

SENIOR COURTS COSTS OFFICE COSTS PRACTITIONERS GROUP

MINUTES OF MEETING HELD ON THURSDAY 10 NOVEMBER 2016

Present		
	Master Rowley (in the chair)	SCCO
	Senior Costs Judge Gordon-Saker	SCCO
	Master James	SCCO
	District Judge Besford	The County Court
	Mr I Stark	ACL
	Mr A Tunkel	The Bar Council
	Mr G Barker	APIL
	Mr P Allen	APIL
	Mr D Marshall	The Law Society
	Miss C Eustace	The Law Society
	Mr A Parker	Civil Justice Council

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Master Simons and Mr Bacon QC.

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 fixed costs. The public consultation by the Department of Health on fixed costs in clinical negligence cases was still awaited. The mediation in relation to fixed costs in Noise Induced Hearing cases was continuing and it was hoped that the Civil Justice Council would be able to publish the results early in 2017.

4. RECRUITMENT AND RETIREMENT OF COSTS JUDGES

Master Gordon-Saker reported that Master Simon Brown had been appointed in October. Master Simons will be retiring in June 2017 and it is hoped that, subject to approval by the Lord Chancellor, a JAC competition for a successor will be held in the year 2017-18.

5. GROUP LISTING ARRANGEMENTS IN THE SCCO

Cases allocated to the group list were being heard within 2 months of allocation. Cases were rarely bumped out into the next month's list. Feedback from the profession remained generally positive.

6. VOLUNTARY PILOT FOR NEW BILLS

The pilot scheme has been extended to September 2017 and a new form of bill, Precedent AB, which did not depend on the use of J-codes, had been published. The Civil Procedure Rule Committee had indicated that it hoped to agree rules for the mandatory use of an electronic bill in May 2017 with a view to those rules coming into effect on 1 October 2017 in respect of work done after that date.

Mr Stark reported that the ACL had produced an alternative electronic bill which complied with PD51L and which a number of large firms were beginning to use.

7. HEARINGS IN PRIVATE

Master Rowley introduced a discussion on the practicalities of detailed assessment where an order had been made that a hearing be held in private. It was agreed that, unless an anonymity order had been made, the case should be mentioned in the cause list.

8. NON-CONTENTIOUS BUSINESS AGREEMENTS AND APPROVAL HEARINGS

Do Part 8 proceedings to approve a settlement turn otherwise non-contentious business into contentious business? After discussion there was broad agreement that the definition of "contentious business" in the Solicitors Act 1974 would probably include an application for the approval of a settlement even if no other proceedings had been issued. Mr Tunkel raised the possibility that work done on the claim might be non-contentious and that only the work done on the application would be contentious business. The meeting agreed that this would require careful drafting of the agreement to distinguish between the two elements.

9. DETAILED ASSESSMENT OF CMO BILLS

District Judge Besford pointed out that it was important that the court should make it clear on the face of the order when a Costs Management Order had been made, so that it would be beyond doubt. There was some discussion about the effects of agreed or approved figures in costs budgets on detailed assessment and in particular whether those figures were caps, soft caps or fixed. It was agreed that guidance from a higher court would be needed and it was noted that an appeal was being pursued from the decision of District Judge Lumb in *Merrix v Heart of England NHS Foundation Trust*.

10. APPEALS FROM SCCO DECISIONS

Master Rowley took the meeting through: *BNM v Mirror Group Newspapers* (to be heard by the Court of Appeal before March 2017), *May v Wavell Group* (appeal to be heard in CLCC in January 2017), *Surrey v Barnet & Chase Farm Hospitals NHS Trust* (application by D for PTA), *Tickell v Tui*, *Radford v Frade*, *Bloomsbury Law Solicitors v McPherson*, *Lowin v W Portsmouth & Co Ltd* (application by D for PTA).

11. OTHER COSTS CASES OF NOTE

Master Rowley drew the attention of the meeting to the following cases:-

11.1 Funding cases

- **Wall v Royal Bank of Scotland Plc** [2016] EWHC 2460 (Comm) (Andrew Baker QC) - inherent power of the court to order a claimant to identify the third party funder.

11.2 CFA cases

- **Premier Motor Auctions Ltd (in Liquidation) & Anor v Price Waterhouse Coopers LLP & Anor** [2016] EWHC 2610 (Ch) (Snowden J) - adequacy of ATE policy re security of costs.
- **Eight Representative Claimants v MGN Ltd** [2016] EWHC 855 (Ch) (Mann J) - recoverability of additional liabilities not incompatible with Article 10 ECHR.
- **Jones v Spire Healthcare Ltd** (HHJ Graham Wood QC, CC (Liverpool) 27/4/16) – assignment of CFAs.

