

The Bi-Monthly
Newsletter from

DEBORAH BURKE COSTING LIMITED

Law Costs Draftsmen and Consultants



Recent Cases...

Part 36 offers versus Part 36 payments

IN the recent judgment in a trespass and damage case, in February 2002, the Defendant had offered to pay £35,000.00 to the Claimants (in a letter which was marked "without prejudice save as to costs.") The Defendants did not follow this up with a Part 36 payment into court and the offer was not accepted. In November 2002, the Claimants quantified the claim at £757,500.00 plus VAT. In November 2004, the judge awarded damages of £25,600.00 to the Claimants.

It was held that an offer to settle a money claim should usually be treated as having the same effect as a payment into court if the offer was a genuine offer

which was expressed clearly, was open for acceptance for at least twenty one days, otherwise accorded with the substance of a Calderbank offer, and if the Defendant was good for the money when the offer was made.

Trustees of Stokes Pension Fund v Western Power Distribution (South Wales) Plc 2005 (2005) EWCA Div 854 CA (Civ Div) (Auld LJ, Dyson LJ)
Ref: www.hmccourts-service.gov.uk



Costs challenge by client

ALTHOUGH a claim form seeking the detailed assessment of bills of costs issued by a solicitor had contained defects, these did not affect the proper interpretation of the document as served.

The claim form was sufficient to commence Solicitors Act proceedings, because the effect of the claim form had been to convey to the solicitor, within the statutory period, the message that the client had wanted the bills to be assessed.

Ilona Szekeres v Alan Smeath & Co.: ChD (Mr. Justice Pumfrey, Master Rogers, Mr. Saroop (costs assessor)).
2nd August 2005.

Ref: *The Law Society Gazette*, 18th August 2005 - page 31

Solicitors' practice rules

Breaching the Solicitors' Practice Rules - does this prevent the recovery of costs?

Despite indications that the judgment in the appeal case of *Edwards v Garbutt* would be handed down at the end of July (**Costs Recovery News Issue 1: July 2005**), this has not yet happened. We will report on the practical implications of the judgment as soon as it has been received.



Profit Pointers...

Chargeable time for services

SOME items of work are usually regarded as non chargeable on the standard basis. Examples include researching law and procedure, administrative tasks including photocopying, the supervision of junior fee earners and the personal service of documentation.

However, researching the law may be recoverable if the point of law is novel. Personal service of documentation may be reasonable in certain circumstances and inter office communication between a senior fee earner and a junior fee earner to whom a task has been appropriately delegated may be reasonable having regard to the matters at issue between the parties. In fact, the case of **Brush v Bower Cotton & Bower** referred to overleaf, held that where a secretary or assistant does work that may be classed as fee earner's work, it will, potentially at least, be recoverable.

If the fee earner routinely records such items as non chargeable, he or she is losing the potential to include the time spent in any subsequent bill of costs, whether inter partes, or solicitor/client.

Whether to include items is best considered during the process of preparing the bill of costs, when the costs draftsman has had the opportunity to consider the file and the case as a whole. An experienced costs draftsman will be used to considering the reasonableness of time recorded on a file and advising the fee earner of any potential difficulties in recovering the same.

There is no point in engaging in accurate time recording, only to exclude work unnecessarily from a claim for costs!



The myth of 'unrecorded time'

IN the July issue of **Costs Recovery News**, we looked at the importance of keeping legible, comprehensive file notes. But what happens when time has clearly been spent which was not recorded on the file and the paying party gleefully refers to the oft quoted case of **Brush v Bower Cotton & Bower**?

The *Brush* case actually states that "It would only be in . . . unusual cases that any substantial allowance would be made for unrecorded time." Nowhere does it state that unrecorded time cannot, in any circumstances, be recovered. In this case, the solicitor had recorded an extraordinary amount of time on his file, in the light of which there was an understandable reluctance to allow unrecorded time as well.

Jemma Trust Company Ltd v Liptrott & Forrester looked at the issue of attendance notes. It concluded that there was no obligation on a solicitor to keep attendance notes (either in relation to contentious or non contentious work). The burden on the solicitor was to show that time claimed had been spent (and of course reasonably and proportionately spent), but that the keeping of attendance notes was not the only way in which this burden could be discharged.

Ref: *Brush v Bower Cotton & Bower (a firm)* (1993) 4 All ER 741 QBD.

Ref: *Jemma Trust Company Limited and (1) Peter D'Arcy Liptrott and (2) John Forrester (No.2) SCCO* Ref: PR 0205414 (2nd February 2004). (2004) EWHC 9011 (Costs).

Costs in London County Courts

WITH effect from 6th July 2005, the pilot scheme providing for costs arising out of all county courts within the M25 (apart from Dartford, Epsom, Staines and Watford), to be assessed in the Supreme Court's Costs Office, has become permanent.

costs recovery news



VAT and overseas clients guidance

IF you think that the recent Legal Services Commission guidance on the application of VAT to legal work done for asylum seekers is relevant only to immigration practitioners, read on!

The guidance purports to clarify the existing position in relation to all overseas clients (including asylum seekers, illegal immigrants and others with no legal right to remain), that legal services are supplied to an overseas client in that client's country of origin. If

that country is outside the European Union, the services supplied will fall outside the scope of UK VAT. If that country is within the EU, the supply of legal services will attract VAT.

The position is particularly difficult where the client is an asylum seeker, because it will often be the case that legal services will be supplied to the client before the immigration status of the client has been determined.

In the next issue of **Costs Recovery News** we will look at the practical implications of the new guidance.

Regulations revoked

AS highlighted in the July edition of **Costs Recovery News**, 1st November 2005 is the anticipated date for the repeal of the existing regulations with primary responsibility for client care, contractual and guidance matters being moved to the Law Society's Professional Rules of Conduct, supporting costs guidance and proposed new model CFAs. It is intended that a simplified model conditional fee agreement will be published by the Law Society.

DCA's paper "New Regulations for Conditional Fee Agreements" Ref: www.dca.gov.uk (what's new - August 2005).

Office news

SHARENE passed her ILEX exams last month and Sharene and Madeleine have attended an ALCD seminar to learn more about costs negotiations and advocacy. Jo has begun to train as a costs draftsman and is taking to it like a duck to water. Karen has quickly become an integral member of our team and is looking forward to the challenge of managing us once we have completed the move to our new offices. Vanessa will shortly be working an extra day per week to help with our ever expanding workload.



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The Association of Law Costs Draftsmen

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