

**SUPREME COURT COSTS OFFICE
COSTS PRACTITIONERS GROUP**

**MINUTES OF MEETING HELD ON
THURSDAY 6 MARCH 2008**

Present: Master O'Hare (Chairman)	SCCO
Chief Master Hurst	SCCO
Master Simons	SCCO
District Judge Oldham	DJ's Association
Mr G Barker	The Law Society
Mr M Heskins	The Law Society
Mr G Lewis	The Law Society
Mr A Girling	The law society
Mr N Bacon	Bar Council
Mr P Allen	APIL
Mr D Marshall	APIL
Mr A Parker	LSLA
Mr J Martin	Minute Secretary, SCCO

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Miss Popplewell (ALCD), Mr O'Riordan (SCCO) and Mr Carter (FOIL).

2. COMMENTS UPON APPROVED MINUTES OF THE LAST MEETING

There were no comments upon the approved minutes of the last meeting.

3. MATTERS ARISING FROM THE MINUTES OF THE LAST MEETING

There were no matters arising from the minutes of the last meeting.

4. NEW GUIDELINE RATES FOR SUMMARY ASSESSMENT

The new Guideline rates were now published on the SCCO website. There had been an overall average increase of 4% on the previous rates.

5. UPDATE ON THE ADVISORY COMMITTEE ON CIVIL COSTS

Master Hurst reported that this Committee, which had been a long standing suggestion, had finally been established under the chairmanship of Professor Stephen Nickell of Nuffield College. The membership of the Committee comprised a cross section of interests and included representatives from the Law Society, ABI, the Consumer Council, a Government Statistician and Economist, a law lecturer and a District Judge.

Mr Bacon stated that the Bar Council has written to the Committee asking them to appoint also a representative from the Bar Council.

Master Hurst said that the first meeting of the Committee had been concerned with the updating of the Guideline rates. Because the 2007 guidelines had been announced as intended to apply for one year only, the committee decided to use the Earnings Index as the basis for a stop gap guideline until its research on the topic was complete. The Committee was now engaged in collecting information to enable it to make recommendations as to future rate increases, and to this end draft questionnaires had been produced for circulation to the profession.

Several members of the Group expressed concern that the information sought by the committee should be information which is reasonably available from a solicitor's file bearing in mind the usual the manner in which costs are agreed in the majority of cases. Asking for information which solicitors cannot supply will discourage them from completing and returning the questionnaires which would be disadvantageous for everyone.

The meeting agreed that, given the time which will have to be taken to by solicitors to complete the questionnaires and the time the committee will need

to evaluate the responses, there can be little prospect of the Guideline Rates being revised by July 2008, as originally intended.

**6. LITIGATION FUNDING: CIVIL JUSTICE COUNCIL
CONSULTATION 8 FEBRUARY 2008**

Master Hurst reported on this conference, which was principally concerned with third party funding. Such funding is here to stay and some major players, including AXA and Allianz have now entered the market. Their interest, however, appeared to be in funding claims with high prospects of success where the remedies sought are likely to exceed £100,000 in value. At present little was available for smaller claims.

Mr Heskins, who had also attended the conference, said that the Law Society had agreed to look into the need to educate the profession in what third party funding actually entailed. Its present view was that any regulation of this new area ought to be done with a light touch.

Master Hurst said that the Civil Justice Council was going to make available the minutes of the conference, and this should be published on their website shortly.

**7. UPDATE ON AMDNDMENTS TO THE COSTS PRACTICE
DIRECTION**

Mr Parker reported that he had recently contacted Rule Committee officers on this topic but had not yet received a response. To some extent the amendments had been delayed through the hiatus caused by Lord Justice Dyson stepping down from the Committee and Lord Justice Neuberger's elevation to the House of Lords. However, there now appeared to be a window of opportunity to introduce these with the CPR amendments due to be "signed off" at the end of July. Master O'Hare expressed the hope that this would be the case, as most of the proposed amendments were uncontroversial.

Master Hurst said he also would write to the Rule Committee officials at the Ministry of Justice, and copy the correspondence to Lord Justice Moore-Bick.

