its application to have them struck out. The Claimant has agreed that the remainder of Mr Marshall's witness statement can be admitted as his witness statement for trial.

16. The question for me is what, if anything, the Court should do about this now. Evidence has now closed, subject to the Claimant's specific disclosure application, and the parties are otherwise ready to proceed to trial on 20 April. The Claimant's position is that the remaining paragraphs should have been removed when the Defendant amended his original statement, and that they should be struck out now. The Defendant says that the disputed paragraphs do comply with PD 57AC, but in any event this is unnecessary satellite litigation contrary to the approach to PD 57AC breaches in the authorities, and that the application is disproportionate and without regard to common sense.

17. The Court retains its full powers of case management and the full range of sanctions available to it when considering the application (PD 57AC paragraph 5.1). It also has specific powers under paragraph 5.2 to refuse permission to rely on part or all of a trial witness statement, to strike out all or part of it or require that the statement be redrafted in accordance with the Practice Direction (paragraph 5.2).

18. I have been referred to and have carefully considered the case law that has arisen around the approach to be taken to applications under PD 57AC, in particular *Mansion Place Limited v Fox Industrial Services Limited* [2021] EWHC 2747 (TCC) ("***Mansion Place***"), *Blue Manchester Limited v Bug-Alu Technic GmbH* [2021] EWHC 3095 ("***Blue Manchester***") and *Prime London Holdings 11 Limited v Thurloe Lodge Limited* [2022] EWHC 79 (Ch) ("***Prime London***").

19. In *Manchester Place*, O'Farrell J said at [49] that:

> "Where a party is concerned that another party has not complied with the Practice Direction in any particular respect, the sensible course of action is to raise that concern with the other side and attempt to reach agreement on the issue. Where that is not possible, parties should seek the assistance of the court, by application for a determination on the documents or at a hearing. However, this should be done at a time and in a manner that does not cause disruption to trial preparation or unnecessary costs. The court does not wish to encourage the parties to engage in satellite litigation that is disproportionate to the size and complexity of the dispute. Often, the judge will be best placed to determine specific issues of admissibility of evidence at the trial when the full bundles and skeletons are before the court."

20. In *Blue Manchester*, HHJ Stephen Davies (sitting as a High Court Judge) gave further guidance, and decided that (in that case) the incidents of non-compliance justified striking out the witness statements.

21. HHJ Davies described striking out (of the whole witness statement) at [44] as:

> "a very significant sanction which should be saved for the most serious cases. There is a sufficient core of compliant material in each witness statement and it is true as … That they are not particularly lengthy witness statements which are particularly egregious in their non-compliance."

22. In *Prime London*, Nicholas Thompsell (sitting as a Deputy Judge of the High Court) noted at [30] that "*in both cases [*Mansion Place *and* Blue Manchester*] the judge approached the matter by considering how to sanction the original non-compliance with the Practice Direction, rather than by applying the sanction of striking it out and then considering under the principles in* Denton *whether to grant relief*", and applied that approach himself. I do the same.

23. I have also borne in mind the summary of the relevant rules for trial witness statements in PD 32 and PD 57AC given by O'Farrell J in *Mansion Place* and the comments of Sir Michael Burton GBE (sitting as a judge of the High Court) in *Mad Atelier International BV v Manes* [2021] EWHC 1899 (Comm) that PD 57AC did not change the law concerning admissibility of evidence or overrule directions on past authorities concerning what may be given in evidence.

24. On that point, in *JD Wetherspoon plc v Harris (Practice Note)* [2013] EWHC 1088 (Ch), Sir Terence Etherton C explained that a witness statement (1) should contain evidence that the maker would be allowed to give orally, (2) should cover those issues, but only those issues, on which the party serving the witness statement wished the witness to give evidence in chief, (3) should not provide a commentary on the documents in the trial bundle, nor set out quotations from such documents, nor engage in matters of argument and (4) should not deal with other matters merely because they arise in the trial. The judge went on to say that the rules as to witness statements and their contents are not "*rigid statutes*" and added that it is conceivable that in particular circumstances they may properly be relaxed in order to achieve the overriding objective of dealing with cases justly; even opinion evidence may sometimes be included in the witness statement of a witness of fact as part of the witness's account of admissible factual evidence.

25. Last, but certainly not least, I must keep in mind the overriding objective of enabling the Court to deal with cases justly and at proportionate cost.

