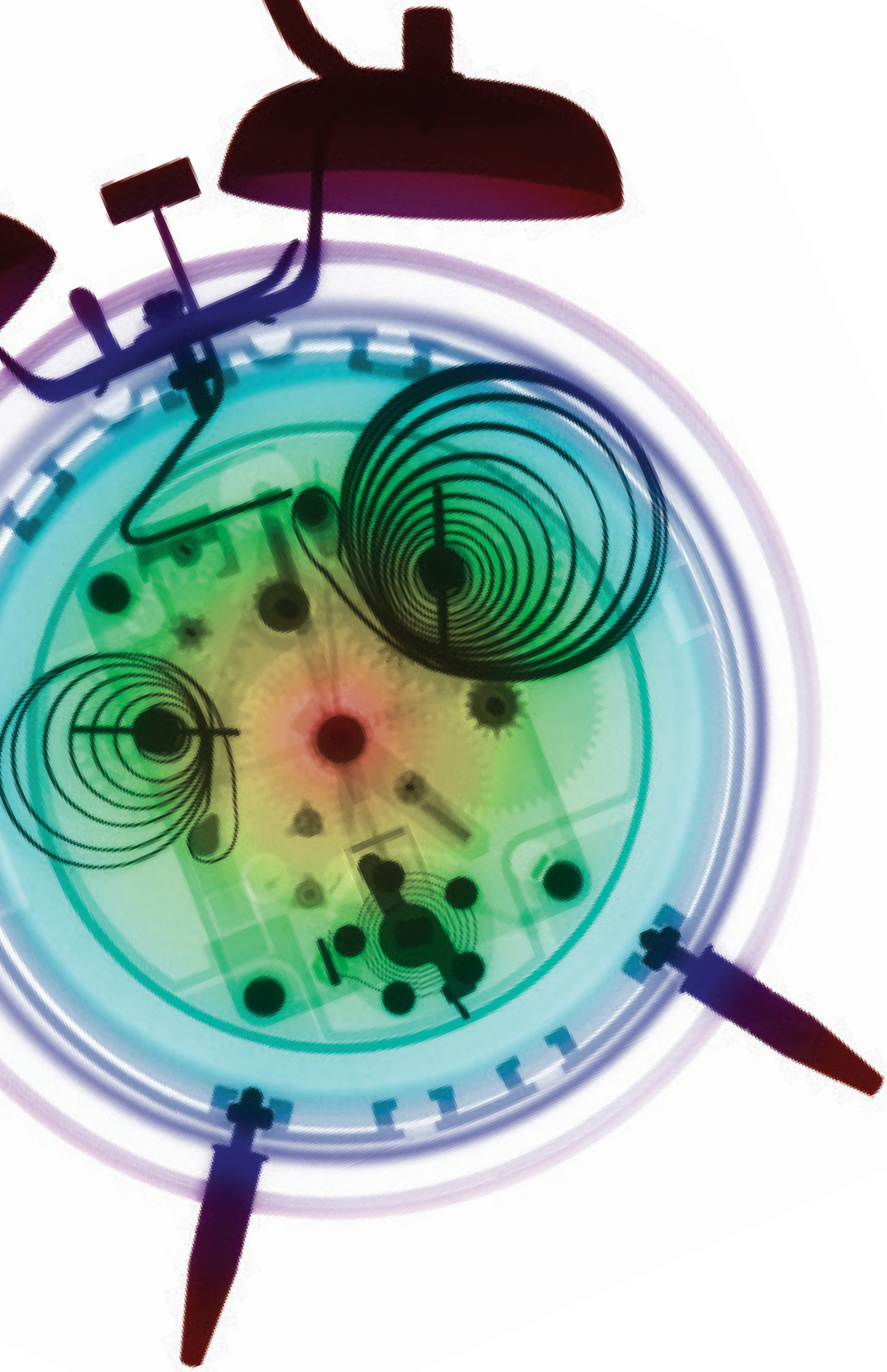

CLARION COSTS LEGAL UPDATES

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CONTENT

We have incorporated a collection of our blogs into a booklet. The blogs were current at the date of publication, however these may have now been superseded. Please visit our blog (https://clarionlegalcosts.com/) for continuous updates on all costs law.

