

**SUPREME COURT COSTS OFFICE  
COSTS PRACTITIONERS GROUP**

**MINUTES OF MEETING HELD ON WEDNESDAY 17 OCTOBER 2007**

Present: Master O'Hare (Chairman)	SCCO
Master Simons	SCCO
Mr D O'Riordan	SCCO
District Judge Oldham	DJ's Association
Mr G Barker	The Law Society
Mr G Lewis	The Law Society
Mr N Bacon	Bar Council
Miss W Popplewell	ALCD
Mr P Allen	APIL
Mr D Marshall	APIL
Mr A Parker	LSLA
Mr J Martin	Minute Secretary

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Chief Master Hurst, Mr Heskins (the Law Society) Mr Girling (the Law Society) Mr Bull (Bar Council) and Mr Carter (FOIL).

The Chairman (Master O'Hare) welcomed to the meeting Miss Popplewell, the new Chairman of the ALCD; and Mr Bacon, who was deputising for Mr Bull.

**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**

Master O'Hare thanked the meeting for their prompt responses to his requests for approval of the minutes of the previous meeting which had been circulated in draft by e mail. This had enabled the minutes to be published quickly on the SCCO website. He expressed the hope that the minutes of this meeting will be published equally quickly, if not more quickly.

### **4. CJC MEDIATION; MEDICAL AGENCY FEES**

Mr Parker reported that although he had been involved in setting up the mediation process, he had not been involved in the negotiations themselves. He went on to explain some details of the settlement, especially why different rates had been applied to invoices which had been paid within 90 days of receipt and those paid after. The invoices in question are those sent by the medical agency directly to the defence insurers. The agreement was only concerned with cases up to a value of £15,000, and whilst it was not restricted to road traffic accident cases, it was envisaged that it would bite mostly on these. So far, it appeared that the agreement was working out well.

District Judge Oldham commented that the agreement should now lead to the resolution of the many cases which had previously been stayed in court offices up and down the country pending this outcome.

### **5. MoJ CONSULTATION: CFAs IN PUBLICATION PROCEEDINGS**

Mr Bacon reported that he had attended the negotiations on behalf of the Bar Council. The negotiations had gone well, and a “near” agreement reached on success fees. The agreement had been tweaked by one of the groups present, who had added their own protocol to it. He thought that eventually there would be fixed success fees at various stages and a series of protocols to the agreement. Master O'Hare drew attention to the possibility of 2 different rates of success fee being applied in any one case: one rate for the main proceedings (which could be as high as 100%) and another rate for the detailed assessment proceedings (25%). As between solicitor and client there can be only one rate (*U v Liverpool CC* [2005] 1 WLR 2657). The allowance of varied rates as between litigants may lead to the receiving party suffering a shortfall between the costs payable by him to the

solicitor and costs payable to him by the paying party. The problem would be avoided if the solicitor agreed not to seek more from the client by way of success fee than was recoverable from the paying party. After a general discussion of the proposals the meeting thought it likely that a deal would eventually be achieved.

## **6. GUIDELINE FIGURES FOR SUMMARY ASSESSMENT: STATUS OF EMPLOYED BARRISTERS**

Mr Bacon reported that a problem had arisen on a summary assessment where a barrister employed by a firm of solicitors had been allowed no costs because that “grade” of fee earner did not appear in the summary assessment guide. The meeting thought that this appeared to be a local problem. The correct approach was that, as an employee of a solicitor, a barrister should be treated on assessment as any other solicitor’s clerk and the level he should be remunerated at ought to reflect his litigation experience. Miss Popplewell said that similar problems had been encountered with foreign lawyers who subsequently qualified in England. The answer here was the same, that the litigation experience of the solicitor should be taken into account. Master O’Hare emphasised that that the summary assessment guidelines were only intended to be guidelines, and not a substitute for the exercise of judicial discretion.

## **7. REVISED COURT FEES FOR DETAILED ASSESSMENT**

Master O’Hare explained that he had placed this topic on the agenda in order to point out an error in the court fees which came into effect on 1<sup>st</sup> October. As originally drafted the new detailed assessment fees were to be calculated solely by reference to the profit costs claimed, and not upon the whole bill. This, however, had now been rectified by an amending Statutory Instrument.

