

SENIOR COURTS COSTS OFFICE COSTS PRACTITIONERS GROUP

MINUTES OF MEETING HELD ON THURSDAY 14 APRIL 2016

Present		
	Master Rowley (in the chair)	SCCO
	Chief Master Gordon-Saker (until 5pm)	SCCO
	Master James	SCCO
	Mrs S Nash	ACL
	Mrs C Green	ACL
	Mr A Tunkel	The Bar Council
	Mr G Barker	APIL
	Mr P Allen	APIL
	Mr D Marshall	The Law Society
	Mr J Martin	Minutes Secretary

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Master Simons and Mr Parker.

2. COMMENTS UPON THE APPROVED MINUTES OF THE LAST MEETING

There were no comments on the approved Minutes.

3. MATTERS ARISING NOT OTHERWISE ON THE AGENDA

It was noted that there had been little progress on the Civil Justice Council report into the workings of Damages-Based Agreements. This was still being considered by the MoJ.

4. RECRUITMENT AND RETIREMENT OF COSTS JUDGES

Master Gordon-Saker confirmed that Master O'Hare had retired on 18 March. It was hoped that approval for a replacement would be made shortly. There would be no need for a competition for the post, as a suitable candidate had been identified in the competition held last year (following which Master James and Master Whalan had been appointed).

5. FIXED FEES IN THE MULTI TRACK

Little substantial progress had been made. Master Gordon-Saker said that the Report on Fixed Fees in clinical negligence proceedings had still to be published, and the ACL's own sub-committee had yet to make its report.

6. GROUP LISTING ARRANGEMENTS IN SCCO

The first hearings under the new arrangements had been held this month. Master Rowley reported that they had gone off smoothly. 18 cases per day had been listed. The rate of settlements had been as expected, and only two hearings had been “bumped” over to the next Block Listing day. Feedback from the profession had been generally positive.

7. VOLUNTARY PILOT FOR NEW BILLS

Take up had been slow and the SCCO had asked for the length of the Pilot Scheme to be extended.

A general discussion followed, in which it was felt that, by attempting to find solutions to cover all eventualities, the format of bill had become over-complicated. The ACL were aware of this, and were actively prepared to work in conjunction with all stakeholders to overcome the perceived difficulties.

8. ‘PAPERLESS’ DETAILED ASSESSMENTS

Master Rowley introduced a discussion on the practicalities of assessment where the receiving party’s ‘papers’ are stored electronically. An increasing number of firms were now “paperless”, and frequently the only time the file was printed was for the purpose of a detailed assessment hearing. Master Rowley had dealt with several such cases, where a ‘memory stick’ containing the solicitor’s file had been provided, and had generally found the file easy to navigate. If any part of the file was to be printed, it was thought that in most instances a “core bundle”, containing, for example, retainer documentation and the pleadings, would normally suffice. There were security implications, and Master Rowley said that guidance on this was something which might usefully be included in a new edition of the SCCO Guide.

9. ALTERNATIVE DISPUTE RESOLUTION

The last amendment to CPR 3.1 had extended applications for Early Neutral Evaluation (“ENE”s) to all civil proceedings. A few had now been made in the SCCO. The outcome of an ENE hearing was not binding on the parties, and that, given the discretionary nature of most decisions made on assessment hearings, it was queried whether ENEs would be appropriate in many detailed assessments. It was noted that in the TCC these applications were often dealt with on paper.

