

SENIOR COURTS COSTS OFFICE COSTS PRACTITIONERS GROUP

MINUTES OF MEETING HELD ON THURSDAY 9 NOVEMBER 2018

Present		
	Master Rowley (in the chair)	SCCO
	Master Leonard	SCCO
	Mr G Barker	APIL
	Mr D Marshall	The Law Society
	Mr E Stansfield (for Mr S Hines)	FOIL

1. Apologies for absence

Apologies for absence were received from Master Gordon-Saker, Master James, DJ Besford, Mr Parker and Mr Hines.

2. Comments upon the approved minutes of the last meeting and any matters arising

Master Rowley expressed his thanks to Mr Hines for his notes from the last meeting. It was agreed by those present that they were an accurate representation of the matters covered and should form the basis of the minutes for the April 2018 meeting. A finalised version of the minutes would be circulated with the November minutes.

The only matter arising which was not covered by the agenda items for this meeting concerned the assessment of bills which have a Costs Management Order. The general view was that bills for assessment before the court remained mainly without a CMO. Mr Marshall expressed the view that it was a matter of timing. It was only during this year that costs negotiations on bills at his firm were often subject to CMOs.

3. Arrangements for electronic bills

Master Leonard informed the meeting that he had dealt with roughly 10 electronic bills to date. The training given to the judges in May was based on his experience of

dealing with these bills which were mainly within the provisional assessment limits. He said that, other than lodging the bill itself, there was little difference for practitioners in the procedure for provisional assessments at least.

Mr Barker reported that he was still encountering many solicitors who had not been aware of the mandatory nature of electronic bills for work after April 2018. The likelihood must be that such firms would not be recording their work in a phase/task/activity fashion and would be relying on costs draftsmen to retrofit the work into electronic bills.

4. Fixed Costs Initiatives

Mr Marshall ran through the various costs initiatives, albeit that there had been little progress on most of them since the last meeting.

The Second Jackson report remains with the Ministry of Justice who are said to be considering it so as to produce their response. Similarly, the CJC delivered its report on NIHL claims to the Government before the second Jackson report and the ball remains in the Government's court on that report as well.

The Clinical Negligence working party has met several times and data has been gathered. A report is hopefully going to be produced early in the New Year.

On related matters, the review into the effects of LASPO after 5 years included a meeting in the Summer attended by representatives of many stakeholders, including some of the CPG attendees. The views expressed at that meeting formed part of the consultation exercise run by the Government and its response is now awaited.

The whiplash reform of the small claims limit to £5,000 is nearing the end of its statutory journey through Parliament. "Vulnerable" road users such as cyclists will not come within the new small claims track limit.

5. CE Filing

Master Rowley informed the meeting that the SCCO is moving towards the electronic filing of court documents. The projected timescale is quite short and ought to be effective by the time of the next CPG meeting. The system is based on the one already in use in the Chancery Division and which is also going live imminently in the Queen's Bench Division.

It will have no immediate impact on the separate question of lodging electronic documents in support of the bill for the purposes of the assessment itself.

6. SCCO Guide 2018

Master Rowley reported that the Guide was ready to be uploaded to the relevant websites, subject to one small query, and so it should be available by the end of the month. This was too late for the White Book supplement and Green Book Reissue but it would be within both texts in the 2019 editions.

7. Applications for the delivery up of papers held by solicitors

The meeting discussed briefly the decision of Soole J in *Green & Ors v SGI Legal LLP; Hanley v JC&A Ltd.* Mr Marshall informed the meeting that the Court of Appeal is due to hear the appeal in *Herbert v HH Law* [?] in March and it may be that the Law Society will seek to intervene given its potential to affect the practice of numerous firms of solicitors. The Court of Appeal may shed further light on s68 applications indirectly. The decision may in any event make the opportunity to pursue claims for alleged overcharging markedly more (or less) attractive.

8. Notable decisions in the SCCO (not appealed)

- **Charles Russell Speechlys v Pieres** – interim bills created a ‘Chamberlain bill’ so as to be capable of a Solicitors Act assessment.

9. Appeals heard from the SCCO

- **Gempride v Bamrah (CA)** – 44.11 costs award against solicitor who certified hourly rates above agreement with herself
- **JXA v Kettering General Hospital NHS Foundation Trust (Goss J)** – hourly rates in serious clinical negligence proceedings
- **Riordan v Moon Beevor (Foskett J)** – Master Haworth’s decision to strike out Solicitors Act claim for failure to pay sums on account pending professional negligence proceedings upheld
- **Hugh Cartwright & Amin v Devoy-Williams (Davies J)** – order for costs where a Calderbank offer with conditions was made
- **Gill v Heer Manek solicitors (Walker J)** – solicitors who closed down the relevant department were not entitled to fees where they terminated the retainer without giving reasonable notice

10. Outstanding appeals

- **Percy v Anderson-Young (Martin Spencer J)** - The Court of Appeal is to hear the defendant’s appeal against the level of a pre April 2013 ATE premium in January.

- **West & Demouilpied v Stockport NHS Foundation Trust (CA)** – evidence required to challenge post LASPO ATE premiums. The Court gave directions in October for the case management of this appeal. A further directions hearing in December, followed by a 5 day hearing in April 2019, is to take place before a High Court Judge and Master Leonard. They will then prepare a report for the benefit of the Court of Appeal who are due to hear the case in June / July 2019.

11. Other costs cases of note

- **Malone v Birmingham Community NHS Trust (CA)** – costs allowed under a CFA which did not name correct defendant
- **Hislop v Perde (CA)** – only fixed costs in Section IIIA of Part 45 recoverable where defendant accepted claimant’s offer ‘late’.
- **Reynolds v One Stop Stores Limited (HHJ Auerbach)** – proportionality appeal where a CMO was in existence
- **Old Street Homes Limited v Chelsea Bridge Apartments Ltd (HHJ Kramer QC (Ch D))** – Deputy Master wrong to order that costs judge should determine the order for costs in the substantive proceedings
- **A v B (Arnold J)** – 44.2(8) award of (“no more than”) 50% of costs where the costs substantially exceeded the budget but court thought good reasons to depart would be found at the detailed assessment.

12. Any Other Business

Master Rowley asked the attendees for their impression of the working of Part 36 in civil cases in order to assist him in producing a note for a subgroup of the Family Procedure Rule Committee. That subgroup is tasked with reviewing the use of Calderbank offers in financial relief proceedings and their inter-relationship with costs not generally being ordered to be paid by losing parties. The practitioners at the meeting felt that Part 36 was working well on the whole - but in most cases, offers were the springboard to settlement and so the parties wished them to be effective. It was only at a court hearing where offers were scrutinised and points taken about wording on some occasions.

13. Date of next meeting

This was agreed as being 2 May 2019.