Mr Parker stated that the changes to other court fees in the SI had been foreshadowed in a Ministry of Justice Consultation Paper. However, there had not, as yet, been a ministerial response to that consultation. Until such a response was seen it was impossible to state the thinking behind these changes.

## **8. REVIEW OF RECENT AND PENDING COSTS CASES**

Master O'Hare reported on the following cases:-

- (a) *Willis –v- Nicolson* [2007] EWCA Civ 199. A costs capping case in which permission to appeal had been given in the hope that the Court of Appeal would give general guidance. In fact the court decided not to give such guidance thinking that to be better given by the Rules Committee. The Rules Committee had now set up a Working Party to look into the issue.
- (b) *Lamont –v- Burton* [2007] EWCA Civ 429. A case concerning fixed success fees. The Claimant had failed to beat a payment into court and so was awarded costs only up to the date of payment in and was ordered to pay costs from that date. Nevertheless, because the case had reached trial, the Claimant was entitled to a success fee of 100% on the costs awarded to him even though, had he accepted the payment, he would have received only 12.5%. The Court of Appeal suggested that such a result could be avoided if the rules were amended. However, Mr Parker expressed the opinion that the Rules Committee might well take the view that no such amendment was appropriate; the present rules were arrived at following negotiations between interested bodies which had been mediated by the Civil Justice Council. The agreement represented a package; making adjustments in one direction might encourage requests for adjustments in other directions.
- (c) *Dyson –v- Strutt* [2007] EWHC 1756 (Ch). This case dealt with split orders for costs and has led to the discovery or rediscovery of a further use of the Medway Oil principles.
- (d) *Kay –v- LB Lambeth*. A case concerning costs against the LSC under section 11 of the Access to Justice Act. The appeal to the Court of Appeal was dismissed by consent. Details of the agreement reached were not known.
- (e) *Jones –v- Wrexham BC*. This case concerned the definition of a “CFA Lite” and compliance with the CFA Regulations. It has been listed for hearing by the Court of Appeal on 22 October 2007.
- (f) *Kilby –v- Gawith*. This was a second appeal from HHJ Stewart, and as such permission to appeal from the Court of Appeal was required. The decision whether to grant permission to appeal was expected to be dealt with by 20 November 2007. This case raised similar issues to *Wetzel –v-*

*Fidea* and reached the same result: the fixed success fee payable in cases to which CPR Part 45 Section II applies remains payable even where the Claimant may have had Before the Event insurance cover for the claim.

- (g) *Crane –v- Cannon’s Leisure Centre*. This case was now due to be heard by the Court of Appeal on 19 November 2007. It was potentially a very important case, which could redefine the term profit costs; i.e. to what extent can profit costs be claimed by solicitors in respect of work they have outsourced to others, in this case to independent costs draftsmen.
- (h) *Gloucester CC –v- Evans*. A case which turned on an interpretation of s58(4)(b) CLSA 1990. It was due to be heard by the Court of Appeal in January 2008.
- (i) *Myers –v- Bonnington (Cavendish Hotel) Ltd*. An appeal from Master Rogers on the enforceability of CFAs. This was currently at the permission to appeal stage in the county court. The meeting noted the growing number of cases within the Accident Line Protect scheme in which paying parties were pursuing the objections to the CFA raised in *Myers*.

## **9. ANY OTHER BUSINESS**

Master O’Hare reported that an Advisory Committee on Civil Costs had been established under the chairmanship of Professor Stephen Nickells, which would report to the Ministry of Justice. Chief Master Hurst was a member, together with others including representatives of the legal professions and consumer groups. The first meeting had taken place yesterday. No remit for the Committee had been published, but the meeting hoped that one of the first things it would tackle would be guideline rates for 2008. The rates published in January 2007 were intended to be effective for 2007 only.

On behalf of Mr Girling, Master O’Hare asked whether any progress had been made on implementing the recommendations made by the Costs Rules Sub-Committee last year for amendments to the Costs Practice Direction. Mr Parker volunteered to make enquiries as to this with the Ministry of Justice officials to whom the Chairman of the Sub-Committee (Master Gordon-Saker) had sent the recommendations.

**10. DATE OF NEXT MEETING**

The next meeting was fixed for Thursday 6 March 2008 in Room 2.09 in SCCO at 4.30pm.

The meeting closed at 5.20pm.