JUDGMENT : Mr Justice Jack : QBD. 24th May 2006.

1. On 26 August 2005 the Legal Services Commission issued a claim under Part 8 of the Civil Procedure Rules against a firm of solicitors, Aaronson & Co, and the two partners, Francis Aaronson and Linda Aaronson. It was for an order under the Legal Services Commission (Disclosure of Information) Regulations 2000 and clauses 3.8 and 3.15 of the Standard Terms of Civil Contract applying between the Commission and the firm, namely that the firm provide to the Commission all its publicly funded client files, which had not yet been billed. On 12 October 2005 an application was issued on behalf of the defendants that the claim be stayed on the ground that it was in breach of an arbitration agreement, namely that contained in the Standard Terms. On 14 February 2006 Deputy Master Hoffman delivered his reserved judgment dismissing the application. On 17 February he gave directions for the conduct of the action including a trial window of April to May 2006. He also refused permission to appeal. The defendants served a notice of appeal. After some listing vicissitudes it came before me on 15 and 16 May. I was able to read the papers before the hearing and formed the view that the proposed appeal had a real prospect of success. I therefore granted permission to appeal at the commencement of the hearing and proceeded to hear the appeal. By an order of Mackay J of 28 February 2006 the provisions of the order of the Deputy Master as to the further conduct of the action had been stayed.

2. The background to the Commission's claim for the delivery up of the firm's unbilled files is complex. It is not easy to extract it from the papers assembled for the purpose of the application to stay and the appeal, but I trust that what follows will be at least broadly accurate. Some of it is abbreviated.

3. The defendant firm has been in existence for over twenty years. It built up a practice which was in part publicly funded and in part privately funded. That funding came initially from the Legal Aid Board and latterly from the Commission pursuant to the Access to Justice Act 1999, which set up the Commission and defines its functions, rights and obligations. The firm's publicly funded practice was substantial, particularly in immigration and asylum work – though the proportion of that work of the whole is a matter of disagreement.

4. By a letter dated 15 September 2003 the Commission terminated the firm's General Civil Contract with the Commission. The termination was later suspended. Three reasons were advanced for the termination: that the firm had not produced certain files; that the Cost Committee had rated the firm Category 3 with a downward assessment rate of 28%; and that the firm had failed to submit billings sufficient to meet the Standard Monthly payments being made by the Commission which had given rise to a deficit of monthly payments over billings of £474,220. The decision to terminate was reviewed by the Contract Review Body in accordance with the internal review procedure provided by the Contract and was upheld on 5 December 2003. As of January 2004 the Standard Monthly Payment was reduced to zero. The issues relating to the termination were referred to arbitration by the firm as provided for in the Contract. Miss Elizabeth Birch of counsel is the arbitrator. The firm alleges that the reason why its billings fell behind the Standard Monthly payments was the change introduced by the Commission that 'controlled work', that is work where the costs are not assessed by a court or tribunal, should not be the subject of interim billing to the Commission by solicitors but must await the end of the case – something which could be a long way off in immigration work. The firm asserts that the payments it had received were justified by unbilled work in progress. The firm's statement of case in this first arbitration is dated 28 June 2005.

5. On 26 October 2004 the Commission gave notice of termination of the firm's Contract awarded on 9 February 2004, commencing 1 April 2004, for immigration work and asylum work. The ground was that the award of the contract was conditional on the firm successfully appealing its Category 3 rating to the Costs Committee, and the appeal had been unsuccessful. The termination was referred to the Contract Review Board, which upheld it. The decision took effect on 22 February 2005. This became the subject of a second arbitration before Miss Birch. The firm's statement of case is dated 27 October 2005.

6. On 25 February 2005 the Commission decided that no further payments should be made to the firm under its General Civil Contract. The ground was the amount alleged to be owed by the firm. The difference between amounts paid by way of Standard Monthly payments and bills presented was put at £466,882. Recoupment of 28% of bills submitted and credited was put at £313,085. There were allegedly duplicate bills totalling £55,260. That gives a total of some £825,000. The firm's case is that the overpayment is met by work in progress, that the commission is not entitled to apply the reduction of 28% -or any reduction, and that the duplicate billing is not by the firm but by the Commission and does not affect the balance of account. The right to stop payments is the subject of a third arbitration before Miss Birch, the firm's statement of case being dated 19 December 2005. The three arbitrations have been consolidated, and I will refer simply to 'the arbitration'.