26. The disputed paragraphs can be grouped by theme, which follows their grouping in the

Claimant's skeleton argument.

Paragraphs 24 and 25

27. The complaint about these paragraphs is that they concern the Defendant's allegation of poor clerking services at the Chambers, and are irrelevant to a pleaded issue that poor services would give an entitlement to withhold or reduce payment of the sums claimed. The Defendant is right that they relate to the pleaded issue of his reason for leaving the Chambers, and I agree that they contain relevant evidence, if tangentially so. They are therefore compliant with PD 57AC such that the question as to whether to strike them out does not arise.

Paragraphs 38 and 39

28. In these paragraphs, Mr Marshall gives his recollection "*in hindsight*" about emails that he sent in 2017 and 2019, which were referred to in the Reply and in a statement of one of the Claimant's witnesses (Mr Tullett). He did not originally recall the circumstances of the emails, but it seems to me appropriate that he refreshed his memory by reviewing them after the event. As he does not recall sending the emails, paragraph 3.4(2) – explaining how he understood the documents at the time – is inapposite. It is also true that paragraph 39 contains a lengthy quotation from one of the emails, contrary to the Practice Direction. All Mr Marshall needed to say was that he had seen the document, and give his recollections on it, if any. On balance, however, these breaches of PD 57AC are not sufficiently serious to require these paragraphs to be struck out: the trial judge can take a view on what weight, if any, to apply to them. Both paragraphs are part of a sufficient context of compliant material in the context of the surrounding paragraphs that striking them out is not reasonably necessary.

Paragraphs 45 to 66 (excluding 55 and 57, which have already been redacted by agreement)

29. These paragraphs detail the procedural history from May 2021, when Mr Marshall received the first letter of claim, through the issue of proceedings to their amendment by the Claimant. Mr Marshall also complains that he was not given the correct version of documents including the Chambers constitution. The paragraphs are not, in my judgment, even arguably compliant with PD 57AC: it is not the purpose of a witness statement to rehearse the procedural history, which is already set out in the correspondence, pleadings and orders, much less for Mr Marshall to give his views and reactions at the various stages. This section of his statement reads like a skeleton argument and in my view that is really what it is.

30. The probative value of these paragraphs is nil. They will not assist the trial judge in any way, and will disproportionately take up the Court's reading time. I therefore order that these paragraphs be struck out.

Paragraph 70

31. In this paragraph, Mr Marshall gives his own view of the Court's reaction to his summary judgment application (which HHJ Saggerson dismissed in March 2024) and his argument at that hearing. Neither point is relevant and is inadmissible opinion evidence; it is non-compliant with PD 57AC. More seriously, the opinion that Mr Marshall expresses seeks

to put his own spin on HHJ Saggerson's written judgment, which is in the trial bundle and stands for itself. In my judgment, it was inappropriate for him to do so. The non-compliance is sufficiently serious such that this paragraph will be struck out.

Paragraphs 74 to 77 and 79

32. These paragraphs deal with the Claimant's case that Richard Jones KC and Paul Bleasdale KC were, as directors of the Claimant, acting on behalf of the Claimant when they wrote to Mr Marshall on 17 July 2012 with the offer of a tenancy at the Chambers.

33. The section as a whole reads even more like a skeleton argument than paragraphs 45 to 66. It contains inappropriate comment and opinion: for example, of an allegation in the Amended Particulars of Claim, Mr Marshall says "*I believe the statement is untrue and is a device to answer the plea under paragraph 3(a) of the original Defence that 'The Claimant, No.5 Chambers Ltd (hereafter "the Company"), has no title to sue*". Mr Marshall then goes on to express his views about what Mr Jones and Mr Bleasdale would have understood from the letter offering him a tenancy (based on his opinion of both men as he knows them), and whether they were consulted about the Particulars of Claim or Amended Particulars of Claim.

34. Mr Segal KC submitted that these paragraphs go to the pleaded issue that Mr Jones and Mr Bleasdale, in making an offer for tenancy, were acting as agents for the Claimant. But that is a question for the Court, not for Mr Marshall. That may be right, but Mr Marshall's opinion on the issue is clearly irrelevant and the statement is of no probative value because the knowledge of others is not a matter within Mr Marshall's own knowledge. Nothing in these paragraphs is proper evidence that would be of any assistance to the trial judge in determining that issue. They are well beyond context, and are not part of a wider core of compliant material. It is therefore reasonably necessary that they be struck out.

