

# SENIOR COURTS COSTS OFFICE COSTS PRACTITIONERS GROUP

MINUTES OF MEETING HELD ON THURSDAY 6 APRIL 2017

Present		
	Master Rowley (in the chair)	SCCO
	Senior Costs Judge Gordon-Saker	SCCO
	Mr I Stark	ACL
	Ms C Green	ACL
	Mr A Tunkel	The Bar Council
	Mr G Barker	APIL
	Mr P Allen	APIL
	Mr D Marshall	The Law Society
	Miss K Fairhurst	The Law Society
	Mr A Parker	Civil Justice Council

## 1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Master James, District Judge Besford, Mr Parker and Mr Bacon QC.

## 2. COMMENTS UPON THE APPROVED MINUTES OF THE LAST MEETING AND ANY MATTERS ARISING

There were no comments on the approved Minutes.

There was no further information available regarding the Bar Council's online survey concerning feedback on the costs being allowed on summary assessment of fast track cases and on budget approval for multi-track cases up to £250,000.

## 3. RECRUITMENT AND RETIREMENT OF COSTS JUDGES

Master Gordon-Saker reported that Master Simons will be retiring in June 2017. A competition has been held for his replacement and hopefully there will be a new Master at the SCCO by Autumn 2017. Subject to unforeseen circumstances, there are unlikely to be any further changes to the complement of Costs Judges thereafter for some time to come.

## 4. VOLUNTARY PILOT FOR NEW BILLS

Mr Barker and Mr Stark reported that the subcommittee of the Civil Procedure Rule Committee had met the previous evening. The subcommittee's recommendation was that rules for the mandatory use of an electronic bill with effect from 2 October 2017 should come into force and

they were working on draft rules for consideration by the Rule Committee at its meeting in May 2017.

The electronic bill would cover work done after 1 October 2017 and so there would be a transitional period where a paper bill would be produced for work up to 30 September 2017 and an electronic bill for later work (unless the party decided to put all of the work into the electronic bill).

#### **5. DELIVERING PAPERS TO THE SCCO**

Owing to a perceived security risk in boxes being brought by couriers directly to the SCCO, the Head of RCJ Security has made new arrangements with effect from February 2017. Deliveries are now made to the main Post Room of the RCJ and the SCCO cannot guarantee that papers will be transported to the SCCO by the following day. Mr Stark agreed to circulate this information to the ACL to promote greater awareness of the new arrangements.

Master Rowley confirmed that there was no change to deliveries made on foot.

#### **6. FIXED COSTS CONSULTATIONS**

The meeting noted the ongoing Review by Jackson LJ into fixed costs as well as the Department of Health consultation. The report of the former would be out by the end of July.

#### **7. DETAILED ASSESSMENT OF CMO BILLS**

Following the decision of Carr J in *Merrix v Heart of England* and pending the Court of Appeal hearing in *Harrison* (see item 9 below) the meeting discussed the approach to adjournments of both courts and parties. Also, the early experience of assessments where a good reason to depart from the budget had been found.

#### **8. DETAILED ASSESSMENT V ALTERNATIVE FORMS OF SETTLEMENT**

Master Rowley led a discussion of various alternatives to detailed assessment including the ABTA procedure referred to in the case of ...

#### **9. OUTSTANDING APPEALS**

Master Rowley took the meeting through the present status of the following cases:

- *Frost and others v MGN Limited* (heard 24-26 January, judgment expected 11 April)
- *BNM v Mirror Group Newspapers* (to be heard 11 October)
- *May v Wavell Group* (heard 19 January, no judgment date as yet)
- *Harrison v Coventry & Warwickshire etc* (to be heard 10/11 May)

- Surrey v Barnet & Chase Farm Hospitals NHS Trust etc (to be heard by 27 November)
- Budana v Leeds Teaching Hospitals NHS Trust (to be heard 6/7 July)
- Hyde v Milton Keynes NHS Trust (heard 4/5 April).

Master Gordon-Saker drew the meeting's attention to the appeal in Catalano v Espley-Tyas Development Group (Dissolved) which is to be heard by the Court of Appeal on 6/7 July. It raises the issue of the application of QOCS where a "pre-commencement" funding arrangement is abandoned in favour of a "post-commencement" arrangement in order to seek to benefit from QOCS protection.

#### **10. CONCLUDED APPEALS**

Master Rowley referred to the cases of Tickell v TUI and Parissis v Matthias Gentle Page Hassan. In the latter case the appeal court concluded that using s70 Solicitors Act 1974 rather than s64 to seek a breakdown was a reasonable approach by a client, not least because solicitors' invoices routinely refer to sections 70 to 72 but do not refer to s64.

#### **11. OTHER COSTS CASES OF NOTE**

Master Rowley drew the attention of the meeting to the following cases where decisions had been given since the last meeting: Bird v Acorn Group Ltd, Qader v Esure Services Ltd, Sharp v Leeds City Council, Plevin v Paragon Finance Ltd, Menary v Darnton (fundamental dishonesty).

#### **12. ANY OTHER BUSINESS**

Mr Allen informed the meeting that his firm had recently made several applications to the SCCO for interim payments of costs which had met with different outcomes which were not fact specific. Following a discussion of such applications Master Rowley agreed to raise the issue at the next SCCO Masters' Meeting.

Mr Tunkel reported to the meeting about an ongoing (and as such unnamed) case in which both the solicitors and counsel were funded by Damages Based Agreements. There has been a payment into court and the Bar Council have intervened on the basis of who are preferential creditors of the now insolvent client.

#### **13. DATE AND TIME OF NEXT MEETING**

The next Meeting was fixed for Thursday 9 November 2017 at 4.30 pm in the SCCO.

The Meeting closed at 5.45 pm.