7. The value of the firm's unbilled work is a matter that the firm relies on and will seek to establish in the arbitration. The costing of the work by costs draughtsmen instructed by the firm is still proceeding. The Commission received no bills for controlled work since the end of 2003, when the Commission ceased making payments to the firm for controlled work. The firm has been in difficulty presenting bills since then, because the firm would become liable to account for vat on the bill, which it would not recoup from the Commission. Although the firm has a computer accounting system, that has not enabled it to extract from the system the units of lawyer time, and the costs, attributable to particular cases. Without the intervention of a costs draughtsman the firm does not know the value of the work. I was informed that the present position is that there are about 2,000 unbilled files of which about half have now been costed. The total costed is about £800,000, which includes certified work approaching £300,000. That would suggest that there may be something of the order of another £500,000 owing on the uncosted files. I was told that the Commission's position in the arbitration is that Miss Birch has no jurisdiction to

determine the amount due on particular files, because that is outside the arbitration provisions and is a matter for the Costs Committee only. That may, or may not, not prevent her from determining the position overall as to the unbilled work and its likely value in so far as that is relevant to the disputes before her.

8. With that abbreviated summary of the disputes which have arisen and which are included in the arbitration, I will turn to the events which led to the Commission's claim for delivery up of the firm's files relating to unbilled work. In a letter dated 25 February 2005 the Commission referred to the termination of the contract for immigration work as of 22 February 2005 and asked for a list of all current publicly funded immigration matters, so arrangements could be made for their transfer to other firms. I have seen no response to this request, although on 4 March 2005 the firm's solicitors wrote a long letter to the Commission denying the Commission's right to determine the contract. It accused the Commission of trying to destroy the firm. On 17 March the Commission wrote stating that in view of the failure to provide a list and the need to protect clients the Commission would attend the firm for an audit of all open or unbilled files on 29 March. A further request was made for a list of files, with details of them. On 24 March the firm's solicitors wrote saying that there were no current files because the work had been discontinued by reason of the Commission's cessation of payments at the end of 2003, and the files were with costs draughtsmen. They stated that there was no basis for any audit. Nonetheless the commission's representatives attended at an office of the firm on 29 March. They were there for 5 minutes. There is a dispute as to what was said. There was in no practical sense any audit. The Commission wrote on 12 April 2005 (misdated 2004), and the firm's solicitors replied on 3 May. They enclosed a memo from a costs draughtsman, Andrew Folkes, that he had costed £480,000 thus far. By letter of 26 May the Commission asked for details of all open and unbilled files within 7 days for the purpose of deciding whether to continue the suspension of the termination of the firm's General Civil Contract (apart from immigration – already determined). By letter of 31 May the firm asked to have until the next week to respond bearing in mind a bank holiday and all else that was going on. Their solicitors wrote on 10 June denying the legality of the Commission's approach.

9. The Commission's letter to the firm's solicitors dated 30 June 2005 stated that the letter of 10 June was not an adequate reply to the Commission's requests made by letter of 26 May. It repeated requests as to how the firm was carrying on its practice, to be answered by 11 July. It repeated the request for a list of open and unbilled files with details. The letter stated: *"I am very concerned at your client's failure to list even one open and unbilled file under your client's care at this important time. This is particularly in view of the confused, and in my opinion evasive, response by your client on key issues of how its legal aid practice has been operating both at the audit and in subsequent correspondence. I would remind you that although we pay for legally aided services and have a statutory duty to obtain value for money in procuring them, we do not receive services directly and rely on audited files and receiving information from our suppliers."*

   The letter continued that the Commission intended to exercise its right to see all open and unbilled files, and they should be delivered to the Commission by 11 July. It was stated that the request was made under clauses 3.8 and 3.15 of the Standard Terms of the Contract and regulation 3 of the Disclosure Regulations as I will call the Legal Services Commission (Disclosure of Information) Regulations 2000.

