

costs recovery

# news

The Bi-Monthly  
Newsletter from

## DEBORAH BURKE COSTING LIMITED

Law Costs Draftsmen and Consultants

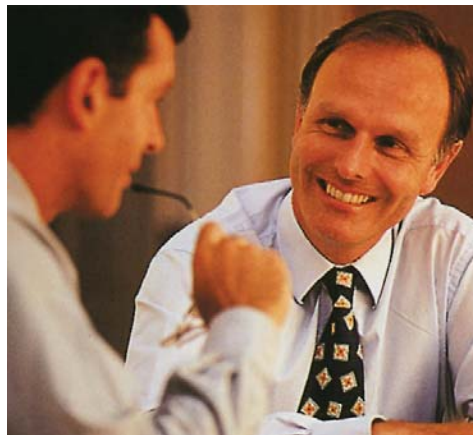


Recent Cases...

### Level of success fees slammed

IN a judgment given on 15th February 2005, the Court of Appeal directed that the success fees of counsel and solicitors be reduced to 15% from 100% and 70% respectively.

This is the first time that the Court of Appeal has given its own view on an appropriate additional liability and it is a damning decision. The Court of Appeal's view was that the level of success fees sought by both counsel and the solicitor in a case where there was a small amount of risk "discredit and devalued the whole of the arrangements for conditional fee agreements."



Ref: Begum -v- Klarit (2005) EWCA Civ 210.

### Setting success fees

THE Court of Appeal has held that a success fee set in the original CFA runs for the whole of the proceedings, including detailed assessment proceedings.

The Court held that it had no power to direct that a success fee is recoverable at different rates for different parts of the case unless the conditional fee agreement provides for that scenario.

If it is found that the success fee in the original CFA is unreasonable or disproportionate, the court still has the power to reduce the level of the success fee.

The judgment reinforces that it is vital to consider the appropriate level of the success fee at the beginning of the case and whether the CFA should provide for different success fees for different types of work.

If your firm deals with conditional fee agreements, you must read this judgment!

Ref: KU (a child, by her mother and litigation friend PU) and Liverpool City Council (2005) EWCA Civ 475.  
(<http://www.baillii.org>)

### Funders liable

THE Court of Appeal has held that it is unjust that a funder who purchases a stake in an action for a commercial motive should be protected from having any liability for the costs of the opposing party if the funded party fails in the action.

In this case the Claimant was only able to pursue his claim to judgment because of the financial support provided by a professional funder. The funders in this action were Managers and Processors of Claims Limited (MPC) and because the Claimant's claim failed, his lawyers have recovered nothing and MPC's support has cost them in excess of £1.3 million, for no return.

Professional funders who finance part of the costs of litigation are now potentially liable for the costs of the opposing party to the extent of the funding provided.

Yeheshkel Arkin and Borchard Lines Ltd (2005)  
EWCA Civ 655



Profit Pointers...

### Timely reminder

LET'S say that you fail to record 12 minutes a day on each of the five files you work on in a day. At the end of the day, you will have lost 1 hour of chargeable time. That makes 5 hours in a week, which is 230 hours over a 46 week year.

At £150.00 per hour, that is £34,500.00 per year. It makes financial sense to time record!

### File management

GOOD file management isn't just an administrative exercise. It decreases the time required to prepare a bill of costs, it maximises your recoverable costs and increases your profitability as a fee earner.

This month we look at file notes:

- Legible file notes help you, other fee earners, your costs draftsman and most importantly, the judge. They don't have to be typed but if they are, that's even better.
- If substantial time has been spent on an item of work, explain in the file note why the task has taken so long. This applies equally to a "routine" task which has taken you longer than expected. Use the file note to explain why.
- If you spend time reviewing the file, say what you did - if you considered documents, which ones and why.
- If you spent time planning future work, explain why it was necessary at that stage in the litigation and what action you decided to take.



## Useful Information...

## Client care

IF you are reviewing your client care and/or conditional fee documentation, remember that major changes are anticipated in the way in which conditional fee agreements are regulated.

It is likely that a single set of regulations will govern CFAs and CCFAs with the consumer protection provisions



moving to the Law Society Costs Information Code.

The current regulations may be abolished in their entirety with the requirements being moved into the Solicitors' Practice Rules.

## Solicitor agents

WHEN you instruct a solicitor agent to carry out work on your behalf (e.g. to obtain a witness statement for your client or to attend a hearing), the time spent by the agent should be included within your own claim for profit costs. For this reason, it is important to ensure that the invoice you receive contains a comprehensive breakdown of the work which has been done on your behalf.

## Travel expenses

ALTHOUGH not defined in the Practice Direction to Part 43 of the Civil Procedure Rules, "local" travel expenses will generally be interpreted as meaning within a radius of 10 miles from the court dealing with the case and will not be allowed on assessment.



## Watch This Space...

## Stop Press...Stop Press...Stop Press...

IN a case heard on 13th July 2005 it was argued that failure to adhere to Law Society rules means that solicitors cannot recover costs from their clients.

The case, *Edwards v Garbutt*, a long running boundary dispute, was heard by the Court of Appeal. It could have "fall-out" for the proposed changes to

CFAs because it is being argued that because the Solicitors' Practice Rules are deemed to have statutory force, a breach of the same is a breach of statute and therefore unlawful, meaning that costs cannot be recovered.

With the proposal that the main provisions governing CFAs are to be moved to the Solicitors' Practice Rules and the current CFA Regulations abolished, this case is one to watch!

## Moving news

OUR most exciting news is our impending move into premises in the centre of Melton Mowbray.

We are all looking forward to the extra space we will have and the opportunities that the new premises will give us to continue to expand and improve the service which we offer to our clients.

We are delighted to announce the arrival of the latest addition to our team, Karen Holdsworth. Karen has previous experience of the costing world, gained when she worked at the Stamford office of Kain Knight Ltd. Karen's arrival will allow Jo Ridge to begin training as a costs draftsman.

Sharene Goddard has taken her latest set of ILEX exams and is (eagerly) awaiting her results and both Sharene and Madeleine Smith are working on their next set of assignments for the Association of Law Costs Draftmen's course.

## Just a thought!

*Actions speak louder than words.*  
Abraham Lincoln (1809 - 1865)

*Better slip with foot than tongue.*  
Benjamin Franklin (1706 - 1790)



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