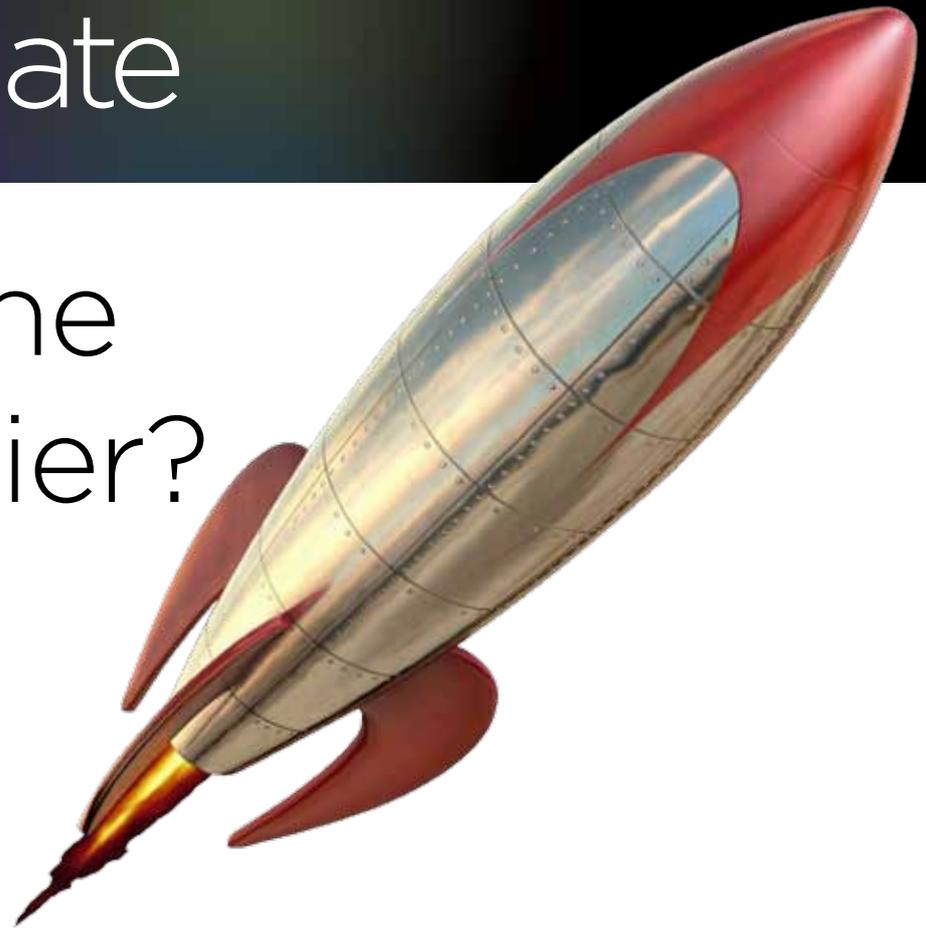


costs update

LASPO: the final frontier? Not yet!



It is over three years since Sir Rupert Jackson was asked to undertake an inquiry into costs and some of the reforms are now on the statute book in the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO), albeit not yet in force. Implementation of the costs provisions is now expected in April 2013.

As the much-vaunted brave new world of costs practice dawns, Paul Edwards, head of costs, reviews where we are up to, discusses what more is needed to make Jackson's costs utopia a reality, and queries whether it will all work out as planned.

Where are we now?

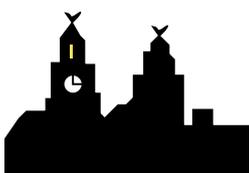
There is still a tremendous amount of work to do. LASPO simply sets up a framework, removes old legislation and sets the scene for further legislation, court rules and practice directions; drafts of which are, in the most part, yet to be completed. That said, the Act certainly starts the ball rolling and, assuming the momentum continues, heralds a significant shift away from the current regime.

Furthermore, Sir Rupert has always been insistent that his proposals cannot be introduced in isolation; they need to be introduced as part of an entire package and the Ministry of Justice reforms are therefore also crucial.

What is in the Act? What more is needed? And what didn't make the cut?

