

When is it reasonable to instruct London Solicitors?

With the growth and increasingly specialist nature of personal injury claims, it has become increasingly rare for a Claimant to instruct their local high street solicitor to act for them. Often a claims management company, trade union or legal expense insurer will instruct a solicitor off their panel on behalf of the Claimant or, as in the recent case of *A v The Chief Constable of South Yorkshire* [2008] EWHC 1658 (QB), the Claimant may choose to instruct a particular firm of solicitors. The problem is that is that choice often leads to increased costs which the paying party is then faced with paying and the court has to decide whether this is reasonable.

The case of *A* concerned a claim against the police arising from his arrest and subsequent failed prosecution. The Claimant alleged that the police had unlawfully searched and detained and thereafter maliciously prosecuted him and as a result, the Claimant had developed schizophrenia. The claim was valued at over £1 Million but settled for £300,000 together with costs on the standard basis.

The Claimant had originally instructed a local firm in Sheffield, Peel & Co, to deal with the criminal case against him. During the criminal proceedings, the Claimant's partner contacted a high profile civil liberties firm, Birnbergs in London, with regards to the possibility of a civil claim against the police. She discussed matters with a solicitor at Birnbergs, Fiona Murphy, and they agreed to speak again after the criminal case. Following further discussions, it was agreed that Ms Murphy would act for the Claimant in the civil case, although she had by now set up a new firm in London, Bhatt Murphy. The Claimant formally instructed Bhatt Murphy and legal aid was transferred to them.

Following settlement of the case, the Claimant's costs could not be agreed between the parties. The dispute concerned the hourly rates claimed by the Claimant Solicitors. It was argued by the Defendant that these were too high and had been unreasonably increased by the Claimant's unreasonable decision to instruct a specialist firm of solicitors in London when the matter could reasonably have been dealt with by a firm in Sheffield with commensurately lower hourly rates. The Claimant argued that it was a reasonable choice of solicitor in all the circumstances of the case.

The Court held that the claim could reasonably have been dealt with by a solicitor with general experience of claims against the police together with specialist Counsel if necessary. Furthermore, the Court agreed with the Defendant that there were large numbers of solicitors in Sheffield with experience of claims such as this and named Irwin Mitchell and Howells as but two. The Court held that, at the very least, the Claimant should reasonably have made enquiries in this area.

The Court therefore limited the Claimant's costs to the hourly rates that would be reasonable in Sheffield.

The full judgment can be found at <http://www.bailii.org/ew/cases/EWHC/QB/2008/1658.html>

Costs Capping – Is this the future for costs

The Ministry of Justice has just published its consultation document on costs capping orders. This long awaited consultation seeks views on possible amendments to the Civil Procedure Rules and associated Practice Direction setting down the approach the Courts should take when dealing with an application to cap a party's legal costs. The use of cost caps has long been considered to be a possible solution to the growing problem of disproportionate legal costs, allowing the Courts to control costs before they are incurred. In Tunbridge Wells County Court, a system whereby costs are routinely capped at the allocation stage has been very successful. Unfortunately, the courts have generally been reluctant to embrace this new avenue of costs control. It remains to be seen whether the new rules will continue this trend.

The full consultation document can be viewed at the MOJ Website - <http://www.justice.gov.uk/docs/costs-capping-consultation.pdf>

Changes to rules regarding service of costs documents

The 47th update to the CPR comes into force on the 1st October. The main amendment is a complete re-write of Part 6 dealing with service of claim forms and other documents. The changes as they apply to the service of Notices of Commencement and Points of Dispute are modest, but important:

Service by post or DX

Where a document is posted or put in the DX, it will be deemed served on the second day after posting, if that is a business day, or, if it is not a business day, the following business day. Under the old rules, the deemed day of service was the second actual day (business, weekend or bank holiday) after service, as confirmed by the Court of Appeal in the case of *Anderton v Clwyd* [2002] EWCA Civ 933.

Therefore, if a Notice of Commencement is put in the DX on Thursday the 1st, it will be deemed served on Monday the 5th, meaning that the Points of Dispute are due by Monday the 26th. Under the old rules, the date of service would have been Saturday the 3rd and the Points of Dispute would have been due on Saturday the 24th.

Service by Fax

Service by fax is effected on the same business day the fax is sent, as long as it is sent before 4.30 pm. Under the previous rule, the deadline was 4.00pm. If the fax is sent after 4.30pm, service is deemed to occur on the next business day. Therefore, Points of Dispute served at 4.45pm on a Friday are not deemed served until the following Monday.

Service by E-Mail

Service by e-mail can still only be effected where the party to be served has expressly provided that such service is acceptable or they have impliedly done so by including an e-mail address for service on any pleading. An e-mail address on a letterhead is insufficient. However, where e-mail service is permitted the deemed date of service is the same as applies to service by fax. Previously, an e-mail was deemed served 2 days after it was sent.

The full text of the amended CPR Part 6 can be found at:

http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part06.htm#IDAXLC1B

Case Law Update

RTA fixed costs: Kilby v Gawaith [2008] EWCA Civ 812

The fixed success fee on an RTA claim under the predictable costs scheme was payable notwithstanding that the Claimant could have brought a claim with the benefit of legal expense insurance. There was no discretion within the rules as to whether the success fee was payable and therefore the reasonableness or otherwise of the use of a CFA was not relevant.

Costs of Funding: Woolley v Haden Building Services (No.2) [2008] EWHC 90111 (Costs)

The costs of dealing with a CFA and ATE insurance premium were solicitor/client costs and should not be recoverable on the inter partes basis.

Small claims costs: Coles v Keklik (2008) Liverpool CC (Unreported) – Stewart QC

There was no reason why the costs of a claim by a minor should not be paid in accordance with the Small claims track. The minor's interests could be protected by parental indemnity and there was nothing in the rules that took a minor's claim outside the normal fixed costs provisions.

Pre-Litigation Costs: Curtis v Pannell (2008) Birkenhead CC (Unreported) – DJ Travers

An agreement to settle a claim pre-proceedings did not give rise to an automatic right to costs unless the agreement expressly agreed to pay costs in addition to the damages. A claim for costs in these circumstances must be struck out.

Indemnity Costs: Fitzpatrick Contractors v Tyco [2008] EWHC 1391 (TCC)

The maintenance of a defence which, whilst not particularly strong, was not entirely hopeless was not sufficient to merit an order for indemnity costs against the Defendant. The defence was weakened as a result of a lack of oral evidence but this was a common feature of many cases and did not mean that the defence was conducted unreasonably.

LCN Free Seminars

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.

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

Paul Jones - Technical Director
E-Mail: Paul.Jones@lcnltd.co.uk
Telephone: 0870-766 4469

John Webb – Managing Director
E-Mail: John.Webb@lcnltd.co.uk
Telephone: 08451-668 647

Or visit our website:
www.lcnltd.co.uk