10. RECENT AND FORTHCOMING CASES CONCERNING COSTS

Master Rowley drew the Meetings attention to the following cases:-

10.1 Change in Funding cases

- **Surrey v Barnet & Chase Farm Hospitals NHS Trust** [2015] EWHC B16 (Costs) – Master Rowley
- **Davis v Wiltshire Primary Care Trust** – Master Leonard – 11/1/16
- **AH v Lewisham Hospital NHS Trust** – D/Master Campbell – 12/1/16
- **Ramos v Oxford University NHS Trust** – Master Leonard – 2/2/16
- **Yesil v Doncaster & Bassetlaw Hospitals NHS Foundation Trust** – DJ Besford 24/2/16

- **Milton Keynes v Hyde** [2016] EWHC 72 (QB) (Soole J)

10.2 CFA cases

- **Ghising v Secretary of State for the Home Department** [2015] EWHC 3706 (QB)J – retrospective success fees
- **Engelham v London & Quadrant & Ors** – Court of Appeal (1/12/2015) – success against D2 sufficient to trigger a ‘win’
- **Garnat Trading & Shipping (Singapore) PTE Limited v Thomas Cooper (a firm)** [2016] EWHC 18 (Ch) – invalid change to CFA terms during course of appeal did not render CFA unenforceable in the original proceedings

10.3 Assignment of CFA cases

- **Jones v Spire Healthcare Ltd** – 11/9/15 – DJ Jenkinson – Liverpool CC
- **Budana v The Leeds Teaching Hospitals NHS Trust** – 4/2/16 – DJ Besford – Hull CC
- **Webb v London Borough of Bromley** – 18/2/16 – Master Rowley – Central London CC

10.4 Part 36 cases

- **Littlestone v MacLeish** [2016] EWCA Civ 127 – attempt to aggregate Part 36 offer with sum admitted in the defence
- **Broadhurst & Anor v Tan & Anor** [2016] EWCA Civ 94 – Part 36 v Part 45 Section IIIA
- **ABC v Barts Health NHS Trust** [2016] EWHC 500 (QB) – indemnity basis order against C following late acceptance of Part 36 Offer
- **Jockey Club Racecourse Ltd v Willmott Dixon Construction Ltd** [2016] EWHC 167 (TCC) – Offer of 95% was a genuine attempt to settle in all or nothing case

10.5 Costs Budgeting cases

- **SARPD Oil v Addax & Ors** [2016] EWCA Civ 120
- **Group Seven Ltd & Ors v Ali Nasir & Ors** [2016] EWHC 620 (Ch)
- **Bloomberg LP v Sandberg (a firm) & Ors** [2016] EWHC 488 TCC

10.6 Solicitors Act cases

- **Wilson Solicitors LLP v Bentine & Ors** [2015] EWCA Civ 1168 – costs found to be outside the retainer are to be included when considering which party succeeded under the 1/5th rule
- **Bolt Burdon v Tariq** [2016] EWHC 811 (QB) – Spencer J – CFA/NCBA upheld

10.7 Other cases

- **Kupeli & Ors v Cyprus Turkish Airlines & Anor** (15/1/2016) (Slade J) – Meeting arranged for solicitors to sign up clients en masse at a Community Centre was not an ‘excursion’ and so the 2008 Cancellation Regulations did not apply
- **Involnert Management Inc v Apilgrange Ltd & Ors** [2015] EWHC 2834 (Comm) - interest on costs should usually run from 3 months after the Costs Order rather than from the date of the Order itself
- **BNM v Mirror Group Newspapers** (11/1/16) (Master Gordon-Saker) and **Miller v Associated Newspapers** [2016] EWHC 397 (QB) – Article 10 not infringed by recoverability of additional liabilities
- **Khaira & Ors v Shergill & Ors** [2016] EWHC 628 (Ch) – costs in the Supreme Court can be assessed before the underlying proceedings have concluded
- **Hobbs v Guys & St Thomas’s NHS Trust** – (2/11/15) (Master O’Hare) applying proportionality to a modest clinical negligence claim

11. ANY OTHER BUSINESS

Master Rowley said that the SCCO Guide was to be updated (this had last been done in 2013). He said that any feedback and suggestions would be gratefully received.

12. DATE AND TIME OF NEXT MEETING

The next Meeting was fixed for Thursday 10 November 2016 at 4.30 pm in SCCO.

The Meeting closed at 6 pm