Damage-based agreements (contingency fees)

Damage based agreements (DBAs) have previously only been allowed in non-contentious matters. However, it is now intended that solicitors in contentious matters will be able to charge their clients a percentage of compensation recovered. We say



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Welcome

This is the first costs update of 2012 and what a year it has been so far! After spirited debate in the Houses of Parliament, we have seen the initial culmination of Lord Justice Jackson's inquiry into litigation costs with LASPO. Everyone is now waiting eagerly to see what will happen next on that front.

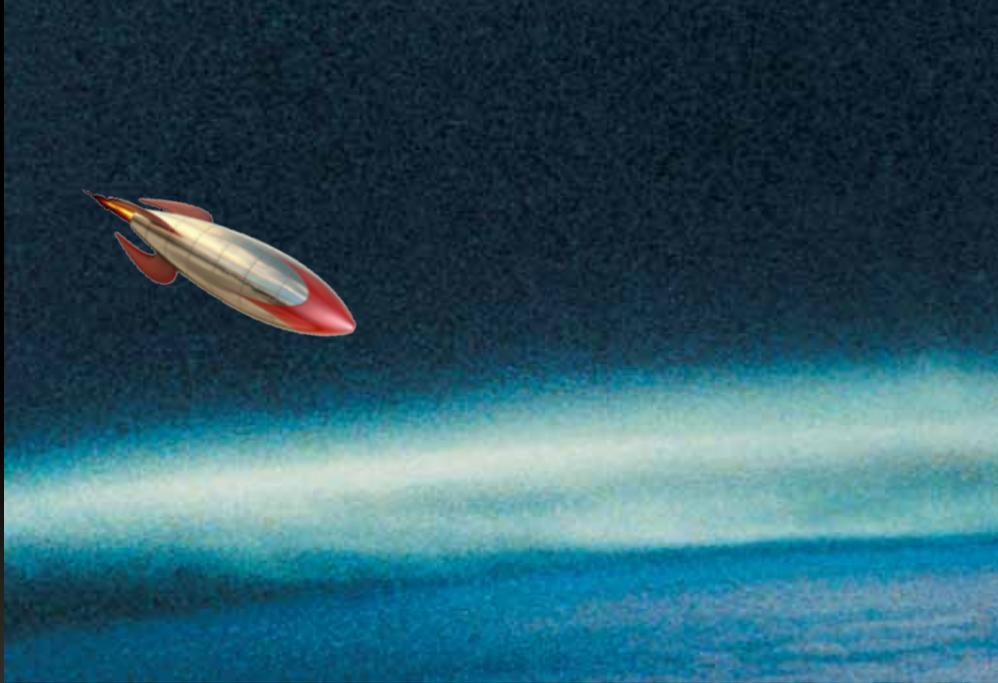
There have also been some important developments relating to interest on costs and counsel fees in infant approval cases. After-the-event (ATE) premiums (now an endangered species!) in MOJ Portal cases have also been under the spotlight here in Liverpool. All developments are reviewed in this update.

Finally, we have decided to start introducing more members of the ever expanding Hill Dickinson costs team to you. This month two of our Sheffield lawyers have been quizzed. I hope you enjoy hearing a few of their views on costs, and other matters.

As ever, if you have any questions about the issues discussed in this bulletin, or more generally about costs, please do not hesitate to get in touch with either me or one of the other team members.

Best wishes.

Paul Edwards
Head of Costs
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'intended' because regulations need to be drafted to complete this move and there will need to be amendments to some parts of the Civil Procedure Rules (CPR).

In terms of provisions which were not adopted, Sir Rupert initially suggested that before a DBA could be signed, an independent legal opinion would have to be obtained. This has not been pursued against fears it would make the regime unworkable.

A ban on referral fees

LASPO prohibits payment and receipt of referral fees by 'regulated persons' in personal injury matters.

Ending recovery of additional liabilities

LASPO prevents a party from recovering a success fee or after-the-event (ATE) premium from its opponent, in most cases. If solicitors want to charge a success fee they must take it from the damages to a prescribed maximum of 25%.

There is, though, an exception for mesothelioma claims. Sufferers will, for now, (pending further research into the effect of removing that right) be able to recover additional liabilities from the opponent.