10. The firm replied to the Commission's letter of 30 June 2005 on 11 July in a letter of 10 pages. Much of the letter was concerned with what had been said, and not said, about the firm's continuing legal aid practice, and the Commission's conduct towards the firm. But although it stated that the Commission had been inconsistent in what it had said about the firm's continuing publicly funded practice, it did not say what the correct position was, but referred to previous letters. There it had been said that there was no continuing publicly funded practice in immigration work as a result of the Commission's actions, but the firm was continuing with family and housing work. As to delivery up of files, the letter stated: *"[The firm] expressly makes any such "open and unbilled" files available to you to "see" on site or at your office, as you have requested, if you have lawful authority under the unlawful process you perpetrated, and 'created' to "see" them."*

    It was stated that the Commission did not have that authority.

11. The Commission's letter of 2 August 2005 referred the failure to provide a list of files or the files. It stated the Commission had no clear picture of how the firm's legal aid practice was operating, and whether quality measures were being met. It stated that the Commission also needed to assess the value of unbilled files and work in progress. The deficit of £835,229 was referred to together with the facts that no bills for controlled work had been submitted since December 2003 and none for certified work since January 2005. It was said that a better understanding of the position was required, and that to that end the Commission would attend the firm on 22 August for an audit of all files on controlled or certified work which were open or unbilled. It was stated that the files were required for inspection, which would be done by removing them and copying them at the Commission's expense: any files being currently worked on would be prioritised. If the files were not provided, an order would be sought from the court. A list of files from the Commission's records was said to be enclosed, but followed on 8 August.

12. The firm responded on 18 August 2005, with a letter of 13 pages. It stated that that the Commission's purpose in seeking the audit was an improper purpose, namely to improve its position in the arbitration. It requested an internal review of the decision to conduct an audit (which is the first step towards the submission of a dispute to arbitration under the Standard Terms). The letter was acknowledged by the Commission on 22 August, stating that the request for an internal review had been forwarded to the Corporate Legal Team. The Commission has not made any further response to the request for a review.

13. On 19 August 2005 the firm's solicitors wrote to the Commission stating that the Commission had no authority to conduct an audit as the purpose was to advance the Commission's position in the arbitration. It stated that Mr and Mrs Aaronson would be away on holiday on 22 August. It also that that in all the circumstances the Commission was 'not welcome our client's office'.

14. The outcome was the issue on 26 August 2005 of the Commission's claim for an order under the Disclosure Regulations and the Standard Terms for the provision of all publicly funded files which were open, or not yet closed, and had not been billed. The claim was issued under Part 8. It occurs to me that, if the firm is no longer carrying on immigration work, it may have no immigration files which are still 'open' or 'not closed'. But that was not been raised before me, and the hearing proceeded on the basis that what was sought was all the files for which the Commission has not been billed. The claim was supported by a witness statement by Elizabeth Long, an account manager of the claimant who had not been involved, at least directly, in the correspondence. She had, however, attended at the firm's office on 22 August and found it closed. The reasons given in the statement for the audit were to understand the value of the firm's work in progress, to protect clients by arranging the transfer of files and to assess the quality of work. It was said that the Commission needed to know the value of the unbilled work in order to assess its own financial position. It was stated that as the firm asserted that so much was due on the files it was odd that the firm would not let the Commission see them.

15. The firm's application to stay the Commission's claim was issued on 12 October 2005. It was supported by a witness statement by Mr Aaronson. The stay was requested on two grounds: first, that the right of the Commission to apply for a stay was covered by the arbitration provision in the Standard Terms, and second, as I understand it, the issues were already raised in the existing arbitration, which I find more difficult to follow.

16. On 3 October 2005 the Commission wrote informing the court that in its action it would rely solely on the Regulations and not on the Standard terms of Contract. That has remained its position. The intention behind this is no doubt to weaken the firm's case that the claim for delivery up should be stayed.

17. On 2 November 2005 the Law Society informed the firm that it would assist it in the action by financial support. The firm already had the assistance of the Law Society in the arbitration.

18. On 4 November 2005 the Commission wrote stating that, as it appeared that the firm intended to disclose the files in the arbitration, it would be sensible to agree how they could be inspected and copied, leaving costs as the issue between the parties. The Commission denied that the files were relevant to the arbitration but accepted it could not stop the firm from disclosing them. The firm's solicitors replied on 25 November that disclosure in the arbitration did not 'indicate a readiness to grant the LSC access to the files. When documents are disclosed in an arbitration, they may only be used for the purposes of the reference. Thus it would not be open to the LSC to use those files for any purpose other than the reference.'

