

**SUPREME COURT COSTS OFFICE
COSTS PRACTITIONERS GROUP
MINUTES OF MEETING HELD ON 11 OCTOBER 2006**

Present: Master O'Hare (Chairman)	SCCO
Chief Master Hurst	SCCO
Master Simons	SCCO
Denis O'Riordan	SCCO
District Judge Oldham	Association of DJs
Mr G Barker	The Law Society
Mr T Girling	The Law Society
Mr M Heskins	The Law Society
Mr S Bull	Bar Council
Mr P Allen	APIL
Mr D Marshall	APIL
Mr R Carter	FOIL
Mr A Parker	LSLA
Mr J Martin	Minute Secretary

Apologies for absence were received from Mr S Garrod of the Bar Council and Mr J Hocking of the ALCD.

1. The Chairman began by paying tribute to Master Rogers who had retired from the Group after 10 years, the last 7 of which had been spent as Chairman.

2. **MINUTES OF PREVIOUS MEETING**

The Minutes of the meeting of 16 March 2006 were approved and signed.

3. **MATTERS ARISING NOT OTHERWISE ON THE AGENDA**

There were no matters arising.

4. PUBLICATION OF CPG MINUTES AND PAPERS

Master O'Hare suggested that a report of the Group's discussions should be posted on SCCO website – thereby following the lead of the editors of the ALCD Journal who sometimes include reports of our meetings. The meeting was in favour of this as it would encourage costs practitioners generally to put forward items for discussion. The website report should therefore provide an email address to facilitate such discussion. Master O'Hare undertook to deal with this.

5. SCCO GUIDE, 2006 EDITION

Master O'Hare reported that the latest edition of the Guide was now on the SCCO website. The Court Service were considering publication of it as a booklet, but dates for this and any cost for it to the profession were uncertain. He expressed the hope that it would find its way into the White Book and Green Book in due course, although Master Hurst cautioned that there was already pressure to remove the current version from the White Book. District Judge Oldham thought that it should be circulated to the regional costs judges, and the meeting agreed with this.

6. PROPOSALS TO AMEND THE COSTS PRACTICE DIRECTION

Minutes of the Costs Rules Sub Committee June meeting had been circulated, but the September minutes were still being typed and would be circulated in due course. Mr Girling expressed concern about the proposal for tightening up the rules on service of costs estimates (form H) to create a mandatory requirement. Both he and District Judge Oldham reported that at present it was rare for the form H to be filed in accordance with the rules. Master Hurst said that the minutes would be by way of a report and recommendation to the Rule Committee who would ultimately decide. Their decision should be awaited.

Concern was expressed that the "Manchester Protocol" was leading to unnecessary costs being incurred through the use of a compulsory mediation scheme. Master Simons reported a similar direction being applied in Exeter, although both parties had appealed this. Master Hurst that it was hoped that

forthcoming amendments to the Costs Practice Direction (CPD) would ensure that only the CPD was to be followed.

7. **COSTS DRAFTSMEN'S FEES**

Mr Hocking, who had been due to address the meeting on this topic had been unavoidably detained. It was agreed to hold the item over to the next meeting, by which time the Court of Appeal should have given guidance in the *Crane v Cannon's Leisure Centre* case.

8. **FAST TRACK TRIAL COSTS**

Mr Bull was concerned that there had been no increase in the fast track trial costs allowed to counsel since the introduction of the CPR in 1999. He had received no response when trying to raise the issue with the DCA. Mr Heskin said that he had recently attended a meeting with the DCA to discuss the issue of fixed costs generally, and had been informed that the matter was still under consideration and that the DCA was awaiting a consultation report. There was no indication of likely timescale. Master Hurst said that he had met with Janet Howe of DCA, and had received a similar response. The meeting expressed concern at the continuing delays in progress on this matter.

Mr Bull expressed a second concern; if the trial of a case allocated to the Fast Track could not be completed in one day counsel was not entitled to a refresher fee, and thus effectively went unpaid. A general discussion followed from which it appeared that the main reasons for this were likely to be inadequate information given to the court in Allocation Questionnaires and over-listing by the court so that Fast Track cases listed for one day did not often start until late.

9. **THE CARTER REPORT**

Although the meeting had no role in the Carter Report, it was still thought that it was right that it should comment on its effects on costs. It was noted that the consultation period on the Report was due to close tomorrow.

Mr Bull was concerned the proposal to deduct counsel's fees in child care cases from solicitors fees would have a severe impact on the Family Graduated Fee Scheme.