Outside of LASPO

Qualified one way costs shifting

This concept (where the claimant recovers costs if successful but the defendant does not) did not make it into LASPO but was hotly debated

during the legislative process. It is expected to be dealt with separately and detailed rules on when and how this will work need to be agreed to account for exceptions to the general rule.

The Justice Minister made a written statement on 10 July setting out further details. Headlines include:

- i) No financial means test.
- ii) QOCS protection lost if:
 - a) there is fraud
 - b) failure to beat a Pt 36 offer
 - c) in certain circumstances where a claim is struck out.
- iii) There is to be further consideration of how QOCS will apply to non-personal injury elements of a claim.

Fixed costs regime extension

It has been proposed that the road traffic accident (RTA) regime applying now only to motor claims, is extended to employers' and public liability claims. A consultation exercise ended in May. It is yet to be seen what level any such regime could be pitched at and agreement would need to be reached and rules drafted to bring this into effect - another 'watch this space' proposal which some commentators are sceptical will ever be brought in. Sir Rupert's previous attempts to encourage parties to agree figures failed.

It is also expected that, with referral fees removed, the RTA fixed-fee will be reduced, although to what level is again yet to be agreed.

LASPO: the final frontier? Not yet!

continued from page 1

Hourly rates

There has been no increase in hourly rates for three years. Jackson suggested that a costs council be established to deal with these and this is back on the agenda in conjunction with the fixed costs proposals mentioned above. It is entirely possible that rates could go down. Jackson has put forward cogent reasons for this, including that the referral fee ban should reduce overheads and the extension of the MOJ portal should encourage efficiency.

Proportionality

At present, courts seem reluctant to find that costs are disproportionate for fear of appeal. We understand from the Justice Minister's statement that a new rule on proportionality has been agreed and a revision to the Costs Practice Direction to give effect to it is being considered by 'senior judiciary'.

Small claims track limit

The Government has announced its intention to raise the small claims limit, applying to non-personal injury elements to £10,000 with potential to extend this to £15,000 after further consultation. It did not originally look as if the personal injury limit of £1,000 would be increased but the Justice minister announced in May that there would also be consultation on this point in conjunction with its study of rising motor insurance premiums.

Portal extension

The Road Traffic Accident Portal scheme was introduced to allow pre-action and undefended RTA claims

to be processed quickly and cheaply. The Government is looking to extend the scheme to RTA claims worth up to £25,000 in April 2013, and shortly after to introduce it for employers and public liability claims. There has been a recent consultation about this extension and some concern expressed about how well it will translate to this wider application.

Part 36

Finally, it is expected that Part 36 will be redrafted (again!). The Justice Minister's Statement (as amended on 17 July) indicates that Part 36 will be revised to add an additional sanction where judgment for the claimant is more advantageous. This is to be calculated as 10% of damages in damages claims and 10% of costs for non-damages matters.

Increased damages

The Court of Appeal has declared, via the case of *Simmons -v- Castle*, that general damages will increase by 10% from 1 April 2013. This will apply to all cases where judgement is given after that date.

A damp squib, or will it live up to expectations and bring about significant costs savings in civil litigation?

At the recent Association of Costs Lawyers Conference, the Master of the Rolls praised Jackson, stating that "contrary to almost all predictions, his proposals have now become law". It is arguable that he is wrong on both counts as firstly the reforms, whilst

subject to opposition, were always likely to be implemented in some shape or form due to the political will to save costs, and secondly, while the first part of the reforms can now become law, they are not yet complete.

What does seem clear, though, is that the future is uncertain: some costs savings are inevitable once ATE premiums and success fees can no longer be recovered. But there is some anticipation in the costs fraternity that savings will not be as big as had been hoped and the prospect of a new 'costs war' seems very real given that there are aspects of the reforms that both 'sides' are unhappy with. That said, Jackson always acknowledged that there would never be a 'one size fits all model'. Perhaps dissatisfaction indicates that the reforms are the fairest they could be. Whatever the case, as the title of this article acknowledges, LASPO is certainly not the end of the story. We will all be interested to see what happens next.

Paul Edwards

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ATE policies in MOJ Portal cases – the Liverpool test cases but will this be the final word?