INTRODUCTION

Cost specialists operating within a large dynamic practice, we also act for firms of solicitors and insurers across the UK. Discreet, smart and highly experienced, when you need advice and assistance with compliance, procedure, preparation, risk management and disputes surrounding solicitors' costs and litigation funding, our dedicated team is here to help.

Flexible, practical and commercially minded, we're fully aware of the pressures and constraints within the complex and shifting landscape of costs. Offering accurate, efficient and timely turnaround of files with the maximum recovery possible, our competitive fees are tailored to meet your needs, including hourly rates, fixed fee or percentage charges.

Bringing to bear highly regarded expertise, especially within the areas of court of protection, commercial litigation, personal injury and costs budgeting/management – whether you are the paying or receiving party, insurer or private client.

The bulk of our work comes via referral and recommendation and all work is kept strictly confidential within the Costs and Litigation Funding team.

Take advantage of our free telephone advice service, call 07764 501252 – available outside office hours.

Free in-house training seminars for solicitors. Talk to us about you and your team's continued professional development and keep up to date with our regular e-bulletins – register your interest with andrew.mcaulay@clarionsolicitors.com.

"Sue is a leader in her field of Costs Management, who always delivers in an efficient manner. Her work is of a high standard and she continually goes the extra mile to turn around urgent work at very short notice, which is why she is my 'go to' person on costs. Sue's technical knowledge and attention to detail is second to none."
Associate, Commercial Litigation – Leeds

"Andrew is an extremely proficient costs lawyer who gives attention to every detail to ensure maximum costs recovery. His extensive knowledge of alternative litigation funding options is second to none. I would not hesitate to recommend him."
Partner, Property Litigation

"I have instructed Andrew and his team on a number of occasions. They offer fantastic client service and always give honest, sensible and commercial advice."
Partner, Commercial Litigation

"It's been a pleasure dealing with Joanne and the speed of turnaround and diligence in the work prepared has been fantastic. The service provided is much better from the previous costs provider I was using, and I will use your services in future and recommend Joanne to other members of our team."
Senior Associate Solicitor, Dispute Management

GOOD NEWS FOR THOSE THAT PREPARE AN ACCURATE COSTS BUDGET

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Following on from the Court of Appeal decision in Jacqueline Dawn Harrison v University Hospitals Coventry & Warwickshire NHS Trust [2017] WECA Civ 792 where the Court of Appeal found that:

The budgeted costs will not be departed from in the absence of a "good reason";
Incurred costs do not form part of the budgeted costs;
The good reason test does not apply to those incurred costs;
The proportionality test can be applied to the final claim for costs, despite the proportionality test having been applied when the costs budget was approved.

As predicted, we have seen that in practical terms this is good news for those that prepare accurate budgets, but not so for those that don't. The practical implications of this Court of Appeal decision has an impact on the recovery of your legal fees, as follows:

If the budget has **not been exceeded**:

- The **budgeted** costs will be allowed in full unless a good reason is demonstrated to depart from the budget;
- A detailed assessment of the budgeted costs can be avoided.

If the budget has been **exceeded**:

- The budgeted costs will be restricted to the amount of the budgeted costs that were approved, unless good reason can be demonstrated to depart from the budget.

Win win for those with well prepared budgets. In addition, following approval of the budget, further consideration should be given to the budget throughout the lifetime of the claim. Examples of which are as follows:

Q1. Is it necessary to consider the budget in preparation for the trial?

Answer – yes.

If you win and your budget has not been exceeded:

- Ask the court to order that the budgeted costs claimed are allowed in full;
- Only incurred costs will be assessed by way of detailed assessment;
- If the trial is less than one day, ask the court to summary assess the incurred costs. The court may assess the budgeted costs, however if the costs fall within budget, these should be allowed in full. Present your budgeted costs in phases to demonstrate to the court that the budget has not been exceed on a phase by phase basis;
- Assess any potential good reasons that your opponent may raise to depart downwards from your budget and be ready to defend those arguments;
- Ask for a payment on account of the incurred costs, these remaining costs being subject to assessment.

If you win and your budget has been exceeded:

- If no good reason can be demonstrated to depart from your budget, the court should limit your claim for costs to the approved budget amounts;
- Therefore establish a good reason to depart from the budget so that the costs can be assessed by way of detailed assessment rather than being restricted to the approved amount of the budget. This will provide you more of an opportunity to justify your costs and overspends;
- Request a payment of the approved costs, payable within 14 days;
- Request a payment on account of the remaining incurred costs, payable within 14 days.