Mr O'Riordan said that with solicitors and counsel charges being controlled by fixed rates and graduated fees, one of the principal reasons for the increase in the family legal aid budget appeared to be the lack of control over "other disbursements" such as experts fees, and especially fees for family assessments.

Mr Girling said the feedback he received indicated that the level of proposed fees would be changed, but that many legal aid practices had already made up their minds to discontinue this work.

Master O'Hare asked whether the meeting had a preference for national or regional fees. After discussion, the consensus was in favour of regional fees, given the differences in overheads around the country.

10. **REVIEW OF RECENT CASES**

Master O'Hare drew attention to the following cases –

- (a) *Garrett v Halton BC ; Myatt –v- National Coal Board* [2006] EWCA Civ 1017. *Garrett* was to be appealed to the House of Lords, although there was a possibility that the Lords would not consider it suitable as their decision would not affect future cases. There was a general discussion on the effect of *Myatt* and it appeared that the influx of new assessments to the court expected following the Court of Appeal ruling had not materialised. Only anecdotal evidence could be advanced, but the most likely reason seemed to be that many solicitors were settling cases on the best terms available.
- (b) *Gaynor –v- West London Buses* [2006] EWCA Civ1120. Mr Girling said that this case was causing some confusion because the Court of Appeal had not considered the definition of "proceedings" when arriving at its decision. Although it was likely to be of nuisance value in Points of Dispute the case

was already being relied on by paying parties. The meeting thought it was likely to be case specific, and therefore no more than an irritant.

- (c) *Rogers –v- Merthyr Tydfil CBC* [2006] EWCA Civ 1134, a case in which a staged insurance premium had been upheld. Master O’Hare noted that, other than the RSA Pursuit cases, there had been a dearth of appeals where insurance premiums had been reduced, and thus there was no authoritative guidance on the subject. Master Hurst said there was a possibility that a DCA consultation may look into the question. On the facts of this decision, Mr Girling thought problems may arise where cases settled pre-issue of proceedings.
- (d) *Days Healthcare –v- Pihsiang Machinery* [2006] EWHC 1444 (QB) a case in which the court considered whether wilful disobedience of court orders should debar a party from taking any further part in assessment proceedings.
- (e) *Q (Brewer) –v- SCCO* [2006] EWHC 1955 (Admin), a criminal case concerning the refusal of the Costs Judge to grant a Public Interest Certificate to allow the matter to be appealed further. The court held that it would have jurisdiction to hear a further appeal.
- (f) *Haji-Ioannou –v- Frangos*. This case concerned the court’s powers to disallow interest (in this case some £130,000) for delay in commencing the assessment process.
- (g) *Woollard -v- Fowler ; Crane –v- Cannon’s Leisure Centre*. These cases were due to be heard together by the Court of Appeal in January. The meeting was not aware of any cases being stayed pending the decision of the Court.
- (h) *Lahey –v- Pirelli Tyres*. This case, which had similarities with *Aaron –v- Shelton* and was not yet listed by the Court of Appeal concerned the extent to which misconduct in proceedings could be raised on a detailed assessment hearing. A general discussion ensued. Master Simons said that most problems arose where cases settled before proceedings had been issued and had thus

never been before the court. Master O'Hare thought that some form of truncated inquiry, similar to "Newton" hearings in criminal cases, was required.

- (i) *Brown –v- Russell Young & Co.* This case was also due to come before the Court of Appeal in January. It concerns generic costs in multi-party litigation.

11. **ANY OTHER BUSINESS**

Mr Girling asked about SCCO guideline rates for 2007. Master O'Hare said that to overcome the problems encountered with the OFT, there was likely to be an increase based on the Retail Price Index. District Judge Oldham reported that there seemed to be little enthusiasm by local district judges to set rates. It was questioned whether setting rates through the Costs Council would overcome the OFT objections.

Mr Heskins reported that the DCA seemed willing to look at an amendment to the Solicitors Act to deal with the indemnity principle. However, as this entailed primary legislation there was no indication as to when Parliamentary time might be available. The matter was therefore still "on hold".

There was a general discussion about the level of court fees for assessment hearings. It was generally thought that the flat fee which had been introduced at the same time as the CPR did not encourage parties to settle at an early stage, leading to late settlements and wasted court time. It was agreed that some form of staged fee, with the possibility of rebates for early settlement was desirable. It was noted that the DCA was due to consult on court fees generally before Christmas.

12. **DATE OF NEXT MEETING**

The next meeting was fixed for Thursday 8 March 2007 at 4.30 pm in Room 2.09 in the SCCO

The meeting closed at 5.45 pm.