A Liverpool regional costs judge has handed down judgment dealing with whether it is reasonable for a claimant to purchase after-the-event (ATE) insurance to support a claim which is likely to proceed, initially at least, through the Ministry of Justice (MOJ) Portal. If so, should claimants be restricted to a single premium, or staged premium policy? Barry Tickell reviews the decision.

As proposals to extend the Portal to other types of claim are under consideration by the MOJ, the recovery of ATE premiums in MOJ Portal cases is a pertinent issue of potentially wide application. These decisions are therefore welcome. However it remains possible that the decision will be appealed - perhaps via the 'leap frog' process, straight to the Court of Appeal. In the meantime, this is where we stand.

Is it reasonable to purchase a policy at all?

Regional costs judge Smedley considered that it is reasonable, although not necessary, to take out a policy prior to stage three of the RTA Portal Protocol. There is no certainty that the case will remain in the Portal, and therefore there is a costs risk (albeit minimal) to the claimant from an early stage.

He considered *Callery -v- Gray* and decided that the case still applies to Portal cases despite it being decided before that process was introduced. In that case a decision to take out a policy was reasonable, as it was incepted prior to the letter of claim being sent and therefore before a liability decision had been communicated by the paying party.

Should it be a single-stage premium or staged premium policy?

Regional costs judge Smedley decided that there was no single right or wrong answer as to choice of premium. Both types of policy are legitimate in the right circumstances. He considered the pre-Portal case of *Rogers -v- Merthyr Tydfil CBC* which he confirmed is still legitimate.

This decision provides some initial clarity, but there may yet be further consideration of the question on appeal.

Watch this space!

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Costs budgeting – the first reported decision.

In the last edition, we reported that a costs management pilot scheme in the Birmingham Technology and Construction Court had been extended to other courts and that it had been deemed a success. Defamation is one area the pilot has operated in since. This decision is, however, applicable to other claims to which a costs management pilot scheme applies. Lisa Walker discusses the SCCO's first judgment dealing with a party exceeding the agreed budget.

The case is *Henry -v- News Group Newspapers Ltd*. The claimant had exceeded the agreed budget by just over £300,000. She argued that the increase

had been brought about through the defendant's conduct; amending its defence at a late stage and serving considerable additional disclosure, which had a knock on effect on witness statements.

In the course of his judgment, Senior Costs Judge Hurst commented that he was in no doubt that if the matter had proceeded to detailed assessment, the majority of the claimant's costs incurred were likely to be deemed both reasonable and proportionate. However, the claimant did not notify either the Court or the other side that the budget was to be exceeded, and the provisions of the costs budget pilot Practice Direction are mandatory. That being the case, Judge Hurst said he was: "forced to the conclusion that if one party is unaware that the other party's budget has been significantly exceeded, they are no longer on an equal footing and the purpose of the costs management

scheme is lost." In the circumstances, he "reluctantly" found against the claimant that there was no good reason to depart from the budget.

Given the importance of the issue, the judge granted permission to appeal although the claimant submitted that his decision would not be binding in any event. He considered however that the issue was of sufficient importance to require a binding decision.

So, watch this space for further developments. In the meantime, if you are seeking to recover your own costs, or want to prevent an opponent from recovering theirs and find yourself involved in a case where the costs management budget scheme applies, take it seriously. Failure to comply with the budget could be either a blessing or a curse!

Lisa Walker

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Interest on costs

A hot topic in the costs world over the last 18 months or so has been whether, and from when, interest can be recovered on legal costs. Barry Tickell considers the point now reached following the Court of Appeal's judgment in *Simcoe -v- Jacuzzi UK Group PLC* earlier this year (the sister case to *Motto and Others -v- Trafigura*, discussed in our last update)

Traditionally, there have been two facets to the challenges against claiming interest on costs:

1. When should interest run from? The date of the order entitling the receiving party to costs (the incipitur rule), or the date when the amount of costs to be paid is determined (the allocatur rule)?
2. Should interest be recovered at all where the receiving party funds its claim with a conditional fee agreement (CFA)?

Previous decisions

The first case of note which put the cat amongst the pigeons was *Gray -v- Toner* in November 2010; an appeal decision by His Honour Judge Stewart QC in Liverpool County Court. The receiving party was on a CFA.