If you lose and your opponent's budget has been exceeded, their budgeted costs should be limited to the budget:

- The winner can obtain costs in excess of the budget if they can show a good reason to depart from the budget, so be ready so defend any good reasons that the winner may raise to depart from the budget.

If you lose and your opponent's budget has not been exceeded, their budgeted costs should be limited to the budget:

- A good reason is required to depart from the budget, therefore if you can identify a good reason to depart from the winner's budget you can secure a reduction to the winner's budgeted costs.

Q2. What are examples of a good reason?

Answer – examples of a good reason to depart down are:

- Did the winner undertake all the work that was provided for in the budget?
- Were there any adverse costs orders, amount needs to be excluded from the budget?
- Proportionality test – does the proportionality test that was applied at the CCMC require revisiting?

Q3. Why raise those good reasons at the trial?

Answer

- Defers the assessment of costs to detailed assessment, if deemed beneficial;
- Minimises the amount of the payment on account;
- Minimise the amount of budgeted costs payable.
- Remember, incurred costs are subject to detailed assessment in the normal way – ensure that the court is aware that this is only applicable to budgeted costs.

Q4. What role does the budget have in securing a Payment on Account?

Answer – the court will scrutinise the amount that was approved in the budget when determining the amount of the payment on account.

- If the court refuses to order the payment of your budgeted costs in full, and opts to order a payment on account instead, request the following amounts:
  Thomas Pink Ltd v Victoria's Secret UK Ltd [2014] EWHC 3258 (Ch) (31 July 2014) – POA of 90% of budget;
  Cleveland Bridge UK Ltd v Sarens (UK) Ltd [2018] EWHC 827 (TCC) – POA of 70% incurred costs and 90% estimated costs.
- Be ready to defend any good reason to depart from the budget that your opponent may raise, this will assist in securing the maximum payment on account, conversely remember to raise any good reason arguments to depart down if you are payer rather than payee.

Q5. What role does the budget have at the mediation or settlement meeting?

Answer – the budget enables parties to be fully aware of their costs exposure, so an informed decision can be made when determining whether to settle. Update the budget for the ADR meeting so that costs may be agreed at the same time and be ready with the same arguments in terms of departure from the budget that would be applied at the trial.

Any questions? Please contact me at sue.fox@clarionsolicitors.com or call me on 0113 336 3389.

FIXED COSTS – THE EFFECT OF ACCEPTANCE OF A PART 36 OFFER.

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The case of Ansell & Evans -v- AT&T (GB) Holdings Ltd (County Court at Oxford 14/12/2017) was an appeal to the County Court in relation to the interpretation and effect of acceptance of a Part 36 offer made in a case to which fixed costs applies.

Further information can be found in Gordon Exall's blog on this case here.

Background

The Claimants had been injured in a car accident and the claim, due to its value, fell within the scope of the RTA protocol ('the Protocol'). The claims were submitted to the Protocol and the Defendant admitted liability. Subsequently, the Defendant wrote to the Claimants stating that they were concerned that the accident was a low velocity impact and they therefore requested that they have access to the vehicle in order to arrange an inspection "***in line with Kearsley -v- Klarfeld...***" and that pending such investigations the Defendant "***may wish to raise Casey -v- Cartwright***".

Shortly thereafter, the Claimants wrote to the Defendant stating that in light of this request, pursuant to paragraph 7.76 of the Protocol the claim was not suitable for and therefore would no longer continue under the Protocol.

Three months later, the Defendant wrote to the Claimants stating that "***LVI is no longer an issue"***.

No settlement having been reached, the Claimants issued proceedings under Part 7 and the Defendant thereafter made Part 36 offers, which the Claimant accepted within the relevant period.

The issue between the parties

Following settlement, the Defendant stated that it considered that the Claimants' conduct in withdrawing the claim from the Portal had been unreasonable, and that the Claimant should be limited to pre-action fixed costs (CPR 45.29B Table 6C).

