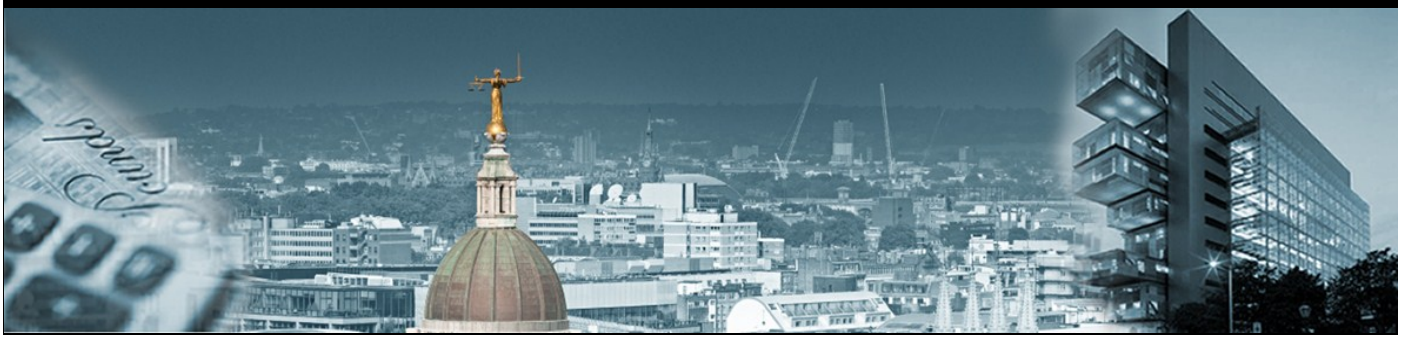
Issue 23

newsletter



Just Costs Wins ABS of the Year Award

Leading legal costs specialists, Just Costs Solicitors has been crowned "ABS Firm of the Year 2013 (50 to 100 Employees)."

Around 500 legal professionals gathered at the Dorchester, London on the evening of Wednesday 25 September for the newly launched Eclipse Proclaim Modern Law Awards.

The glittering award ceremony celebrated the champions in ABS, new legal entrants and pre-existing law firms that have successfully led engaging, relevant and new strategies for gold-plated services and business growth since the Legal Services Act came into force.

The winners of each category where chosen by a cross-industry panel of esteemed and high profile Judges.

Upon receiving the award, Paul Shenton, Managing Director of Just Costs said "We were delighted to be shortlisted for such a prestigious award but to go on and win is just amazing in these competitive and challenging times. The award is recognition from a panel of independent Judges that we are adapting to the future and viewed by our peers as being a go to firm.

All at Just Costs are very proud of this achievement."

At the same awards ceremony, Shirley Rothel was also highly commended for her role as Compliance Officer for Finance and Administration at Just Costs

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Shirley has the day to day responsibilities for the Finance and Administrative Teams and also ensures that the business is fully compliant. Under Shirley's guidance, Just Costs have experienced clear audits and have never incurred any SRA breaches.

Just Costs, launched in 2006, has offices in Manchester, London and Chesterfield. The firm has recovered record levels of costs for its clients since inception, namely a quarter of a billion pounds to date.

If you would like any further information on this, please do not hesitate to contact our National Client Relationship Manager, Amber Holt on 0161 618 1784 or at amberholt@justcosts.com

UNLOCK YOUR CASH & HELP ACCELERATE YOUR PRACTICE GROWTH – SEE PAGE 4 FOR MORE DETAIL

It's The Principle of the Matter!!

Seven months on from the implementation of the Jackson reforms and still significant unhappiness and confusion resonates. The reforms seem to raise more uncertainty than provide clarity and large parts of the industry continue to be concerned.

For example, can the 25% success fee cap charge to a client, who is a child or a patient, be taken from the damages? Should Claimants still take out ATE insurance to protect themselves from the potential adverse costs of failing to beat a Defendant's Part 36 Offer despite the premium being, in the main, irrecoverable between the parties? Is it right and correct that a Claimant can no longer recover a success fee between the parties where a new, second CFA post 1 April 2013 is needed because, perhaps, the Claimant has reached 18 or changes solicitors because the previous firm has ceased doing that type of work or maybe even the Claimant has died and the estate needs a new CFA? These are just a few of the many questions raised by the reforms which are yet to be directly addressed.

But, drilling down into the new rules, we see technical issues that can arise from poor drafting which simply exacerbates matters further. Take Points of Dispute and Replies in detailed assessment proceedings, for example. The drafting of the rules concerning these aspects of the process is already leading to technical challenges.