Paragraphs 80 and 81

35. In these paragraphs, Mr Marshall comments on what he alleges the Chambers' constitutions (both old and new) provide for. The comment is unnecessary and is a matter for submissions (and ultimately the Court). As the paragraphs are not evidence, but commentary, and they add nothing. It is reasonably necessary in my judgment that they be struck out.

Concluding Remarks on the Witness Statement Issue

36. It is open to me to require redrafting of the relevant paragraphs that I have decided should be struck out, as Fancourt J did in *Greencastle MM LLP v Payne* [2022] EWHC 438 (IPEC). I have not taken that course, because it seems to me to be disproportionate and unnecessary at this stage of the proceedings. The paragraphs do not add anything to the factual evidence matrix, so to redraft them would essentially be allowing Mr Marshall the opportunity to amplify his evidence at a late stage. He is already able to rely on the remainder of the statement as his evidence in chief at trial, so he will not be prejudiced by my denying him the opportunity to redraft. The costs of doing so would also be out of proportion to the claim, which is currently valued at around £71,000 (albeit with the potential for an account to be taken).

37. I also considered whether I should simply allow the witness statement to stand in full, and leave questions of admissibility and weight to the trial judge, as Mr Segal invited me to do. I have concluded that to do so would have placed an unnecessary additional burden on the trial judge and on cross-examining counsel. As HHJ Saggerson said in a previous application, this is a case where the parties and their lawyers "*are not getting on*" and where no stone has been left unturned in argument. The same has been apparent to me having heard the PTR. The trial timetable is already tight, with limited reading in time, and in my judgment proportionality and the overriding objective require me to do what I can to enable the trial to be completed in its listed slot.

38. I feel duty bound to make one final point in relation to this issue. When I read the disputed paragraphs, it was obvious to me that some of them, at least, were non-compliant with PD 57AC on their face. How, then, Mr Marshall and his solicitor Mr Kushner felt able to sign the statement of compliance is far from clear to me. The breaches in the paragraphs I have struck out were not minor. They were substantial. I do not make that criticism lightly, particularly as Mr Kushner has not given evidence, but it is important to stress – in general terms – that practitioners must exercise proper judgement over witness statements generally, and those to which PD 57AC applies in particular.

39. I have had regard to HHJ Keyser's decision in *Curtiss and Ors v Zurich Insurance plc and Ors* [2022] EWHC 1514 (TCC) and also to Fancourt J's judgment in the *Greencastle* case. Both contain helpful and instructive guidance, but ultimately cases such as these are very much on their own facts and I have exercised my discretion in the circumstances of this case.

Was the Application properly made in relation to the Witness Statement?

40. Mr Segal KC criticised the Claimant's approach to the witness statement. He says that the authorities (in particular *Mansion Place*) require a party who wishes to raise non-compliance with PD 57AC to raise that concern with the other side and attempt to reach agreement, and the Claimant failed to do that. Instead, the Claimant issued the application on 7 November 2025 (just short of a month after the witness statements were exchanged). The Claimant submitted that even if it had raised the issue in prior correspondence, it would have been unlikely that the Defendant would have complied: he did not respond to the application until 31 December 2025, when he provided an amended version of his statement.

41. In that amended version, Mr Marshall redacted a significant amount of material: some 30 paragraphs on 10 pages of A4. These paragraphs were seriously and obviously non-compliant: they were argumentative, contained comment on previous applications brought by the Claimant and submissions on disclosed documents and previous witness statements served in the proceedings. It is unsurprising that they did not comply with PD 57AC, as Mr Marshall and his legal representatives were unaware that the Practice Direction applied to the proceedings at all. What is surprising is that material such as this was included in a trial witness statement at all: it was plainly inadmissible.

42. The Defendant did not respond to the application within a reasonable time, in my view. Given that he himself is an experienced barrister and was represented by solicitors and counsel (including leading counsel), it should have been obvious to him and his advisers

that the statement was non-compliant with the Practice Direction they knew applied from the date they were served with the application. But they said nothing about it until after working hours on New Year's Eve, when the amended statement was filed, and no explanation for this has been forthcoming from Mr Marshall. He did not file any evidence in response to the application. I do not therefore consider it to be a fair criticism of the Claimant that it did not write to the Defendant before bringing the application. It is far from clear that the Defendant would have acted promptly or at all without the threat of an application. In any event, the significant amendments that were made to Mr Marshall's witness statement demonstrate that the application was necessary and well-made.