The Claimants' position was that:-

- Pursuant to CPR 36.20 there was no deemed order for costs (CPR 44.9 applies only to settlement under CPR 36.13);
- CPR 36.20(2) provides that where a Part 36 offer is accepted within the relevant period the Claimant is entitled to fixed costs applicable at the date on which the notice of acceptance was served;
- The court had no discretion to go behind the self-contained provisions of CPR 36 and make some other order as the court;
- Even if the court did have such a discretion, the court should not do so because if the Defendant had wished to raise issues of reasonableness it should not have made an offer pursuant to CPR 36; and
- It is incumbent on a defendant to 'say what it means' when making offers. The consequences of CPR 36.20 are designed to give certainty in the event that the claim is settled. The consequences of the Defendant's offer should therefore have been construed ***contra preferentem*** in favour of the Claimants.

The Claimants also alleged that, in the alternative, it had not been unreasonable to withdraw the claim from the Portal in light of the Defendant's statement that it "***had LVI concerns***"

The Decision

At first instance, the Court dismissed the Claimants' application on the basis that it had been unreasonable to withdraw the claim from the Portal. However, the judge did not give any reasons for dismissing the Claimants' argument that by operation of CPR 36.20 costs payable by the Defendant were fixed to the sums set out in Table 6B for the ***stage at which the claim*** settled and that therefore the Court did not have discretion to make an order in a different amount. The judge at first instance refused permission to appeal.

The Claimants made an application for permission to appeal on the grounds that (1) the judge had failed to give reasons for their judgment, (2) that the judge was wrong in law to reject the Claimants' argument that by operation of CPR 36.20 costs payable by the Defendant were fixed at those set out in Table 6B, and (3) that the judge was wrong in law to conclude that the Claimants' had acted unreasonably by withdrawing the claim from the Portal.

At the appeal hearing the Court allowed the appeal on the first ground, but dismissed the second and third grounds.

The First ground was a simple question of fact. As to the third, the court held that the letter sent by the Defendant that it "***had LVI concerns***" was merely an indication that complex issues might be raised, but was not of itself sufficient to give rise to complexity sufficient to justify withdrawal from the Portal.

However, had the Claimants succeeded on the second ground, the reasonableness or otherwise of the Claimants' conduct would have been irrelevant. Thus it was upon the second ground that the Claimants' case hinged and therefore the reasons for dismissal require more detailed analysis.

In respect of the second ground, which was that CPR 36.20 provides that where a Part 36 offer is accepted within the relevant period a claimant is entitled to the costs applicable for the stage at which the claim settlement, the judge held that CPR 36.20(1) incorporates CPR 45.29A(1), which therefore incorporates CPR 45.29A(3) which incorporates CPR 45.24 (consequences of failure to comply or electing not to continue with the relevant pre-action protocol).

Simply put, the judge found that where a case settles by CPR 36, the court has discretion to award a different amount to that provided for under CPR 36.20 and Table 6C if the court determines that the claimant acted unreasonably.

Analysis

CPR 36.20(2) provides that where a Part 36 offer is accepted within the relevant period, the claimant is entitled to the fixed costs in Table 6C of Section IIIA of Part 45 for the stage applicable at the date on which notice of acceptance was served on the offeror.

There is no provision within CPR 36.20 which is relevant to these facts. In particular, there is no provision which states that CPR 45 generally shall apply where a Part 36 offer is accepted within the relevant period or which provides for any discretion for the court to award any other amount.

CPR 36.20(1), states "***This rule applies where (a) a claim no longer continues under the RTA or EL/PL Protocol pursuant to rule 45.29A(1)***".

So far as it is relevant CPR 45.29A(1) provides that "subject to paragraph (3), this section applies (a) to a claim started under (i) the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol')… where such a claim no longer continue under the relevant Protocol or the Stage 3 Procedure in Practice Direction 8B"

CPR 45.29A(3) provides that "nothing in this section shall prevent the Court making an order under rule 45.24."

The judge found that because CPR 45.29A(1) states that it is "subject to" CPR 45.29A(3), where the court considered that withdrawal from the portal was unreasonable under CPR 45.24, by virtue of CPR 45.29A(3) the claim had not "continued under the RTA Protocol" for the purpose of CPR 36.20(1). Accordingly, the Court was not bound to allow only those costs within Table 6C.

Alternative View

It is possible to argue that the judge on appeal erred in their finding as set out above.