19. In the firm's skeleton argument bearing the names of leading and junior counsel for the hearing before Deputy Master Hoffman on 3 February 2006 the following assertions were made:
    (a) it was clear that the reason why the Commission wanted the files was to assess what was properly claimable under them;
    (b) the reasons given by the Commission for seeking the files were in issue in the arbitration;
    (c) in deciding whether the Commission was entitled to act as it had, the arbitrator would have to decide whether there was a deficit against standard monthly payments by taking account of unbilled files;
    (d) it would be for the arbitrator to decide how she dealt with that, but documents disclosed in the arbitration might only be used for that purpose (paragraph 41);
    (e) if the reason why the Commission was seeking the files was the same as an issue the arbitrator had to determine, the claim should be stayed;
    (f) in addition to the obligation to stay an action which might arise under section 9 of the Arbitration Act 1996, the court had an inherent jurisdiction to stay claims which might fall outside section 9 – ***Channel Tunnel Group v Balfour Beatty Construction Ltd*** [1993] AC 334;
    (g) in ***Asghar v Legal Services Commission*** [2004] EWHC 1803 Ch it was held that, where there were non-contractual claims and contractual claims which could not only sensibly to heard together, there should be a stay, but in any event the wording of the arbitration provision in the Standard Terms was apt to cover claims which were not contractual claims but which concerned a breach of contract.

20. In his judgment the Deputy Master referred to the order made by the arbitrator on 16 January 2006. This included an order that general disclosure should be provided by way of a listed index by 3 February 2006. (The firm's list referred to its unbilled files but did not list them individually.) The judgment stated: *"In the arbitration proceedings a general disclosure list has now been provided by the [firm] to the [Commission] but in argument before me the [firm] have suggested that, notwithstanding this disclosure under the arbitration, inspection will not be given to the [Commission]."*

    It was submitted to me that this was wrong. There is no transcript of the hearing. I was provided with a letter from the firm's junior counsel in which he states 'I suggested that it would be for the arbitrator to decide how to deal with inspection for the purposes of the matters before her'. It continued that it would be for the arbitrator to decide how to deal with the issue of the value of the unbilled work, which would determine how inspection should be undertaken. In view of that, and paragraph 41 of the skeleton argument it is not surprising that the Deputy Master thought that the firm were playing a tight hand on inspection.

21. The judgment records that the Deputy Master was told that the firm had stopped the costing of files because they were not going to be paid and if they presented bills they would have to account for vat. It stated: 'The current position therefore appears to be that under the arbitration the [Commission] can neither see the files nor is there quantification [i.e. costing] of completed work.' I was told that costing has not ceased but is accelerating – the firm advertising for costs draughtsmen. But it is certainly correct that a large proportion of the controlled work has not yet been costed, perhaps up to half. One explanation is the size of the firm and the cessation of payment by the Commission.

22. The judgment lists five reasons why, as it had been submitted to the Deputy Master, the Commission wanted the files: (1) to consider whether the statutory charge could be enforced against any clients; (2) to consider the standard of work; (3) to consider the need for any transfer of files; (4) to consider whether any vulnerable clients needed protection; and (5) to carry out a general overview of the costs claimed on the files. The last comes somewhere near the main reason given by Ms Long – to assess the overall financial position. The judgment stated that it was not denied that the delivery up would enable the Commission to take a view on the assertion that the firm was owed more on these files than the Commission asserted it was owed. On the firm's case, as I have understood it, that is a key factor in the arbitration. It is difficult to see how it is not something which the Commission should be entitled to do for the purpose of the arbitration. I mean both for the purpose of presenting its case in the arbitration and for deciding the position it should adopt if there were discussions as to a settlement.

23. The judgment refers to the firm's submissions that because of the Commission's bias against it, delivery up was pointless; that the Disclosure Regulations did not enable the order sought; and that the issue should be left to the arbitrator, who, it was submitted, could order delivery up.

24. The deputy master's reasons for refusing a stay were these. The issue as to delivery up might be distinct from the arbitration. The ambit of the Disclosure Regulations was not an issue in the arbitration. If delivery up was ordered, the Commission could form a view on the value of the work, but that was not a sufficient reason for a stay. The issue needed to be dealt with expeditiously and economically in accordance with the overriding objective.