43. It is a separate question whether the Claimant should have pursued the application after it had received the amended witness statement. The Claimant accepted that the amended statement could stand as Mr Marshall's trial witness statement, subject to the redaction of the additional paragraphs to which this hearing related. The Claimant has been mostly successful on its application to redact those paragraphs. I have held that most of them are serious breaches of PD 57AC and that it was proportionate and in accordance with the overriding objective to strike them out. For those reasons, in my judgment the application was properly pursued at the PTR. I will deal with the consequences of that when I come on to consider costs.

The Payments Issue

44. The Claimant's Amended Particulars of Claim plead as follows (as relevant) in paragraphs 8.1, 8.2 and 10.1:

> 8. In or around September 2014, the Constitution was amended. The 2014 Constitution (which is attached at **Appendix 5**) included the following provisions:
>
> 8.1. "*Part I INTERPRETATION*
> ….
> *"Company" means No5 Chambers Limited, company number 2727465, being incorporated on 30th June 1992*
> *"Contributions" means and includes rent, charges and sums owed to the Company for services and goods supplied by Chambers or obtained on the Member's behalf*"
>
> 8.2. "*Part II MEMBERS DUTIES AND CONTRIBUTIONS*
> *It shall be the duty of Members:*
> ….
> iii. *To make payment of contributions due to the Company upon demand*"
>
> 10. On the terms of the Offer Letter, the Tenancy Information Pack and the Constitution (in its separate iterations) pleaded above the Contract contained the following terms:
>
> 10.1. A term that the Defendant would be liable to pay percentage rent on all work done pursuant to instructions received in the Set after his start date. The percentage rent would be payable on (and fall due after a reasonable period after) fees being received. Alternatively the fees would be paid on receipt of an invoice from the Company or (alternatively) within a reasonable period of an invoice from the Company being received.

> 14. Having received information that the Defendant had received fees, the Company has produced an invoice. When those invoices refer to "Fee Income" for a particular month, the invoice refers to information received during the relevant billing period that payments had been received by the Defendant, even if (which is unknown to the Company) the payments were in fact received by the Defendant at an earlier juncture.

45. "*Percentage Rent*" is defined as "*levied on the fees (net of VAT) received by each member*". The Claimant claims payment of the sums in the invoices, and an order for an account from the Defendant of payments (i.e. fee income) received by him in relation to which Contributions were paid to the Claimant.

46. The pleaded claim is therefore that the Claimant invoiced the Defendant when it (the Claimant) became aware that he (the Defendant) had received fees, rather than based on when the fees were actually received by the Defendant, and that the dates on the invoices reflect that. In his Amended Defence, the Defendant denied liability for payment on the basis that he was a former member of the Chambers, not a member. He did not respond to the specific allegation about when payments were received.

47. Instead, the Defendant pleaded in his Defence that certain of the invoices are not "*true invoices*" or are otherwise wrong, because he did not receive fee payments on the dates stated in the invoices (see paragraph 22 of the Amended Defence).

48. The Claimant made a Part 18 Request asking the Defendant to state the fees that he received in relation to the cases identified in the Claimant's invoices. The Defendant responded that he had not received the fees on the dates referred to in the invoices, but he did not say when or if he did receive them.

49. Following disclosure, the Claimant sought specific disclosure of bank statements from the Defendant covering the period in dispute, i.e. August 2016 to May 2019.

50. The Claimant submits that the Defendant should now be required to respond to the Part 18 Request or disclose the bank statements. Without that information, the Claimant submits, it does not know whether the Defendant's case is that he did not receive those fees, or that he did but in a different month from that stated in the invoice, or that he does not know either way.

51. Mr Churchill helpfully summarised the law in his skeleton argument, which Mr Segal did not dispute. I gratefully adopt it. From Richard Smith J's decision in *Bourlakova v Bourlakova* [2024] EWHC 352 (Ch) in relation to Part 18:

    a. A request must be concise and strictly confined to that which is necessary for the requesting party to understand the case it has to meet or to prepare its own case.

    b. The power under Part 18 expressly refers to an ability to ask matters which are outside a party's statement of case.

    c. It will not normally be reasonably necessary or proportionate to require a party to provide information that will be provided in disclosure or witness evidence at a later stage.

d. When considering its discretion the Court will have regard to (a) the likely benefit which will result in the information being provided; (b) the likely cost against giving it; and (c) whether the financial resources of the responding party are likely to enable it to meet the order.