In considering both the date and availability of interest, His Honour Judge Stewart found that section 17 of the Judgments Act 1838 envisaged that

the judgment debt arose only when the amount of the debt was quantified (when the amount of costs was decided). He also found that the court could exercise discretion as to when to order that interest on costs should commence from pursuant to Part 40.8(2) of the Civil Procedure Rules (CPR).

Further, noting that the primary purpose of awarding interest on damages or costs was to compensate a party from being kept out of their money and that in accordance with the terms of the CFA, the receiving party had not actually made any costs payments to his solicitor, HHJ Stewart QC found that the receiving party should not recover interest until the amount of costs to be paid had been quantified either by agreement or assessment.

To defendants, this seems a commonsense position. However, since the *Gray -v- Toner* decision the approach taken by the Court to both issues has been inconsistent. The matter therefore desperately required clarity from the Court of Appeal. This was provided in *Simcoe*.

Court of Appeal

Contrary to *Gray -v- Toner*, in *Simcoe*, the Court of Appeal decided that the incipitur rule should apply – so interest on costs was awarded from the earlier date that the liability for costs was agreed, not the amount. The Court of Appeal considered that the right to claim interest in the County Court arose from section 74(1) of the County Courts Act 1984 and subsequently the County Court (Interest on Judgment Debts) Order 1991 applied.

The Court of Appeal also considered whether the Court had the ability to award interest from a different date under CPR 40.8(1). It found that the approval of the Treasury was required to give effect to any subsequent rule on interest which was to be awarded under the 1984 Act and therefore CPR 40.8 (1) was invalid and interest must be calculated from the date of the order entitling a party to costs rather than the later date when the amount of those costs was agreed.

And as to the CFA question, the Court of Appeal found that even if Rule 40.8 did apply, its general effect would be that interest would run from the date of the order entitling a party to costs. The fact that a receiving party's solicitor may be acting under a CFA did not justify departing from that principle.

To conclude

Interest can, therefore, be recovered from the date of the order for costs at the set rate of 8%, such rate being provided for under section 17 of the Judgments Act 1838.

This does at least clarify the position for now and allows stayed cases to move forward. We understand that permission to appeal this decision to the Supreme Court has now been refused. It will therefore take another brave defendant to challenge the position reached.

Barry Tickell
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Packing a punch - success stories

John Appleyard reviews four cases which show how significant savings can be made by keeping an eye out for retainer issues and not backing down on a fight for small claims costs.

1) The indemnity principle - and still they get it wrong!

Following a bit of a spat, we persuaded an opponent to withdraw its client's claim for costs after we highlighted the following offending passage in their retainer letter:

'We, the solicitor, agree that we will not charge you any fees, regardless of whether you win or lose your claim, provided you fulfil your part of this agreement.'

This is a blindingly obvious breach of the indemnity principle. If solicitors are not going to charge their client costs whether the litigation is won or lost, those costs cannot be recovered from the defendant.

While what the solicitor was trying to do for his client is appreciated, they learned a hard lesson in playing with retainers.

2) Litigation friends and the retainer - just a technicality?

We were able to bring about a significant reduction in the costs claimed by standing our ground on this retainer issue.

The claimant, a minor, brought proceedings to recover damages with her grandmother acting as litigation friend. Costs approaching £300,000 were claimed. Strangely though, given the identity of the litigation friend, the claimant's mother had entered into conditional fee agreements to fund the litigation. As the mother was not, on

the face of it, party to the proceedings, we argued that there was no valid retainer and therefore no right to recover costs.

The Manchester regional costs judge disagreed, concluding that the arrangement was sufficient to found a claim for costs. We appealed, and although the appeal was never heard, our arguments clearly held force, as settlement was reached days before the hearing with the claimant accepting a reduction in excess of 50% to the costs claimed.

3) Small claims costs - never give up on a fight...

Damages were agreed in the fully-inclusive sum of £2,500 post issue, but before the claim had been allocated. The offer had been broken down into £750 for general damages and £1,750 for special damages. The value made this a small claim although the settlement referred to costs being paid on the standard basis.

Despite this, we argued that the court should disallow all costs above and beyond those otherwise payable for a small claim. After receiving advice from leading costs counsel on the point, the claimant capitulated and accepted our offer of small claims costs - a saving of £8,000.

