

79. The next question concerns the charging rate because under the indemnity principle Miss Wayman could not seek to recover from Mr Poultney a charging rate in excess of the charging rate applicable to her retainer with her client. Mr Poultney's case put succinctly is that the only evidence before the court as to a charging rate is in the divorce and injunction bill which it is accepted was charged at £80 per hour. Therefore he says that has to represent the charging rate either agreed with Mrs Poultney or intended throughout by Miss Wayman. If he is right about that then the bill presented for detailed assessment would have been in clear breach of the indemnity principle as it employed charging rates of £155 per hour up to 31 December 2002 and £165 per hour thereafter. District Judge Brooks allowed those rates.
80. The failure by Miss Wayman to write a client care letter to her client setting out her charging rate and her estimate of her costs was a clear breach of the Solicitor's Costs Information and Client Care Code 1999. In fact it is fair to say that Miss Wayman appears to have totally ignored the code. Garbutt v Edwards [2005] EWCA CIV 1206 a decision of the Court of Appeal and more recently the High Court decision in Mastercigars v Withers [2007] EWHC 2733 (Ch) are however clear authority to show that breach of the code does not make the contract unlawful. Nor does it limit what a solicitor can charge. Breaches of the code may be subject to disciplinary action by the Law Society (now the Solicitors Regulation Authority). Further in a dispute between a solicitor and his client breaches of the code may well result in costs being reduced. However a solicitor's retainer is a contract for services like any other and is subject to the same rules so if a charging rate has not been agreed the solicitor, like any other service provider and subject to the potential sanctions that I have described, is still entitled to charge a reasonable fee for his services: Section 15 Supply of Goods and Services Act 1982
81. I do not think that the adoption by Miss Wayman of a charging rate of £80 per hour in her divorce bill is representative of an agreement to charge that amount for all the work carried out by her for this client. It is important to note that this bill was drawn on 8<sup>th</sup> June 2004 <sup>before</sup> ~~after~~ the successful appeal before Judge Barclay <sup>and</sup> ~~but~~ before the conclusion of the detailed assessment before