52. Mr Segal referred me to *HRH Prince Khaled Bin Abdulaziz Al Saud v Gibbs* [2022], where Richard Salter KC (sitting as a Deputy High Court Judge) reminded us that there is a jurisdictional threshold in Part 18 applications, namely that the request must be strictly confined to matters that are reasonably necessary and proportionate for one or other of the stated purposes (referred to in paragraph 51a above).

53. In relation to specific disclosure, the Claimant referred me to *Avalon Capital Markets Limited v Duigou* [2023] EWHC 1890 (KB) and the guidance in the White Book at 31.12.2. In summary:

a. The Court has a discretion to order specific disclosure in relation to documents which are (or have been) in the party's control.

b. The rationale behind the discretion to order specific disclosure is to require the party to disclose documents which may assist the other party's case and relevance is decided by reference to the pleaded issues in the proceedings.

c. In *Avalon*, the Court ordered specific disclosure of documents which related to the remuneration of a party on the basis that the parties would be able to identify revenues which might be caught by the contractual clauses in dispute.

d. On an application for specific disclosure, the Court will take into account all the circumstances of the case and in particular the overriding objective (PD31A paragraph 5.4). The scope of standard disclosure is defined at CPR 31.6: a party must disclose documents (i) on which a party relies, (ii) which adversely affect his own case, (iii) which adversely affect another party's case or (iv) which support another party's case. An order for specific disclosure should be limited to documents which are necessary to deal with the case justly and at a proportionate cost. The overriding objective also requires the Court to ensure, as far as is practicable, that the parties are on an equal footing and can participate fully in proceedings.

54. The Defendant's response is that both requests are premature because they are in effect seeking an order for the taking of an account before liability has been established (in other words, they are not currently relevant). Mr Segal invited me to dismiss the application and allow further directions for the taking of an account to follow trial, if liability were established. He argues that the fee income in respect of which the Claimant now seeks further information or disclosure is not fee income received or collected by the Claimant, and the information sought is not relevant to the Claimant's claim for a liquidated sum.

55. The Defendant also argued that obtaining the bank statements would be expensive and time-consuming, and that the statements would not provide the information that the Claimant seeks because they would identify only payments made from the Defendant's new chambers that would not identify the cases to which the payment related.

56. I also bear firmly in mind that this is a claim of relatively modest value (around £71,000, albeit the Claimant is also claiming an account) that has been cost budgeted to roughly £100,000 for the Claimant and £117,000 for the Defendant. I must therefore consider whether any benefit to the Claimant by granting the orders it seeks is worth the additional cost involved.

57. Starting with the pleading point, I agree with the Claimant that the way it has put its case is that the sums it is claiming under the invoices are based on fee income that may have been received on dates other than those identified in the invoices. It is not limited to a claim for sums based on a payment received on those dates: that is clear from the Particulars of Claim.

58. I have some sympathy for the Claimant's position. It has invoiced sums that it believes are due based on the Defendant's fee income (which information it gleaned from solicitors and from the Defendant's current chambers), and pleaded a case that he received fee income that was invoiced in invoices 33535, 31670, 28428, 27089 and 25742.

59. Is that an action for an agreed sum or a remedy for an account? It is trite that an action for an agreed sum must be for a sum already due under a contract: it cannot be contingent on the performance of an obligation or the occurrence of some other specified event (Chitty on Contracts, 36th Edition, 31-003). The sums in the invoices are contingent on a specified event, namely the receipt by the Defendant of fee income. What the dispute on this point is really about is whether that specified event has occurred, which is an evidential rather than a conceptual point. It is not about taking an account: the Claimant already seeks that as a remedy, but in relation to *other* fee income that the Defendant may have received during the relevant period that the Claimant is unaware of (paragraph 18 of the Amended Particulars of Claim).

60. If the Claimant cannot prove that the fees claimed have been received, the specified event will not have occurred and its claim for the percentage amounts claimed in relation to them will fail as a claim for an agreed sum. It may or may not then be able to recover those monies if it is successful in persuading the Court to order an account, if it can come up to proof on that.

61. For the purposes of this application, the question is whether the Claimant knows the case it has to prepare in relation to proving that the specified event has occurred. The Claimant has pleaded that the specified event has occurred, and thinks it can evidence that it has through the information it received from solicitors and Mr Marshall's current chambers. The Defendant's case is that the specified event did not occur on particular dates, but he does not plead whether or not it occurred at all and if it did, when.