4) Infant claims and small claims costs

After a slipping accident, damages of £1,000 were agreed for the claimant, a minor, pre-issue. Approval

proceedings were issued. The claimant claimed over £10,000 in costs.

Initially, we offered fixed costs, before increasing slightly to cover the cost of counsel's advice on settlement. The claimant wanted detailed assessment, but we insisted that costs should be summarily assessed at the approval hearing.

That hearing had to be adjourned for costs to be considered but within minutes, the judge commented that he would have expected damages for this type of injury to be £800. Combined with counsel's advice of settlement at up to £900, the judge considered this a clear indication that the claim had no prospect of being allocated to anything other than the small claims track. Accordingly, only fixed costs, plus an allowance for instructing counsel, were allowed.

John Appleyard

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Practice update:



Court of Appeal provides clarity on counsel fees in infant approval cases where RTA fixed costs are awarded.

A couple of months have passed since the Court of Appeal gave judgment in *Tubridy -v- Sarwar* which clarified whether counsel's fees could be recovered at an infant approval case where road traffic accident (RTA) fixed costs are concerned. Barry Tickell reminds us of the Court's decision and queries whether there is still room for improvement.

Rules

Civil Procedure Rule (CPR) 21.10(2) requires that where settlement is reached for an infant's claim, this must be approved by the Court using the Part 8 procedure.

Section II of Part 45 of the CPR governs the amount of fixed recoverable costs which can be recovered in RTA claims.

CPR 45.10 prescribes the disbursements recoverable as part of the predictive costs regime. It includes counsel's fees, but only where these are 'necessarily incurred', since one of the parties is an infant (or protected party).

Issue

It had become customary for claimants to instruct counsel to provide both an advice, to be presented at court on the level of settlement, and also to attend the approval hearing. The claimant looked to recover these costs. Defendants disputed whether these fees should be paid, arguing in particular that the attendance fee should not be; an agent could have been instructed and their fees included as part of the prescribed profit costs claimed.

Decision

In *Tubridy*, the Court limited the situations in which counsel's fees for attending the approval hearing are recoverable. Counsel's fee for attendance can now only be recovered where there is 'some complexity in the case which justifie[s] their being instructed to appear on the approval hearing'. Furthermore, 'It is not enough to say that counsel would help to remove the stress of the occasion'.

Our view?

The Court of Appeal appears to have given solid guidance on the recoverability of counsel's brief fees where CPR 45.10 applies. This is to be welcomed. However, there remains potential to argue that they have been over-generous in their comments regarding the recoverability of counsel's fees for the advice on quantum.

The Practice Direction to CPR 21 at 5.2 it states that 'An opinion on the merits of the settlement or compromise given by counsel or solicitor acting for the child or protected party must, except in very clear cases, be obtained.' Surely the conducting solicitor, or his supervisor, could provide an appropriate written advice in most matters? A partner who has been practising personal injury for many years will have seen as many settlements as counsel, if not more, and should therefore be in a position to provide an authoritative view. Could this be the next area for discussion? Only time will tell.

Barry Tickell

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Case update – your aide memoire



John Appleyard provides brief details of just a few recently decided costs cases. Please contact any one of the costs team if you want more information on any of the cases mentioned.

The way to lose while winning

Abbott -v- Long [2011] – Court of Appeal

The claimant recovered only £8,600 in hire charges against a claim for £48,000. At trial, the judge made no order as to costs. The claimant appealed, on the basis that it had still won, so should recover costs, and there had not been a finding of misconduct.

The Court of Appeal agreed with the first instance decision. The starting point is CPR 44.3 and the Court is entitled to exercise its discretion. Accepting that there was no dishonesty involved, the Court of Appeal considered the relevant test to be the ‘reprehensible’ test found in *Widlake -v- BAA* (2009). On the basis that the hire company was a ‘serial litigant’ who ‘ought to have had proper systems in place to ensure that only claims properly capable of succeeding are pursued’, the court found this to be ‘conduct which the trial judge was capable of finding to be reprehensible’.

A warning to ‘trigger happy’ claimant litigants in the MOJ Portal

Patel -v- Fortis Insurance Company [2011] – Leicester County Court

The defendant failed to respond to a claim notification form sent by the claimant under the RTA MOJ Portal. The claimant therefore elected to withdraw the claim from the Portal.

