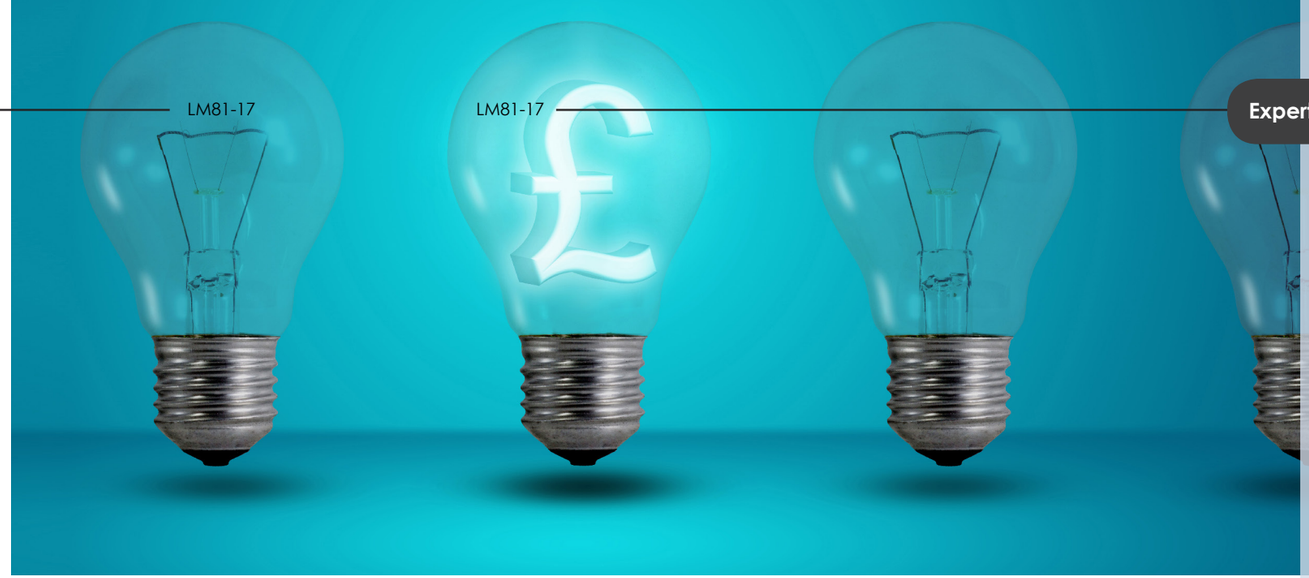

LM81-17



# LITIGATION

*Settling fees and costs between different parties can become a sensitive issue, especially when that money is so important and crucial to the litigant. We speak with Senior Associate Oliver Jones, who has extensive experience in costs law; he enlightens us on the updated regulations which have shaped the way he has practised and the pressures behind litigation involving serious money.*

**When dealing with costs of high amount, what are the most important things to regard? How do you deal with the pressure that a lot of money is involved in the case?**

This is an interesting question as quite often in the higher value cases, the participant doesn't have a direct stake; quite often those costs are met by insurers, so they don't have a direct interest in the sums of money and so it doesn't matter to them how many zeros are involved. For example, I acted for a litigant-in-person (LiP) who had been injured in an accident. He was only recovering £3000, which in the broad scheme of things is not a lot, as I deal with cases involving millions, but to him it was very important as he was so financially destitute. Alongside suffering with severe mental illnesses, he had previously been badly advised by a number of solicitors, who were also demanding costs from him, and so I had to quantify and recover their costs as they took the monies without the claimant's consent. From my perspective, this case was more pressured than if I am dealing with an amount of £5 million case from insurers. Therefore, it is not necessarily the money involved which causes pressure.

When you initially start out, you can look at the sums and be overwhelmed, but as you become more experienced you start to treat each case on its own merits and I think that's where experience lies. You judge the instructions you receive and don't become daunted by the amount of money involved; you assess the issues in a rational way without the money becoming an issue.

> *You simply don't know what price to put on such cases*

More than half of my instructions are from solicitors seeking money from insurers, or vice versa. In these cases, the pressure is arguably less as you're moving money around different pots. I would therefore say that pressure derives much more from an LiP who directly instructs you without a solicitor as they expect you to do what is best for them and they have a direct and immediate interest in what happens, especially in cases where it can financially ruin the person if the Court goes the wrong way.

**What different difficulties do those cases pose for you and how do you deal with them differently?**

This goes alongside the pressure I just mentioned, LiPs are obviously very keen to know what is happening on their behalf, whereas insurers understand that litigation is a very lengthy process and are astute about the procedure. The reason why we are instructed is because it's a specialism for us. It is a difficulty of explanation really, when acting for a LiP, I can be called daily and need to explain the intricacies of the process, especially with CFAs (conditional fee agreements); if the LiP is asked to pay double it needs very careful client handling, because there are complex principles involved to get a 100% success fee reduced, for instance. For insurers, it is just about the numbers – they will have a reserve for a particular piece of litigation and if that number is below that reserve, they don't really care; but clients who instruct me directly are understandably anxious and more demanding.