25. Since the judgment matters have moved on in the arbitration. On 21 March a number of orders were made. The firm was to provide a list of all files by 14 April, and detailed provisions were made for inspection commencing 24 April and copying of files requested by the Commission, over a period expected to be 3 weeks. The order recorded the parties' agreement that inspection was taking place solely for the purpose of the arbitration and documents would not be available for any other purpose. The firm failed to list the files by 14 April. On 15 May, the first day of the hearing before me, an order was made extending the period to 16 June with a provision that any file not then listed could not be relied on. Inspection is to take place over two weeks commencing 26 June. All the files were to be available together because the Commission wished to do a quick, 2 to 3 minute check on each, with the ability to return to a file and to do random checks. There is to be a preliminary issue to be decided in June whether the arbitrator has jurisdiction to assess the costs on individual files.

26. There has also been correspondence between the parties about the appeal. The firm's letter of 24 February 2006 included this: 'Additionally, we have disclosed all the unbilled files in the arbitration, you have requested inspection, and we are seeking the arbitrator's directions for an orderly inspection. On inspection, you can assess what in your view is the financial value and also see any quality assurance issues. If you feel that there are any quality assurance issues, for example, then it is open to you to take steps to address them – including by exercising any statutory functions.' Following service of the appeal notice the Commission asked by letter of 7 March whether it was now the firm's position that inspection in the arbitration could be used for any purpose. On 23 March the Commission wrote a letter 'without prejudice save as to costs' which was nonetheless put before me by agreement. It enclosed with a draft consent order providing for delivery up of the files with ancillary provisions, and that the firm pay the costs. On 24 March the firm's solicitors wrote referring to the Commission's letter of 7 March. It stated that the firm's position had always been that the Commission was entitled to disclosure and inspection of the unbilled files 'in the arbitration proceedings for the purposes of the arbitration'. It stated that it should have been clear to the Commission for some time that it was going to see the files for the purpose it wanted, namely the 'costs purposes featuring in the arbitration' – which must mean the value to be put on each file. It suggested a further audit for non-arbitration purposes after the completion of inspection in the arbitration. It proposed a consent order with a stay of the proceedings and the costs reserved until the conclusion of the arbitration. This offer was rejected by letter of the same day, 24 March. By a further letter of the same date the firm's solicitors offered to settle the claim by giving delivery up at the conclusion of the arbitration. By letter of 5 April the firm summarised its position as to audit and delivery up: the Commission could use the inspection process to assess whether there was any auditing process it wanted to undertake outside the arbitration and then conduct an audit, or there could be delivery up of the files at the end of the arbitration. The Commission replied on 11 May. The letter insisted on delivery up but put forward a way in which that might be achieved with protection of the firm's interests. It stated that as none of the files were ongoing to deprive the firm of them would cause no inconvenience. That ignores such need as the firm might have for the files in the arbitration. It asserted that the examination of originals was essential to see if original documents had been altered and to see original signatures on forms, by way of examples. It was said it would not be practicable to have access to the documents at the firm's offices. This insistence on the needs for originals contrasts with the position taken in the Commission's letter of 2 August 2005, when it was proposed that the commission should photocopy the files. A consent order was proposed in the same form as had been proposed on 23 March.

27. In support of the appeal it was first submitted by Mr Anthony de Freitas on behalf of the firm that the issue whether there should be delivery up was covered by the arbitration procedure in the Standard Terms. This was contested by Mr Mukhtiar Otwal on behalf of the Commission.

28. Clause 23.1 of the Standard terms provides that all disputes concerning, inter alia, 'alleged breaches of this Contract' are subject to internal review, and clause 23.2 provides that all disputes concerning, inter alia, 'alleged breaches of this Contract', are subject to 'internal review, review (mediation by agreement) and arbitration.' Clause 23.3 provides that, if rights under clause 23 are not pursued within the periods specified, the disputed decision is to be taken as accepted. Clauses 23.6 to 23.9 set out the internal review procedure. Clauses 23.10 to 23.15 provide for a further review by the Contract Review Body. Clauses 23.16 to 23.22 relate to mediation. Clauses 23.23 to 23.25 provide for arbitration if either side disagrees with a decision of the Contract Review Body. These provisions were considered by Lightman J in ***Asghar v Legal Services Commission*** [2004] EWHC 1803 Ch and were held to constitute an arbitration agreement for the purpose of section 9 of the Arbitration Act 1996. That was accepted before me.