In this case, it was a simple matter of fact that the claim had not continued under the Protocol under CPR 45.29A(1). CPR 45.29A(3) states that "***nothing in this section***" shall prevent the court from making an order under CPR 45.24. However, it does not state that a finding under CPR 45.24 that the claim had left the portal unreasonably would mean that section CPR 45.29A(1) did not apply. Furthermore as is clear, CPR 36.20 is not "***in this section***" (i.e. within CPR 45.29A) and therefore CPR 45.29A(3) is specifically dis-applied.

Summary

Claimants should careful to ensure that they do not withdraw a claim from the portal unless the defendant has actually raised a complex issue. Parties should be sure to clarify with their opponent whether there are any issues of conduct prior to the issue of proceedings and in any event before any offer of settlement is made or accepted. It is a common tactic for defendants in particular to only raise issues such as this after settlement has been agreed, as was indeed the position in this case. Written correspondence on the point prior to the acceptance of an offer should at the least give rise to an argument in estoppel should they later try to raise conduct.

Any questions? Please contact me at matthew.rose@clarionsolicitors.com or call me on 0113 222 3248

PAYMENT ON ACCOUNT OR FINAL INVOICES? – ANOTHER SOLICITOR/OWN CLIENT COSTS BATTLE…

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Since the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2013 (LASPO), solicitor/own client costs disputes have increased.

The case of Laurence Sprey -v- Rawlison Butler LLP [2018] is a good case to read for anyone who would like to learn more about solicitor/own client costs disputes. The principal issue in the case concerned whether monthly invoices (case funded under a discounted conditional fee agreement) delivered by the law firm to the client were 'statute invoices'. The ultimate decision was not they were not 'statute invoices'; the invoices were therefore open to challenge/assessment and were not 'time barred' pursuant to s70 of the Solicitors Act 1974.

It has always been important for lawyers to have a good understanding of the Solicitors Act 1974, but that has increased post LASPO, particularly for those lawyers charging (and deducting) success fees and ATE insurance premiums from clients' damages under post 1 April 2013 Conditional Fee Agreements.

Paragraph 4 on page 2 provides some very useful information in relation to the types of invoices that can be raised (many lawyers do not know that they regularly raise a "chamberlain bill"). Paragraph 6 on page 2 helpfully sets out the time limits for a challenge.

Solicitor/own client costs disputes often arise because the retainer, terms of business and invoicing are not consistent with the lawyer/law firms' intention. It is important to make sure that you know what invoices you want to raise and you have a process that is consistent with that intention and delivers the invoice you want – without confusion and costs litigation!

At Clarion, we have significant experience in solicitor/own client costs disputes. Therefore, please do not hesitate to contact us if you have any questions.

This blog was prepared by Andrew McAulay who is a Partner at Clarion and the Head of the Costs and Litigation Funding team. He can be contacted at andrew.mcaulay@clarionsolicitors.com or on 0113 336 3334.

THE DISCLOSURE PILOT SCHEME – WHAT ROLES DO COSTS ESTIMATES AND PRECEDENT H COSTS BUDGETS HAVE?

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Details of the disclosure pilot scheme are now available on the MOJ website, with a large focus of the scheme centring around saving costs – accurate costs estimates are essential (PRACTICE DIRECTION 51U – DISCLOSURE PILOT FOR THE BUSINESS AND PROPERTY COURTS).

In terms of costs, the pilot scheme reveals that costs estimates are now required to support different disclosure proposals; costs estimates of the intended disclosure exercise are required; estimating the costs of disclosure can be deferred until after the precedent H costs budget; costs don't necessarily follow the event and be prepared for adverse costs orders being made. Be ready to be able to justify any estimates at a hearing and ensure that the estimates are accurate enough to be transferred across to the precedent H costs budget. Please see below some important paragraphs of the pilot scheme that relate to costs and estimates:

Costs don't necessarily follow the event.

Para 9.9 – In an appropriate case, the court may order that the question of which party bears the costs of disclosure is to be given separate consideration at a later stage rather than the costs being treated automatically as costs in the case;

Para 10.3 – The parties' obligation to complete, seek to agree and update the Disclosure Review Document is ongoing. If a party fails to co-operate and constructively to engage in this process the other party or parties may apply to the court for an appropriate order at or separately from the case management conference, and the court may make any appropriate order including the dismissal of any application for Extended Disclosure and/or the adjournment of the case management conference with an adverse order for costs.