**Throughout the years how has costs law developed? What were the regulations that really altered the way in which you practiced costs law in the future?**

There have been two massive developments in costs law since 2013; the two key changes were the wide scale rollout of budgeting – there was a pilot scheme prior to April 2013 in various Courts, but it is now mandatory on all multi-track cases worth less than £10 million. This generally means we are getting involved much earlier than we ever used to. The earliest we used to get involved was just before trial, when we would prepare a statement of costs before that trial and potentially advise on the cost order; now, firms are instructing us to prepare their budgets at CMC (Case Management Conference) stage, so we are being approached much sooner in the case. We are then potentially instructed to audit the budgets and amend them if necessary, and then prepare the bill of cost at the end of the case in accordance with that budget. It's a significant development that has hit a lot of cost firms, as many have agreed to only render their invoices at the end of the case in order to remain competitive. A lot of cost firms have therefore gone under as they have been exposed to over two years' payment terms on their WIP (work in progress).

The other development from 2013 was the abolishment of the recoverability of success fees. It used to be the case that you could recover your success fee from your opponent. The reason success fees were brought in was to widen access to justice; such that a poor man could bring litigation and would only become liable for his solicitor's fees if he won, and wouldn't have to pay anything if he lost. But, as of April 2013, you can no longer recover those elements. Solicitors can still charge a success fee, but now it comes out of the client's damages and if the client wants to insure their case, they must pay the premium out of their damages as well. Those changes are very significant as it effectively reduces access to justice and those two elements increases the tension between solicitors and clients; therefore, we are starting to see more instructions whereby clients will want to reduce the success fees payable to their solicitors.

**Are there any upcoming regulations you have got your eye on?**

What is concerning is that there is discussion at the highest levels, on an increase in the small claims track cost limit from £1000 to £5000 – and the consideration of increasing the number of cases caught by fixed costs. We think this will significantly impact on access to justice – there is a great difficulty in fixing costs in different types of litigation. I can understand costs being fixed for whiplash claims, as essentially they involve the same stages. But to suggest fixed costs for clinical negligence claims, for example, is just inherently more complex; I advised on a case recently whereby the medical report fee was over £7000, but the claimant only recovered £5000. That just shows to you that if the costs were fixed, the claimant may not have gotten the result they wanted, because the fixed fee for the report would have been much less than £7000 claimed. There are concerns that if there are attempts to roll out fixed costs on a wider basis, that this will affect the level of service that potential claimants receive because the template is such a restrictive straightjacket. I do now agree with fixed costs for low value injury claims but I think to extend it will not only effect the level of service, but also undermine the whole budgeting provisions and can potentially make budgeting otiose.

**When dealing with sensitive personal injury and clinical negligence cases, how do you know what price to put on such cases?**

This involves the current hot topic of my industry which is: proportionality. I acted for Brian May in his claim for damages against his neighbours for installing a super basement. I quantified his costs for about £208,000, and we went to court, and had those costs assessed, which were reduced by the Court to about £100,000. This sounds like a big reduction, but there were good reasons as to why the costs were deducted. After that the court then arbitrarily reduced even that figure down to £35,000 plus VAT and the judgment gave no indication to how that figure was reached. A significant part of the new test of proportionality is that you are still supposed to be compensated for any non-monetary relief that you are seeking (such as an injunction, which was what Dr May was seeking), but the court's judgment gives the impression that this was not properly taken into account.

On the other end of the scale, I also acted for a lady who had negligent surgery to her ear and only recovered £35,000 at the end of a 3 day trial, but her solicitors recovered around £250,000 for this piece of litigation.

So, in reference to your question, you simply don't know what price to put on such cases; both the cases I have just mentioned are being appealed, as guidance from the higher courts is needed on precisely how proportionality is to be implemented under the new test, as effectively what the court has said in these two cases is you are a lot more likely to recover higher costs if you go to trial. The impact of these two decisions could lead to more trials and less settlements, while the new proportionality rule is supposed to have the opposite effect.

There is therefore massive uncertainty at the moment on how much a client can recover and how much the litigation is worth to them. **LM**

## FIRM PROFILE

Just Costs Solicitors is the leading Solicitors' Practice in the UK specialising in Costs, and is regulated by the Solicitors Regulation Authority (SRA). Its experienced Costs Lawyers work closely with each client to provide individually tailored costs solutions and consistently achieve maximum levels of costs recovery.

## ABOUT OLIVER JONES

Oliver Jones became a Costs Lawyer and graduated towards the recovery of high-value costs in personal injury and clinical negligence claims and nurtured a reputation for dealing with Litigants-in-persons. Oliver brings a breadth and depth of experience in all levels of costs, and with an expertise in modern funding arrangements.

**Contact**
**Oliver Jones**
**Senior Associate**
**M: 07889725170 | T: 020 3457 4616**
**W: www.justcosts.com**

Justcosts SOLICITORS



www.lawyer-monthly.com