

'The Costs Column'



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IN the last 'Costs Column', I looked at some of the decisions in relation to costs cases since the Myatt and Garrett (1) cases were decided by the Court of Appeal. The validity of pre-November 2005 cfa's continues to be the subject of new case law and a couple of the most recent decisions are set out below. I have also looked at a case which deals with costs estimates, hourly rates and proportionality - perennial favourites on detailed assessments. Happy reading!

In the case of Shaun Bevan v Power Panels Electrical Systems Limited (2), the Defendant maintained that the cfa was unenforceable because the Claimant's solicitors had failed to advise the Claimant that they had a financial interest in recommending a particular insurance policy (*they were approved solicitors on the panel of Accident Advice Helpline*) and because they had asked a question about the availability of insurance which was not specific enough (*there was no reference to credit cards, motor insurance or household insurance*).

The Claimant acknowledged that there had been a technical breach of the Regulations but argued that oral advice was also given which did fully discharge the requirement with the result that the breach was not "material" as per Hollins v Russell (3).

On detailed assessment, Master Wright, sitting as a Deputy District Judge, found that there had been a materially adverse effect on the protection afforded to the client and a materially adverse effect on the administration of justice because express provisions relating to the steps to be taken in litigious matters should be observed.

Master Wright also agreed with the Defendant that asking a very "bland" question - "Have you got insurance", also amounted to a material breach of the Regulations.

In the circumstances the cfa was held to be unenforceable.

A different line was taken in the case of Brian Foord v America Airlines Inc (4). Mr Foord's cfa indicated that the Claimant's solicitors were an approved member of the Lawcall Direct Limited's solicitors' panel, but confirmed that the solicitors did not have any financial interest in recommending a particular insurance policy. The Claimant's solicitors filed witness evidence which argued that the firm had declared that it had a financial interest in Lawcall by stating that it was an approved member of the panel. The witness evidence dealt in detail with the client care information given to the client, the relationship between Lawcall and the firm, the percentage of cases referred by Lawcall and the number of those where the client had taken out Lawcall's branded ATE insurance compared to the number where this had not happened.

In his judgment, Master Simons said that all elements of the solicitors' financial interest with Lawcall were disclosed to the client either in the cfa itself or in the client care letter. Master

Simons concluded that there had been no breach of Regulation 4(2)(e).

The recent case of Douglas Tribe and Southdown Gliding Club Ltd (5) is a case which deals with costs estimates, hourly rates and proportionality.

Mr Tribe had funded his personal injury litigation by way of a cfa supported by an ATE policy with cover limited to £100,000.00. He subsequently served a Notice of Discontinuance, as a consequence of which the three Defendants in the action were entitled to claim their reasonable costs from the Claimant. The bill of costs of the First and Third Defendants totalled £244,509.72, some five times more than the amount they had estimated in their Allocation Questionnaire. The Claimant said that he had relied on the estimate given and in particular, that he had not increased the level of his insurance premium as a result. Master Gordon-Saker gave a detailed judgment which reached the following conclusions:-

- The Claimant had reasonably relied on the costs estimate given by the First and Third Defendants in their Allocation Questionnaire and that it was appropriate to reduce the Defendants' costs to take into account the Claimant's reliance on that estimate.
- That the costs claimed were disproportionate to the value and issues of the action, particularly because there were no complex legal issues.
- It was reasonable for the Defendants to instruct specialist aviation solicitors (the Claimant had been injured when the glider he was piloting crashed), but this was not "City" work and the Defendants should only be able to recover Central London rates.

(1) *Garrett v Halton Borough Council and Myatt & Others v National Coal Board* [2006] EWCA Civ 1017

(2) *Shaun Bevan v Power Panels Electrical Systems Limited* [2007] EWHC 90073 (COSTS) (SCCO)

(3) *Hollins v Russell* [2003] EWCA Civ 974

(4) *Brian Foord v America Airlines Inc* [2007] EWHC 90076 (COSTS) (SCCO)

(5) *Ref: Douglas Tribe v (1) Southdown Gliding Club Ltd (2) Robert Adam (3) Estate of Ron King* (June 2007) - SCCO

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