29. Clause 3.8 of the Standard Terms was relied on when the claim was issued. It provides:

> *3.8 You must make available to our representatives such information, assistance and facilities (including, without limitation, photocopying and interviewing facilities) and such documents or parts of documents, including the case files and file records of any Clients and Former Clients, as we may require.*

Clause 3.9 provides supplementary provisions. Clause 3.15 was also relied on. It provides that when it is required for the purpose of clause 3 the Commission may require documents including case files and file records to be sent to it.

30. A dispute whether the Commission was entitled to delivery up of documents under these clauses in the circumstances which have arisen would be as to whether there had been a breach of contract by the firm in not delivering up their files. The decision to demand the documents would be capable of being subject to review and then arbitration. The firm asked by its letter of 18 August 2005 for review of the decision to demand the documents. That letter was acknowledged, but the commission has not taken any steps towards a review. That means that the route to arbitration is for the moment barred. But it is barred by the Commission's own inaction and the Commission cannot complain about it. The Commission are, however, no longer relying on a contractual right to the documents.

31. The Commission now rely solely on regulation 3 of the Disclosure Regulations. It provides:

> *3. The Commission may require a supplier to provide to any person authorised by the Commission to request it such information or documentation as it may from time to time require for the purpose of discharging its functions under the Act or Legal Aid Act 1988.*

32. Mr de Freitas submitted that the regulation does not give a power to require documentation to be provided. On the face of it, it does. But Mr de Frietas's argument is that the regulation is made under section 22(1) of the Access to Justice Act 1999, and that gives no power to make regulations empowering the Commission to demand documents. The section provides:

> *22 (1) Except as expressly provided by regulations, the fact that services provided for an individual are or could be funded by the Commission as part of the Community Legal Service or Criminal Defence Service shall not affect –*
>
> *(a) the relationship between that individual and the person by whom they are provided and any privilege arising out of that relationship, or*
>
> *(b) any right which that individual may have to be indemnified in respect of expenses incurred by him by any other person.*

Mr de Freitas submitted that the power to make regulations is a power to provide that the provision of services may affect the relationship referred to in (a) and the right referred to in (b) of the subsection, and that it does not therefore include a power to require documents. On Mr de Freitas' argument a regulation might provide, for example, that a contractual right to documents existing as between the Commission and the solicitor, should not be defeated by the rights existing between the solicitor and his client. If he is correct, then the Commission's claim will fail as it is not relying on its contractual rights. That, however, is not a reason for staying the claim. It will have to be determined as a matter of defence to the claim if the claim is not stayed. In determining the issue of stay I must proceed on the basis that the Commission have an arguable case under the regulation.

33. Mr de Freitas submitted that the claim to documents under the regulation is so closely connected to the contractual claim which was made and in respect of which the firm have asked for a review that it should be stayed. In *Asghar* the claimant solicitors claimed a conspiracy to injure in connection with a 'raid' on their offices, misfeasance in a public office and inducement of breach of contract. Lightman J held that these non-contractual claims had the clearest connection with the Contract. All rested on the good faith of the Commission which was a key issue in the arbitration. He stated: 'In a word the resolution of the contractual claims cannot sensibly or practically be divorced from the resolution of the noncontractual claims.' He held that there should be no over-lapping of issues between a the court proceedings and the arbitration. He also held that the words from clause 23.2 *'disputes concerning alleged breaches of the Contract' were wide enough to cover 'all disputes in which the issue of breach of contract arises.'* He said: *'… the provision for arbitration is not to be by-passed without the consent of the parties by raising that issue and having it determined as an issue in court proceedings, however framed.'* Mr de Freitas

submitted that the position here was similar, but stronger. He said that, if the Commission had power to demand the files both under the contract and under the regulation, then the question which arose in each case was the motive, or good faith, of the Commission in making the demand, and hence its validity. He also relied on clause 3.4 of the Standard Terms, which provides that the solicitor 'must comply with all relevant legislation.' This, he submitted, meant that the breach of contract and the regulation could not be separated. Mr Otwal answered that in *Asghar* the claims were closely entwined and here the Commission's right under the regulation stood wholly apart from the contract.

