

Current Costs Law - An Overview

As a Fellow of the Association of Law Costs Draftsmen, the Association's National Conference, which this year took place over two days at the Belfry Hotel near Birmingham, presents an ideal opportunity to hear the up-to-date views of some of the leading experts in the world of costs.

This year, there was much talk of the fallout from the Court of Appeal decisions in the conjoined appeals of Garrett -v- Halton Borough Council (declaration of panel membership) and Myatt & Others -v- National Coal Board (enquiries of BTE insurance)¹, in relation to conditional fee agreements entered into before 1st November 2005.

As you may recall, leave to appeal was refused by the Court of Appeal in the Garrett case. Interestingly, in a Supreme Court Costs Office decision of Senior Costs Judge Peter Hurst only last month², the Claimant sought to distinguish the Garrett case because evidence was produced to the Senior Costs Judge which showed that failure to recommend the particular insurance policy would not lead to the loss of panel membership (something which had been assumed by the Court at all levels in Garrett) and that the solicitors received no commission or benefit from recommending a particular policy. Despite all of this evidence, Senior Costs Judge Peter Hurst held that there was still a sufficient interest in the solicitors wishing to maintain a "flow of work" from the claims management company to make it necessary for them to disclose that interest to the client. The Claimant's solicitors had failed to do so and no profit costs were recovered. I understand that this decision is not being appealed.

There are also some worrying reports that in a case out of Oldham County Court, the Garrett decision has been held to catch the Accident Line Protect scheme and further developments in relation to this point are awaited.

The Myatt case has been appealed and at the moment I understand that the original decision concerning the level of enquiries to be made regarding the availability of BTE insurance will stand. Details of that judgment are expected shortly.

At the Conference, there was also much talk of costs capping. Much of the relevant case law in relation to costs

capping orders relates to group actions and complex litigation such as is found in the clinical negligence arena. This kind of order ties in very much with the move to exert greater control over costs as part of the case management procedure. In a 2006 case³, the judgment indicated that "it is far better for the Court to attempt to control and budget for costs where appropriate, than to allow costs to be incurred and then have them submitted to detailed assessment after the event". There is, of course, a duty on the parties to keep their opponents advised of costs where there is a significant increase above any previous estimate⁴. It is also important to remember that Section 6 of the Costs Practice Direction was amended at the end of 2005 to require a statement to be served with the bill of costs where there is a 20% or more discrepancy between the costs being claimed and the amount of any previous costs estimate.

Many other costs issues were raised during the course of the Conference. As ever, it served as a timely reminder that the area of costs law is an increasingly complex one, of crucial importance to fee earners and costs draftsmen alike.

1 [2006] EWCA Civ 1017

2 *Andrews v Harrison Taylor Scaffolding and Others* 9 February 2007 SCCO

3 *Sheppard v Mid Essex Health Authority* [2006] 1 Costs LR8

4 *Henry v BBC* [2005] EWHC 2503(QB)

For up-to-date information about costs issues, please visit our website at www.dbcosting.co.uk

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