The Court considered whether making this election was reasonable. It decided it was not. Other than technical non-compliance, the claimant had failed to identify any reason for withdrawing. The judge therefore exercised his discretion under CPR 45.36 and restricted the claimant’s costs recovery to fixed costs.

Sometimes they do get away with it

Fox -v- Foundation Piling Ltd [2011] – Court of Appeal

The claimant issued a personal injury claim quantified in excess of £280,000. The defendant admitted liability, but argued the injury was exaggerated and had CCTV evidence to back this up. The defendant made a Part 36 offer of £23,500 in 2008, then withdrew this and made a further offer of £31,700 in 2009 which the claimant accepted.

The court considered whether the claimant should get their costs and decided that, notwithstanding the gulf between the amount claimed and recovered, they should. The claimant was the successful party and should not be deprived of costs in a personal injury claim because he had won on some issues and not others. The defendant, with evidence of exaggeration, is in a prime position to make a protective offer.

This position seems all the more likely to be maintained following the Supreme Court's comments in the recent Summers case regarding the range of tools available to defendants to counter suspected exaggeration.

Lownds clings on to the death...

Morgan -v- Spirit Group [2011] – Court of Appeal

The Court of Appeal reversed a first instance decision where the judge had decided, on summary assessment, that the claimant's conduct was so terrible that their schedule should be ignored and a reasonable figure substituted.

Unfortunately, the Court of Appeal did not agree that this was the correct approach. Rather, the court must assess costs using the two-stage approach advocated in *Home Office -v- Lownds*. There should be a global view of proportionality followed by an item by item consideration of individual elements. Alternatively, the matter could go to detailed assessment.

This might be the last major decision on the current proportionality regime. We now await a new battle regarding the forthcoming changes.

Part 36 in low value claims

Solomon v Cromwell: Oliver -v- Doughty [2011] – Court of Appeal

The acceptance of a Part 36 offer in a low value pre-proceedings RTA claim did not allow for costs to be assessed on the standard basis. The matter remained within Section II of Rule 45 of the CPR 1998.

Counterclaims and success fees

Amir and Hussain -v- Mullings and RSA [2011] EWHC 278 – High Court

Where a counter claim is settled at trial but the original claim/main claim has long since settled, only the work done on the counter claim is subject to the fixed success fee of 100% under Part 45.

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Who's who at Hill Dickinson?

Put faces to names and find out a bit more about the people who make up Hill Dickinson's costs team with our new who's who article! To kick us off, Joshua Mayo and Josh Pearson, both costs draftsmen in our Sheffield costs team, 'volunteer' to face a grilling from fellow costs lawyer John Appleyard.



1. How long have you worked in costs?

JM: Two years

JP: One year

2. What made you decide to work in costs?

JP: The attraction of immediate litigation experience over a variety of legal disciplines.

JM: The opportunity for a variety of advocacy at all levels.

3. What is your favourite part of the working day?

JM: Finding some small detail which provides a significant result for our client in negotiations with an otherwise impossible opponent.

4. What is the best thing about working for Hill Dickinson?

JP: Good opportunities to develop internal relationships throughout all the disciplines within the firm.

JM: The friendly support provided throughout the firm and encouraging atmosphere in the Sheffield office.

5. What is your favourite costs case, and why?

JP: Javed -v- British Telecommunications Ltd – it really highlights the general unreasonable nature of some claimant litigants seeking simply to issue proceedings as a first, not a last, resort.

JM: Mylward -v- Weldon (1596) – In the times when Solicitors were paid for the length of the document produced a lawyer was fined and sent to prison for producing a pleading which ran to 120 pages. As a further punishment he was forced to poke his head through the document and parade around Court 'bareheaded and barefaced'. It's such a shame the sanctions under the CPR no longer allow for this!

6. What is your 'top tip' for a claims handler or solicitor when dealing with costs?

JP: Five minutes of research online (using websites such as solicitorsonline.com or a claimant solicitors' website, etc) usually yields a number of key challenges to hourly rates.

JM: Check everything (within reason!). Usually, this won't be without reward. And don't be afraid to ask for disclosure/ further information.