34. If the conduct of the firm in declining to hand over its files is unjustified, it has both acted in breach of the provisions of the Contract and has failed to comply with the regulation. Its failure to comply with the regulation is itself a breach of contract. I have concluded that the dispute which has arisen between the Commission and the firm as to the provision of documents is a 'dispute concerning alleged breaches of this Contract'. I agree with Lightman J that those words are not to be given a narrow interpretation. By the provisions of the Contract which the Commission imposes on solicitors disputes concerning alleged breaches of the Contract are to be resolved in the complex way I have described. That is not something which the Commission can pick up or put down as it chooses. I conclude that the dispute falls within the arbitration provision and so the action must be stayed. The power given by section 9 is not discretionary: it has not been suggested that 'the arbitration agreement is null, void, inoperative or incapable of being performed. I thus find myself in disagreement with the Deputy Master.

35. I appreciate that solicitors carrying out publicly funded work may on occasions, hopefully rare, act in grave breach of their duties so that the Commission should be able to require them to deliver up their documents with the sanction of a swiftly available court order if they do not. The court has substantial powers provide by section 44 of the Arbitration Act 1996 to act on the application of a party or proposed party to arbitral proceedings.

36. I have not found the reference to ***Channel Tunnel Group v Balfour Beatt***y helpful. That considered the jurisdiction of the court to stay proceedings under its inherent jurisdiction in situations rather different to this, namely where there is an agreement to refer disputes which falls short of coming within the statutory definition of an arbitration agreement: I refer to the speech of Lord Mustill at page 352.

37. The court does however have a wide inherent jurisdiction to stay proceedings. I refer to volume 2 of the White Book at page 2321 and following. I have set out the history of the dispute so that its character can be seen. The firm relies on its files to establish that it has a vast backlog of unbilled work exceeding in value the sums it has received from the Commission. The Commission wants to see the files primarily to ascertain the likely balance of account between it and the firm. The files are being disclosed in the arbitration and a scheme for inspection taking account of the Commission's needs has been determined. Nonetheless the parties have been unable to resolve the action. It has been primarily, it seems to me, because the Commission has insisted it needs to take possession of all the original files in a 'delivery up' exercise which is separate from anything happening in the arbitration, and because the firm has insisted that inspection in the arbitration shall not be used for any purpose outside the arbitration. It is accepted that the assessment of the value of the unbilled work is within the arbitration and the only surviving purpose outside the arbitration is, I think, to check the quality of the work. The firm accepted at a late stage that the Commission could use the inspection to identify files for an audit – or quality check, but the audit was not to be done as part of the inspection in the arbitration but subsequently – a two stage process. The situation cries out for the imposition of a solution by the court to enable both parties to use the files while protecting the interests of each.

38. The arbitration is proceeding as I have described, and its purpose is to resolve the underlying disputes. There should not and cannot be a separate delivery up/disclosure procedure being conducted in parallel with that in the arbitration. The arbitration procedure should take precedence. In any event the firm has defences to the action, namely the regulation 3 issue and the motive or good faith issue, which will have to be determined. That would take time, particularly the latter. So disclosure in the arbitration will have been concluded before delivery up could be achieved in the action.

39. During the course of his submissions Mr de Freitas offered an undertaking on behalf of the firm that, if an original file or files were requested and the reasons for the request were provided by the Commission, the firm would respond within 7 days either by providing the files or with a reasoned refusal. That is helpful as far as it goes. To be fully effective there would need to be an undertaking from the firm if not each party that in the event of continuing disagreement the issue should be submitted for summary determination by the arbitrator. Mr de Freitas did not move from the position taken by the firm in correspondence that while the Commission might use inspection in the arbitration to see any quality assurance issues, any 'audit' should follow as a second stage. In my view the Commission should be free to use inspection in the arbitration for quality assurance purposes without limit so long as it is consistent with the timetable and procedures ordered by the arbitrator. If that means that there is no time to permit an 'audit', then that can follow as the firm have agreed. I would have wanted an undertaking as to that.

40. Accordingly, had I not reached the conclusion I have as to whether the claim falls within the arbitration provision, I should have exercised the court's inherent jurisdiction to avoid multiplicity of proceedings and I would have stayed the action on the terms which I have indicated, leaving inspection in the arbitration to obviate the action.

Mr Anthony de Freitas (instructed by Alison Trent & Co) for the Defendants/Appellants
Mr Mukhtiar S Otwal (instructed by Legal Services Commission) for the Claimant/Respondent