

In response to the very positive response LCN have received to our free legal costs seminars, we now offer a range of different courses dependent on your particular requirements. These include:

- An Introduction to Legal Costs
- Conditional Fee Agreements – An Introduction
- Current Issues in Legal Costs
- Conditional Fee Agreements – Recent Developments
- Conduct – How to minimise your legal costs spend from claim inception to assessment

#### Comments on previous seminars:

‘The clearest costs presentation I’ve heard with excellent supporting material.’  
 ‘The presenter was very knowledgeable’  
 ‘An excellent talk on an ever changing subject’

We are also happy to tailor a bespoke seminar to match your exact requirements. Please contact Paul Jones (paul.jones@lcnltd.co.uk - 0161-742 4575) for further information.

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## THE SOLICITOR AS DOORSTEP SALESMAN

With the revocation of the CFA Regulations in November 2005, it was hoped, certainly by Claimant Solicitors and the Courts, that challenges to the validity of CFAs would gradually wither away. Whilst the number of such challenges has decreased, paying parties are becoming increasingly inventive in finding ways to challenge the validity of CFAs. One such potential challenge arises from an unlikely source, a statutory instrument intended to guard the public against door to door salesman and pressure selling which also happens to catch unwary solicitors.

*The Cancellation of Contracts made in a Consumer’s Home or Place of Work etc. Regulations 2008 (SI 2008/1816)* came into force on the 1st October 2008 and they regulate certain agreements between consumers and traders, the definition of which would cover a solicitor providing legal services.

*“trader” means a person who, in making a contract to which these Regulations apply, is acting in his commercial or professional capacity and anyone acting in the name or on behalf of the person.’ - Section 2(1)*

Section 5 of the Regulations sets out that they cover agreements for goods and services, which would include legal services, where the agreement is entered into

- During a visit by the trader to the consumer’s home, place of work or the home of another individual
- During an excursion organised by the trader away from his business premises
- After an offer has been made during such a visit or excursion

This would therefore include the signing of a CFA during a visit by a solicitor, or their agent, to a client’s home or place of work or, a CFA signed subsequent to such a visit.

Regulation 7(2) sets out that any such agreement **must** give the consumer a written notice of their right to cancel the agreement within 7 days. The notice must be in a particular form, must be dated and must be easily legible and given sufficient prominence in the agreement. Where such a notice is not provided, section 7(6) is very clear:

*‘A contract to which these Regulations apply shall not be enforceable against the consumer unless the trader has given a notice of the right to cancel and the information required in accordance with this regulation.’*

Section 15(1) confirms that any term of an agreement which seeks to limit or exclude this requirement is void.

Therefore, any CFA entered into on or after 1st October 2008 where the CFA was signed at the client’s home or place of work, or is signed after such a meeting, must contain the written notification of the right to cancel. Any failure to do so, renders the CFA unenforceable. If a CFA falls into this category, the argument that it is unenforceable is a very strong one and it is certainly an argument for Defendants to have in their armoury.

Many small personal injury claims involve minors and a large proportion of such claims settle before proceedings are issued. An issue that often arises when such a claim settles below the Small Claims Track limit is the basis upon which costs are payable. The three options being:

- Costs in line with the Small Claims Track
- Costs in line with the fixed RTA scheme.
- Standard basis costs.

The recent case of *Aurangzeb v Walker* [2008] EWHC 90134 (Costs) considered this issue.

The claim was settled without the issue of proceedings for £500 and a parental indemnity form was completed. The Defendant argued that small claims fixed costs were payable in accordance with CPR 27 and the Claimant argued that predictable costs should be payable as the matter had not been allocated to the small claims track and any infant approval on behalf of a minor had to be allocated to the multi track in accordance with CPR 8.9.

Master Rogers, giving his judgement, provided the following analysis:

- There is nothing inherent in the claim of a child that prevents a case being allocated to the small claims track, *Coles v Keklik* (2008) Liverpool CC (unreported)
- Therefore, a minor's claim that settles without proceedings for a sum which, if proceedings had been issued, would have fallen within the small claims track, does not attract predictable costs, CPR 45.7(2)(d).
- Therefore the costs payable in such a case are to be assessed on the standard basis.
- On the standard basis, the Court must consider all the relevant factors when assessing the costs payable, CPR 44.5.
- Where damages were agreed below the small claims limit, costs should be payable in line with small claims fixed costs, even though the case had not been allocated to the small claims track, *Voice and Script International v Alghafar* [2003] EWCA Civ 736

This is an important decision for Defendant insurers and solicitors and provides a strong argument to limit the costs in such claims.



To discuss any of the issues in this newsletter or the services provided by LCN please contact:

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### **Mullan v Chief Constable of Thames Valley Police** [2009] EWHC 90140 (Costs)

The costs incurred in relation to a complaint to the Independent Police Complaints Commission were not costs of an incidental to subsequent civil proceedings brought against the Defendant for wrongful arrest, assault and false imprisonment.

### **Pacey v The Ministry of Defence** [2009] EWHC 90138 (Costs)

Where 2 claims were brought following the death of the Claimant, one on behalf of the estate and one on behalf of the Claimant's widow, a CFA entered into by the widow could not be interpreted as covering the claim brought by the estate. As the claim brought by the widow was discontinued, no costs were payable.

### **Hosking v Smallshaw** [2009] EWHC 90137 (Costs)

Damages were agreed in relation to an RTA claim shortly before a 5 day trial was due to commence. The parties could not agree the terms regarding the frequency of periodic payments and the Claimant Solicitors made an application for the matter to be determined. The Court heard the application and made an order accordingly. It was held on assessment of the Claimant's costs that the matter had settled before trial and, therefore, the fixed success fee should be 12.5% rather than 100%.

### **Blackmore v Cummings** (2009) (CA) (Lawtel 10.6.09)

There was no presumption in favour of an interim payment being ordered where a party had a costs order in their favour.

### **Singh v Adams** (2009) (Nottingham CC – Inglis J) (Lawtel 10.6.09)

Where a case was one to which RTA predictable costs applied, the cost of Counsel attending an infant approval hearing would only be allowed where such attendance was necessary. It was not sufficient that such attendance was reasonable.

## Coal health compensation scheme

In response to a parliamentary question on the 20th July by John Mann, Labour MP for Bassetlaw, the Department for Energy confirmed that the total costs paid to the top 100 legal firms as part of the coal health compensation scheme exceeded £1.2 Billion. Of this sum, £1.5M was paid to Thompsons, the nationwide trade union firm, and £1.4M to Yorkshire firm Beresfords. The sums paid to Beresfords, in particular, have attracted attention in the press. In December 2008, Jim Beresford and Doug Smith, 2 partners at Beresfords, were struck off following a Law Society disciplinary hearing for 'conscious impropriety' in their dealings with claims on behalf of miners. David Leverton, chairman of the tribunal, said that such cases reflected badly on the entire legal profession.

## Court Fees

The Civil Proceedings (Amendment) Fees Order 2009, which came into force on the 13th July 2009, has made more than 30 changes to the fees payable in civil proceedings, to include applications to enforce judgments and changes to the rules regarding fee exemption for litigants on low incomes. The fee amendments are part of a government-wide focus on ensuring the cost of providing public services is met, where appropriate, by users of those services. The full text of the amended fees can be viewed at [http://www.opsi.gov.uk/si/si2009/uksi\\_20091498\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20091498_en_1).