7. What is the best thing a claims handler or solicitor can do on a file to make your job easier?

JP: Keep good, detailed, attendance notes of absolutely everything. Usually, success or failure at assessment on key issues comes down to the 'nitty gritty' of what is on the file. The more we have, the better we can be.

JM: Keep a well tended file and respond to the opponent promptly.

And now for a bit about the city they both work in...

8. How would you describe Sheffield to someone who has never been? Why should they come?

JP: Built on seven hills, Sheffield prides itself as one of the biggest cities in England, yet still has the homely feel of a local village about it. The reason everyone should come here is for the classic venues the city still offers, such as the Crucible.

9. Where is the best place to eat in Sheffield?

JP: The Milestone

JM: Casanova's

And finally, a bit of friendly advice for Lord Justice Jackson...

10. If you were Lord Justice Jackson, what would you make happen tomorrow to improve the costs world/ reduce the cost of litigation?

JP: Greater openness of the costs being incurred in even the most basic of proceedings.

JM: Fixed costs across the board (although I may come to regret these comments!).

Damages and costs – a multi-party success

David Dunne, one of our partners dealing with disease claims, has had a costs success in a multi-party action.

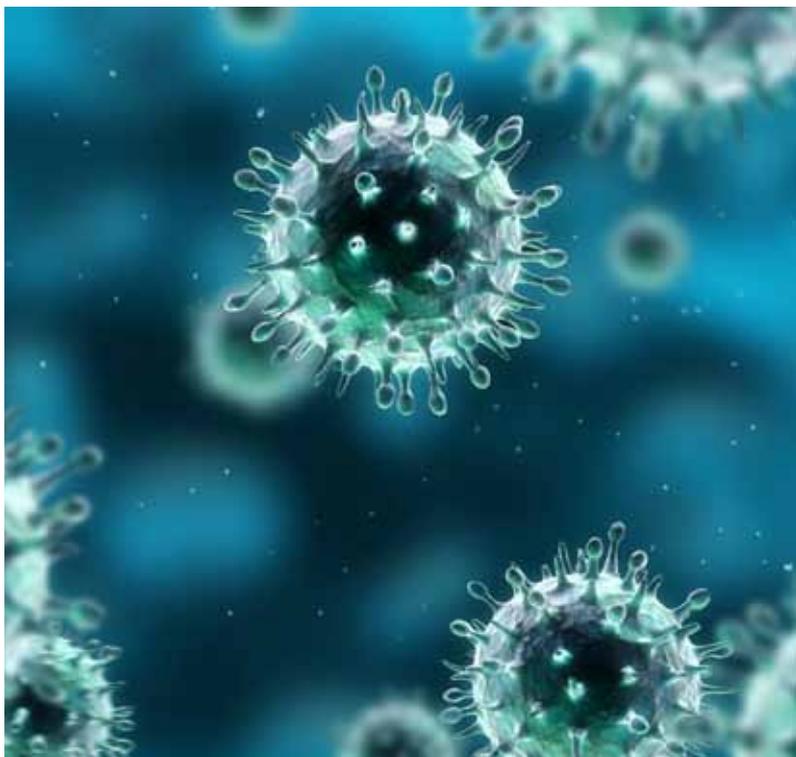
David acted for the fourth defendant while another firm acted jointly for the first, second and third defendants. We had a number of arguments to deploy in defence of our client's position and secured a low percentage contribution to damages - 15.23% - shortly before trial. The consent order agreed was silent as to the apportionment of the claimant's core costs between the defendants. We argued that these should be apportioned in the same way as damages. Or, alternatively, that the maximum our client should ever have to pay is 25%. The other defendants said that costs should be paid 50/50, with our client paying the same amount as the other three defendants combined.

The other defendants suggested that, as we had robustly defended the claim, rather than settling at an earlier stage, this had contributed to an increase in costs and we should therefore pay half.

However, the judge disagreed with the other defendants, considering that we had adopted reasonable positions and therefore ordered that the common core costs should be split in the same proportion as the damages between the other defendants.

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About Hill Dickinson

The Hill Dickinson Group offers a comprehensive range of legal services from offices in Liverpool, Manchester, London, Chester, Sheffield, Piraeus and Singapore. Collectively the firms have more than 1,400 people including 190 partners.

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