11.3 Part 36 cases

- **Webb v Liverpool Women's NHS Foundation Trust** [2016] EWCA Civ 365 - CoA overturned judge's issues based costs order where C succeeded on one part of a clinical negligence claim but not another. Indemnity costs awarded since Cs own offer beaten.
- **Purrusing v A'Court & Co (a firm) & Anor** [2016] EWHC 1528 (Ch) (Judge Pelling QC) - only interest accrued up to the end of the expiry date of a Part 36 Offer could be considered in deciding whether an outcome was more advantageous than the Offer.
- **Transocean Drilling UK Ltd v Providence Resources Plc** [2016] EWHC 2611 (Comm) (Popplewell J) - costs not to be taken into account in assessing whether a Part 36 Offer had been beaten.

11.4 Costs Budgeting cases

- **Jamadar v Bradford Teaching Hospitals NHS Foundation Trust** [2016] EWCA Civ 1001 - CoA upholding restriction of Cs budget to court fees for failing to file and serve a budget. Admission of liability did not affect need to deal with budgeting.
- **Wright v Rowland & Anor** [2016] EWHC 2206 (Comm) (Flaux J) - the court approved some of the defendant's budget and left the remainder for detailed assessment.
- **Churchill v Boot** [2016] EWHC 1322 (QB) (Picken J) - doubling the size of the claim, additional disclosure and delay of trial were insufficient to demonstrate a significant development so as to justify the increase in a budget.

11.5 QOCS cases

- **Thompson v GO North East Ltd & David Bott & Co solicitors (respondent)** (Judge Charnock-Neal, CC (Sunderland) 30/8/16) - discontinuance set aside in order for court to make a costs order against C for being fundamentally dishonest. Wasted costs order also made against Cs solicitors.
- **Price v Egbert H Taylor & Co Ltd** (HHJ Lopez, CC (Birmingham) 16/6/16) - a claimant who falsely represented that a pre-commencement funding agreement existed, was prevented from asserting later that no such agreement existed and / or that QOCS applied.
- **Meadows v La Tasca Restaurants** (HHJ Hodge QC, CC (Manchester) 16/6/16) - a DJ's finding that inconsistencies in a claimant and her witnesses' evidence meant that she had not proved her case was not sufficient to find her fundamentally dishonest.
- **Parker v Butler** [2016] EWHC 1251 (QB) (Edis J) - appeal proceedings were also covered by QOCS protection.

11.6 Other cases

- **Richard Andrew Campbell v Robert Campbell** (Chief Master Marsh)
 1. [2016] EWHC 2237 (Ch) - the court has power to order a litigant in person to produce a budget.
 2. [2016] EWHC 1828 (Ch) - services provided by a lawyer qualified in another jurisdiction not recoverable by a litigant in person.
- **K v K** [2016] EWHC 2002 (Fam) (MacDonald J) - costs of £38,813 reduced to £3,737 on a summary assessment.
- **Ashman v Thomas** [2016] EWHC 1810 (Ch) (Master Matthews) - request for interim payment can be considered after costs order made but before the order was sealed.
- **FPH Law v Brown (t/a Integrum Law)** [2016] EWHC 1681 (QB) (Slade J) - damages obtained by firm against former partner who breached undertaking to preserve lien and caused firm to lose the chance to recover fees from a former client.

It was noted that the Court of Appeal would be handing down judgments in *Bird v Acorn Group* (which fixed fee in Section IIIA of CPR Pt 45 applies where a case is not allocated to track but is listed for a disposal hearing and settles before the hearing) on 11 November 2016 and in *Qader v Esure Services* (does a case which was in the portal but is allocated to the multi-track remain subject to the fixed costs in Section IIIA of CPR Pt 45) on 16 November 2016.

The UKSC has granted PTA in *Frost & Ors v MGN* in which the defendant newspaper argued that a requirement to pay additional liabilities was an infringement of its rights under Art 10 ECHR and that appeal would be heard with 2 others in due course.

12. ANY OTHER BUSINESS

Mr Bacon QC (via Mr Tunkel) informed the meeting that the Bar Council has started an on line survey to gather some feedback on the costs being allowed on summary assessment of fast track cases and on budget approval for multi-track up to £250,000. This was in anticipation of Government proposals for extending fixed costs.

13. DATE AND TIME OF NEXT MEETING

The next Meeting was fixed for Thursday 6 April 2017 at 4.30 pm in the SCCO.

The Meeting closed at 6 pm.