Costs estimates are required to support different disclosure proposals.

10.6 – Having agreed the List of Issues for Disclosure and exchanged proposals on Model(s) for Extended Disclosure, the parties should prepare and exchange drafts of Section 2 of the Disclosure Review Document (including costs estimates of different proposals, and where possible estimates of likely amount of documents involved) as soon as reasonably practicable and in any event not later than 14 days before the case management conference.

Costs estimates of the intended disclosure exercise are required.

22.1 – The parties are required to provide an estimate of what they consider to be the likely costs of giving the disclosure proposed by them in the Disclosure Review Document, and the likely volume of documents involved, in order that a court may consider whether such proposals on disclosure are reasonable and proportionate (as defined in paragraph 6.4). These estimated costs may be used by the court in the cost budgeting process.

Estimating the costs of disclosure can be deferred until after the precedent H costs budget.

22.2 – In cases where the cost budgeting scheme applies, if it is not practical to complete the disclosure section of Form H in relation to disclosure prior to the court making an order in relation to disclosure at the case management conference, the parties may notify the court that they have agreed to postpone completion of that section of Form H until after the case management conference. If they have agreed to postpone they must complete the disclosure section within such period as is ordered by the court after an order for disclosure has been made at the case management conference. Where possible the court will then consider (and if appropriate, approve) that part of the cost budget without an oral hearing.

If the approach to Extended Disclosure is not fully agreed, the parties should be ready to provide more detailed information at the CMC as to how their global estimates were arrived at and the impact upon them of particular requests for Extended Disclosure.

Any questions? Please contact me at sue.fox@clarionsolicitors.com or call me on 0113 336 3389.

PROPORTIONALITY – A FLURRY OF CASES

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Proportionality is a hot topic in the legal costs world at the moment and in the last 4 months there has been a flurry of cases from the Senior Courts Costs Office and the High Court.

The cases are as follows:

Marcura & DA-Desk FZ-LLC -v- Nisomar Ventures Limited & Claus Hyldager.

Various Claimants -v- MGN Ltd [2018]

Arjomandkhah -v- Nasrouallahi [2018]

Powell & others -v- The Chief Constable of West Midlands Police [2018]

The outcomes in each of these cases are of course case specific. Every case is different, and therefore in practice, this is what makes the application of the new test of proportionality difficult to predict.

It is now fundamentally important for all litigators and costs lawyers to have a sound knowledge of CPR 44.3 (5):

Costs incurred are proportionate if they bear a reasonable relationship to

(a) the sums in issue in the proceedings;

(b) the value of any non-monetary relief in issue in the proceedings;

(c) the complexity of the litigation;

(d) any additional work generated by the conduct of the paying party; and

(e) any wider factors involved in the proceedings, such as reputation or public importance.

Lawyers should be able to link case facts/details to the above factors and articulate those facts to a Judge at a CCMC, summary assessment or to a Costs Judge on detailed assessment (or provisional assessment).

A really important point is that value shouldn't be given superior status, as shown in the cases of Various Claimants -v- MGN Ltd [2018] and Marcura & DA-Desk FZ-LLC -v- Nisomar Ventures Limited & Claus Hyldager (costs can be higher than damages). However, in practice, Judge's are often tactically led by Defendants to place a greater weight on value. It is therefore important for Claimants to be alive to this and ensure the Judge gives equal consideration to each factor in CPR 44.5 (3) and to encourage the Judge to adopt a 'holistic' approach (May & May -v- Wavell Group & Dr Bizzari [2018]) when applying the new test of proportionality.

The 'May' case is the only case to date to give some real judicial guidance in relation to the test and how it should be applied. The decision in that case was appealed, but last week permission to appeal was refused by the Court of Appeal. Many legal experts expected the 'May' Appeal to provide the Court of Appeal with the chance to issue some clarity and guidance on the test – they will now have to wait a bit longer

The area of proportionality is starting to develop and we will see many more decisions in 2018, with some appearing harsh and some lenient. The application of the test involves a large degree of judicial discretion and therefore practitioners should not expect a great deal of consistency. If certainty is what practitioners want then fixed costs is the remedy, which is of course not an attractive alternative!