Not only is a receiving party prevented, through the Provisional Assessment procedure, from advocating their case at a hearing, paying parties are seeking to also prevent receiving parties from replying to their Points of Dispute. We need to consider the rules to understand the argument.

CPR.r.47.9 states:-

> ***"Points of dispute and consequence of not serving***
>
> ***47.9***
>
> *(1) The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute…"*

The associated Practice Direction states:

> ***"Points of dispute and consequences of not serving: rule 47.9***
>
> ***8.2*** *Points of dispute must be short and to the point. They must follow Precedent G in the Schedule of Costs Precedents annexed to this Practice Direction, so far as practicable. They must:*
>
> *(a) identify any general points or matters of principle which require decision before the individual items in the bill are addressed…"*

CPR.r.47.13 states:

> ***"Optional Reply***
>
> ***47.13***
>
> *(1) Where any party to the detailed assessment proceedings serves points of dispute, the receiving party may serve a reply on the other parties to the assessment proceedings."*

The associated Practice Direction states:

> ***Optional reply: rule 47.13***
>
> ***12.1*** *A reply served by the receiving party under Rule 47.13 must be limited to points of principle and concessions only. It must not contain general denials, specific denials or standard form responses.*

Accordingly, a paying party may raise issues concerning 'general points' and 'matters of principle' but a receiving party may only reply to 'points of principle' and not 'general points.' This, therefore, begs the question, what is the difference between a 'point of principle' and a 'general point?'

One well known legal representative for a paying party recently wrote to us stating:-

> *"On the issue of any replies, I have been concerned recently with many replies failing to comply with PD47 12.1…I set out my client's position for avoidance of doubt. The defendant will object to replies that do not comply with the PD. By non-compliance, that includes any denials and responses to any points that do not raise points of principle…A point of principle, in this context, is a matter of law. Most of the points of dispute concern matters of quantum…We would seek an unless order requiring amendment of the replies, failing which the court should have no regard to them."*

So, a receiving party cannot reply to points that dispute, for example, Proportionality? Grade of fee earner? Hourly rates? That would seem to be this legal representative's position. The Oxford English Dictionary defines a point of 'principle' as "*a fundamental quality determining the nature of something*" and certainly not a '*matter of law*.' Well, surely dictionary definition includes matters such as Proportionality, Grade of Fee Earner and Hourly Rates because the finding on each or any of those issues can have a profound effect on the overall assessment of a bill of costs? One might say a finding on any of these issues can be 'fundamental' to the overall assessment of a bill of costs.

Time will tell I suppose, but for now, our position as to whether a point of dispute is a general point or a point of principle is to ask the question, '…is it a point that could have a fundamental impact on the overall assessment of the bill?'

By Nick McDonnell
Senior Associate & Costs Lawyer

Provisional Assessments - Are They Working

By James Toland, Associate & Technical Manager (Manchester)

Detailed Assessment Hearings, like most contentious litigation in front of a Judge, can be a combative experience. Prior to 1st April 2013, in all Fast Track and Multi Track cases, the Paying Party laid out their issues with the Receiving Party's Bill of Costs in Points of Dispute, the same issues were robustly responded to in Replies to Points of Dispute and these issues were argued over in front of a Judge for anything from 3 hours in low value matters up to several weeks in the highest value cases. The Courts, as a result, found themselves overwhelmed.

In an effort to cut the amount of time devoted by the Court's to Detailed Assessments as outlined above, the Judiciary ran what they deemed as a 'successful' pilot for all matters where the total Bill was under £25,000. This was conducted in the Mercantile Court, Defamation Court and Construction and Technology Courts. The pilot provided that cases within this category were streamlined and would be assessed on the papers before the Court without any advocate offering direction or input: a paper-based assessment. The result was that matters of this nature were processed more quickly by these Courts, freeing up time in the diary for hearing other matters.

Following the pilot, the Judiciary expanded the scheme (now termed "Provisional Assessments") to all matters in the County Court and High Court where the commencement of the assessment proceedings was post 1st April 2013 and the Bill totals under £75,000 (rather than the original £25,000). As in the Pilot, the Judge considers the Bill of Costs, Points of Dispute and any Replies without the Parties in attendance, and in the 20 minutes allocated to each Provisional Assessment, they must place a value on the Bill of Costs before returning to the Parties to determine who had "won" and "lost" the assessment. We were originally informed that the Court would attempt to assess the Bill provisionally and return to the Parties within 6 weeks, with the decision made and to all intents and purposes, binding on the parties. Most solicitors would agree that matters where costs are approaching £30,000 (let alone the £75,000 limit) are likely to be anything but straightforward, and the idea that such matters could be disposed of within 20 minutes of a Judge's time is ludicrous. Many in the costs world predicted the scheme was doomed to failure, and lamented the fact that that no costs expert was involved in the drafting of the amendments to the Rules to implement Lord Jacksons reforms.