62. There is plainly a pleaded issue between the parties about whether the fee income was received by the Defendant entitling the Claimant to raise an invoice for chambers rent that the Defendant has not fully responded to. This case is now around six weeks from trial. The disclosure and evidence phases are complete and the Claimant has filed evidence in support of its pleaded case. The evidence is hearsay because it is what the Claimant's witness was told by others, but it is evidence nonetheless.

63. Analysed in that way, it seems to me that the Claimant knows the case it has to meet in relation to the invoices. It may not be satisfactory to the Claimant because it does not have primary evidence in relation to it, but that is not the test for a Part 18 Request. The Claimant is able to, and has been able to, prepare its case on the point. What it is really seeking is evidence, and that is not something that should be entertained on a Part 18 application.

64. In the circumstances of this case, there would be a benefit to the Claimant in receiving the information it seeks: its evidence might be improved. Had this application been heard at the outset of the case before disclosure and witness statements, I might well have granted it. At this stage, however, I do not think that the jurisdictional threshold is met. It is not reasonably necessary for the Claimant to understand the case it has to meet or to prepare its case. If the trial judge accepts the Claimant's evidence as it currently stands, the Claimant is likely to have proved its case on this point.

65. That is not the end of the matter, because if the Defendant's disclosure had been complete and addressed the pleaded issues, it would have provided the Claimant with the opportunity to obtain that evidence. I will therefore move on to the specific disclosure application.

66. As I have held, there is a pleaded issue on whether or not the Defendant received the fees that underlie the invoices sued upon. There is prima facie evidence that the specified event occurred. The Defendant has not provided disclosure in relation to that issue, and he should have done, or explained why it would have been disproportionate to do so. The Defendant has control of the documents that show whether or not he received the fee income alleged during the relevant period; that would either be adverse to or would support the Claimant's case. It is within the duty of standard disclosure.

67. According to his disclosure statement, the Defendant did not search for bank statements outwith the limited periods covered by the invoices claimed by the Claimant. For the reasons I have given, that was not sufficient. The pleaded issue required searches for work done in the period from 1 October 2016 to 31 May 2019. These are relevant documents that would support or contradict the Claimant's pleaded case.

68. I must, however, consider proportionality and the overriding objective. The Defendant gave evidence in his trial witness statement that retrieving his historical bank statements would be a time consuming (manual) and expensive process for his bank. It was submitted on his behalf that disclosure of the bank statements would be pointless, because they would not show anything other than payments from Cornerstone Chambers.

69. The Defendant did not file any evidence in response to the application, so I have no further details beyond that disclosure would be "*expensive*" and "*time consuming*". That is unsatisfactory. There are no figures for timing or cost. If the Defendant wished me to take proportionality into account in a meaningful way, he should have filed evidence on it and told me what the issues were.

70. As he did not, I have concluded that to put the parties on an equal footing, and because the documents fell within his duty of standard disclosure in any event, the Defendant should provide copies of his bank statements that relate to accounts held by him and into which he received payments in relation to work done while a member of the Chambers

from 1 October 2016 to 31 May 2019. That will have to be done in short order given the imminence of trial. Ideally, the parties will agree on a protocol that can narrow the temporal scope of the disclosure based on Mr Marshall's recollections, but I can make no order to that effect; the best I can do is encourage co-operation.

71. To that extent, the Claimant's application on the Payments Issue is granted.

72. I considered whether, notwithstanding my conclusion on the Part 18 application, that it would be more proportionate to require the Defendant to respond to that request in lieu of providing further disclosure. I decided not to take that course because it seemed to me that – from a practical standpoint – the same documents would be required to enable the Defendant to respond to the request, and therefore my conclusion on principle married with my conclusion on practicality and proportionality.

The Defendant's Application for costs of the adjourned hearing on 12 February 2026

73. The Defendant applied to adjourn the hearing of the Claimant's present application that was listed for 12 February 2026 and sought his costs at the PTR of bringing the application. The Claimant declined to consent to the adjournment. The application was granted on the papers by HHJ Holmes on 5 February 2026, but the order did not mention costs. The Defendant contends that the Claimant unreasonably refused to consent to his application, and therefore costs should follow the event.