This blog was prepared by Andrew McAulay who is a Partner at Clarion and the Head of the Costs and Litigation Funding team. He can be contacted on 0113 336 3334 or at andrew.mcaulay@clarionsolicitors.com

PART 36 OFFERS, THE BASIS OF ASSESSMENT, AND KNOWING YOUR EXPERT

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It is well known within the costs profession that there is some tension in the provisions of CPR 36.17, which deals with the costs consequences following judgment. When a Claimant beats their own Part 36 offer, CPR 36.17 (4) provides that the Claimant is entitled to: interest not exceeding 10% above base rate from the date of expiry of the offer on the whole or part of any sum of money awarded, their costs on the indemnity basis from the date of expiry of their offer, interest on those costs, again, at a rate not exceeding 10% above base rate, and a prescribed percentage uplift limited to a maximum of £75,000 (10% on awards less than £500,000, and for awards more than £500,000, 10% on the first £500,000 and 5% of any amount above that figure thereafter).

However, for the Defendant, the rules are not quite so generous. CPR 36.17 (3) provides that the Defendant is entitled to costs from the date on which the relevant period expired, and interest on those costs. There's no mention of indemnity basis costs, and no mention of any enhanced interest.

The recent costs decision in the case ***The Governors and Company of the Bank of Ireland (1) and Bank of Ireland (UK) PLC (2) v Watts Group PLC [2017]*** looked at this point closely, with the Defendant trying to persuade the Hon. Mr Justice Coulson that they should be awarded their costs on the indemnity basis following expiry of their first Part 36 offer, which they beat at trial, and which expired on 23 October 2015 (the parties had previously agreed that the Defendant should recover interest at 2% above base rate for the relevant period).

The Defendant relied on three main arguments; that the claim was hopeless and should never have been brought, that the Defendant had beaten their own Part 36 offer, and that the Claimant's expert was heavily criticised by the trial judge.

The Hon. Mr Justice Coulson considered the principles that he had set out in ***Elvanite Full Circle Limited v Amec Earth and Environmental (UK) Limited [2013] EWHC 1643 (TCC)***, and summarised that "indemnity costs are appropriate only where the conduct of a paying party is unreasonable "to a high degree". 'Unreasonable' in this context does not mean merely wrong or misguided in hindsight". He went on to say that "The pursuit of a weak claim will not usually, on its own, justify an order for indemnity costs, provided that the claim was at least arguable"

In this case, he did not regard the case as being hopeless from the start, and he stated that the claim was, at least in part, supported by expert evidence and detailed witness statements.

He recognised that if the Claimant had beaten their own Part 36 offer then, in accordance with CPR 36.17(4)(b), they would have automatically been entitled to indemnity basis costs, however, he stated that whilst the rules were misaligned and considered unjustified by some, it remained the law that the same rules did not apply to successful Defendants.

He did, however, allow costs on the indemnity basis in relation to one discrete aspect of the case – the expert's conduct, and he relied on the decisions of Balmoral v Borealis [2006] and Williams v Jervis [2009] in doing so. He considered that the expert's conduct should be reflected in the costs order, but he did not consider that an order for indemnity basis costs in their entirety was appropriate. He recognised that the expert's inadequacies had already been a factor in the Claimant losing at trial, and therefore "to order indemnity costs as well would be penalising the Bank twice over for the conduct of their independent expert". He ordered that costs of the Defendant expert should be assessed on the indemnity basis, as well as costs of and occasioned by the oral evidence given by the Claimant's expert at trial.

The Claimant paid a heavy price for relying on an expert who had never given oral evidence at a trial. However, the conduct of the expert did not persuade the Court to allow indemnity basis costs throughout. Nor did the fact that the Defendant had beaten their own Part 36 offer. And whilst the Claimant bank accepted that they lost the litigation "badly", they denied that the claim was unreasonably brought and they warned about the dangers of applying hindsight to such decisions.

It, therefore, seems that there is a high bar to clear in persuading the judge to award indemnity basis costs in a claim where the Defendant has successfully beaten their own Part 36 offer. Like in this case, a paying party would need to consider and rely upon the factors listed in CPR 44.2 (4), in order to formulate a case that would persuade a judge to make such an award in the circumstances.

If you have any questions or queries in relation this blog or legal costs in general please contact Joanne Chase (joanne.chase@clarionsolicitors.com and 0113 336 3327) or the Clarion Costs Team on 0113 246 0622.

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