So, how is this panning out in reality? Here at Just Costs we are watching a scene unfold that is not unlike the car crashes that feature in so many of our clients cases. There is what can be described as utter confusion in the Court system, and there is anything but a consistency of approach being employed across the network.

Provisional Assessments are being listed for between 3 – 6 months after the Request for the hearing is made rather than the 6 week turn around initially promised. Some Courts require lodging of the entire file of papers in advance of the hearing, some require only a Bundle of Documents preparing, and some require nothing filing other than the Points, Replies and the Bill of Costs. Court offices are groaning under the weight of complete files of papers that have been submitted for assessments that are unlikely to take place for many months. It is only a matter of time before Solicitors files are lost en masse in the jumble (although here at Just Costs we are only ever submitting copy files to cope with this eventuality). A Judge in Manchester County Court has recently commented at the end of a hearing we attended that those who had written the rule changes were "super intelligent idiots", which gives an insight into how Judges and local Courts feel about what they have been required to do. Still, as the Ministry of Justice's unofficial motto runs: "we are where we are" and we must watch the scenes play out with a combination of bystander apathy ("you can't fight city hall!") and voyeuristic joy as the Court's staff are apparently more confused, more overworked and the lists are even busier than before this new regime.

It is noted in the "*White Book's 2013 Cumulative First Supplement" that:*

"…*The second potential problem is the increase in the monetary limit which will catch far more bills than previously and if this leads to an increase in the number of bills lodged, as in the pilot scheme, it is likely to cause difficulties with workflow and the administrative work necessary to deal with the incoming papers. The Rule Committee has agreed to review these rules in due course."*

It begs the question that, if the Rules Committee foresaw the problems that these changes would make in advance, why the Rule changes were still introduced. As noted above the writer predicts the current fiasco is only going to get worse, and this brave new world of Provisional Assessments will be re-designed sooner rather than later.

CHARITY NEWS

Cheque Presentation to St Mary's Hospital Charity, Manchester

Last month, Paul Shenton, our Managing Director, presented a cheque to Jenny Clarke, Corporate and Individual Fundraising Manager at St Mary's Hospital Charity in the sum of £2,986. The money was raised from our Just Costs Annual Charity Golf Day which took place on 27 June this year.

INTRODUCING EXCITING NEW COSTS ADVANCE SCHEME

Just Costs Solicitors has joined forces with a leading law firm litigation funder on the launch of their new Costs Advance Scheme - **CA$H**

The new **CA$H** product enables law firms to draw down on up to 70% of their likely recoverable costs once they have successfully settled their Personal Injury, Clinical Negligence and Industrial Disease cases.

With this new facility now in place, Just Costs Solicitors are delighted that a number of their law firm clients are already taking advantage of and benefiting from improved cash-flow which is helping to accelerate their practice growth.

Key Benefits of the Scheme Include:

- NO personal guarantees required!
- Improved Cash-Flow – money paid straight to your office account
- Simple Administration – online system; just select case and the amount to draw
- Fast Payment – money received within 48 hrs from request
- Flexible – funding provided as a facility, drawn down on a case by case basis
- Simple commercials – fixed admin fee per case, interest taken monthly

To find out more about **CA$H**, contact our National Client Relationship Manager, Amber Holt on 0161 618 1784 or email: amberholt@justcosts.com

Budgeting: Tom Tells All …..

Assignment of CFAs

I have spoken to three separate people in the last week re this issue. Pre 01.04.13 CFAs which are now out of date (minor comes of age, capacity, death, transferal of instructions etc). Recommended reading is:

http://www.bailii.org/ew/cases/EWHC/Costs/2005/90008.html

Yes it's a first instance decision, however no-one knows more about CFAs than the SCCO. I would urge anyone who is taking on new cases, new members of staff with their own cases or has any of the above scenarios – to seek professional help. Not a Doctor, but a contract lawyer, costs draftsman or Counsel. Two heads are better than one!

Andrew Mitchell MP Appeal

This is listed to be heard on November 7th, with judgment hopefully due by Christmas.

Does anyone (sane) predict that the CoA will allow the Application for Relief (and therefore the Appeal succeeds)? I am very doubtful.

Check out http://www.justcosts.com/blog for further Costs Budgeting Updates By Tom Blackburn, Senior Associate/National Advocacy Manager

http://uk.linkedin.com/company/just-costs-solicitors

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Modern Law Awards 2013 25TH SEPTEMBER, THE DORCHESTER WINNER

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