74. Although neither party raised it in argument, it seems to me that CPR 44.10(1) is applicable here. That provides (where relevant):

"*Where the court makes an order which does not mention costs – subject to paragraphs (2) and (3), the general rule is that no party is entitled – (i) to costs...*

75. Sub-paragraphs (2) and (3) relate to applications without notice or for permission to appeal/judicial review, so are not relevant here.

76. HHJ Holmes' order did not reserve the costs to the PTR or any later hearing. It included the usual provision in orders made without a hearing that either party may apply within 7 days of service of the order to set aside or vary the order under Part 23.8. Neither party did so. Neither party is therefore entitled to the costs of the application to adjourn the hearing listed 12 February 2026.

77. The Claimant made an application dated 5 January 2026 for the adjournment of a hearing of the 7 November 2025 application listed for 6 January 2026. HHJ Ashby granted that application in an order dated 5 January 2026 and reserved costs generally. The costs position in relation to that application was not argued at the PTR, and the Defendant indicated in correspondence after the circulation of the draft judgment that he wished to make submissions in relation to it. Those costs will therefore be reserved to the trial judge.

Costs

78. The Claimant seeks its costs of the application and also an order that the Defendant be unable to recover any costs associated with the production of the witness statement dated

10 October 2025. The Defendant accepts that he must bear any reasonable costs associated with his failure to comply with CPR PD57AC, but does not accept that he should be unable to recover any costs in relation to the preparation of his witness statement. The Defendant submits that the former should be limited to the Claimant's costs of writing a letter to the Defendant objecting to the initial disputed correspondence. He also submits, in reliance on *Curtiss* (ibid), that the Claimant's application was unreasonably brought and was disproportionate and therefore he should be awarded 50% of his costs responding to the application in correspondence, and all of his costs opposing it.

79. I have held that the Claimant's application was properly brought in relation to the Witness Statement Issue. The Claimant has been successful on most of its application for strike out of the paragraphs of the witness statement it objected to. I note in *Curtiss* that the judge awarded 75% of the costs against the applicant notwithstanding that it had been successful in striking out all or part of several witness statements. That, in my view, was a very different situation. The breaches there were not egregious ones, and the judge formed the view that the application had been brought strategically (in the bad sense) in the hope of emasculating the evidence of a witness who was central to the claimant's case, rather than ensuring the efficiency of the trial process (see [16]). I am satisfied that the Claimant in this case made the application in response to what were, on any view, serious breaches, and that the Defendant's refusal to redact additional paragraphs that were defective in similar ways to the those he had agree to redact was wrong.

80. The Claimant was also successful on its specific disclosure application, but was unsuccessful in relation to its application for an order under Part 18. I see no reason for departing from the usual rule that costs should follow the event in respect of the Claimant's application. However, I will make a modest reduction on the Claimant's recovery to 80% of its costs to reflect the facts that it was not wholly successful. It is not more than that because (in relation to the Part 18 application) there was much overlap with the specific disclosure application. This is not a case that is sufficiently out of the norm to justify assessment other than on the standard basis.

81. In summarily assessing the Claimant's costs, I have in mind the overriding objective and CPR 44.2. The Claimant's statement of costs claims £10,291.25, which includes its work on the application and reviewing Mr Marshall's original witness statement. The hourly rates claimed are within the Guidelines and I am satisfied that the amounts claimed are reasonable and proportionate. The Defendant will therefore pay 80% of those costs, namely £8,233.00.

82. I agree with the Claimant that the Defendant should not recover his costs in relation to his failure to comply with PD 57AC, but it would go too far to disallow all of his costs in relation to preparing the witness statement, which but for the redacted and struck out paragraphs has been admitted into evidence.

83. A fairer order is that the Defendant is unable to recover his costs associated with the non-compliant paragraphs. It would not be helpful on an assessment of costs, however, to put the parties to the expense of arguing which costs are, and which are not, attributable to the non-compliance. It seems to me the more proportionate approach would be disallow a percentage of the witness statement preparation costs. The final statement, including all redacted/struck out paragraphs, is 112 paragraphs long. 40 of those original paragraphs

have now been removed. Taking a broad brush approach, I will disallow the Defendant from recovery of 35% of his costs of preparing the trial witness statement.

84. This judgment will be handed down on my behalf by HHJ Dight CBE on 20 March 2026 at 10am. The parties are excused attendance and the approved version will be circulated to the parties after the mention.

(End of Judgment)