8. ACCIDENT LINE CASES AFTER GARRETT

Master O'Hare said that consequent upon the decision in *Garrett v Halton BC; Myatt v National Coal Board* [2006] EWCA Civ 1017 there were many cases decided at costs judge and district judge level concerning regulation compliance in Accident Line cases. The most recent case was *Jones v Attrill* heard by District Judge Dancey in Bournemouth County Court. District Judge Dancey had granted permission to appeal and recommended that any such appeal should be leap-frogged to the Court of Appeal. Master Hurst said that permission to appeal had just been granted by Mr Justice Eady in *Puksis v Brumby*, a decision by Master Gordon-Saker in the SCCO. Another case (*Tankard v John Fredericks Ltd*, 6 February 2008, District Judge Sykes, sitting in Liverpool County Court) may also be going on appeal.

Master O'Hare said that, in Accident Line cases proceeding in the SCCO which were assigned to Costs Officers, the Senior Costs Officer, Mr O'Riordan, had directed that if the Garrett point was raised, the case should either be adjourned or re-assigned to a Costs Judge.

The Meeting felt that because of the growing number of inconsistencies in costs judge and district judge decisions on the point, swift intervention by the Court of Appeal would be welcome. It was clear that there were potentially many thousands of cases involving costs running into many millions of pounds which would be affected by such an appeal.

9. REVIEW OF RECENT AND PENDING COSTS CASES

Master O'Hare reported on the following cases:-

- (a) *Kay -v- LB Lambeth* [2007] EWHC 90068. This appeal had been dismissed by consent, and therefore no decision had been made by the Court of Appeal.

- (b) *Crane –v- Cannons Leisure Centre* [2007] EWCA Civ 1352. This long-awaited decision by the Court of Appeal had been given in December. It did not re-draw the line between profit costs and disbursements.
- (c) *Jones –v- Wrexham BC* [2007] EWCA Civ 1356. Another case on compliance with CFA Regulations which has come to be known as “the accidental CFA Lite case”.
- (d) *Meretz Investments –v- ACP Ltd* [2007] EWHC 2635 (Ch), a case on the division of costs where several litigants instruct the same solicitor, but not all of them are awarded their full costs.
- (e) *Mastercigars Direct Ltd –v- Withers LLP* [2007] EWHC 2733 (Ch), which explains the effect of costs estimates in disputes between solicitors and client;. The Claimants have applied to the Court of Appeal for permission to bring a second appeal.
- (f) *Harris –v- Moat Housing Group South Ltd* [2007] EWHC 3093 (QB), an appeal upholding Master Haworth’s ruling that where more than one firm of solicitors has been instructed by a litigant subsequently awarded costs, the detailed assessment under that order should cover the costs incurred by all of the firms instructed.
- (g) *Gloucester CC –v- Evans* [2008] EWCA Civ 21 in which the Court of Appeal upheld District Judge Lightman’s ruling on a no win/reduced fee CFA with success fees. It is permissible to specify a percentage increase on the full fees even where such a percentage will exceed 100% of the reduced fees payable if the claim fails.
- (h) *Myers –v- Bonnington (Cavendish Hotel) Ltd* [2007] EWHC 90077. This appeal to the Central London CC from Master Rogers’s decision on CFA regulation compliance in an Accident Line cases has also been dismissed by consent.
- (i) *Kilby –v- Gawith*. A case concerning whether success fees are discretionary under the fixed recoverable costs regime. This is listed to come before the Court of Appeal in May.

Master Hurst and Mr Bacon both mentioned another case listed for the Court of Appeal in the period August to December 2008: *Byrne v Richwood*, which concerns the circumstances in which it is appropriate to include vehicle repair

costs as well as personal injury compensation when calculating fixed recoverable costs.

10. ANY OTHER BUSINESS

(a) There were two changes to membership of the Group. Mr Bull had been appointed a District Judge in Birmingham. Accordingly, Mr Bacon had now taken over as one of the Bar Council representatives. Master O'Hare welcomed him as a permanent member of the Group.

(b) Mr Girling announced that he was standing down from the Group. He had been appointed by the Law Society when this Group was first set up and he was pleased to say that he had never been disappointed by it. Master O'Hare and Master Hurst both paid tribute to Mr Girling's contribution over the years.

(c) Master Hurst reported that he would shortly be hearing another RSA case on premiums.

11. DATE OF NEXT MEETING

The next meeting was fixed for Thursday 16 October 2008 in Room 2.09 in SCCO at 4.30pm.

The meeting closed at 5.25pm.