

costs recovery

news

The Bi-Monthly
Newsletter from

DEBORAH BURKE COSTING LIMITED

Law Costs Draftsmen and Consultants



Recent Cases...

To mediate, or not to mediate

IN a case heard in July 2005, the Claimants' refusal to mediate until after the commencement of proceedings was found not to have been unreasonable. In this case, which arose out of a dispute between the parties concerning the parking of a vehicle by the Defendants on the Claimants' property, the Claimants had refused to consider mediation whilst the vehicle remained on the land and before the parties had clarified the issues in dispute.

Proceedings were commenced but subsequent mediation proved unsuccessful. At trial, a declaration was granted substantially in the terms sought by the Claimants. The Defendants maintained that the Claimants should not be entitled to costs because of their conduct in refusing to mediate until after proceedings had commenced.

Don't forget
your conduct!

In the case of **Aaron v Shelton**, it was decided that where a matter went to trial, any questions concerning the conduct of either of the parties should be drawn to the attention of the trial judge at the conclusion of the trial.

It was an abuse of process for a paying party to raise the conduct of the receiving party at detailed assessment when the matters complained of could have been raised before the costs order was made.

Aaron v Shelton [2004] EWHC 1162 (QB)
www.lawtel.com

The Court found that, whilst in many cases it would be considered unreasonable not to enter into mediation at an early stage, in this particular instance it was not unreasonable to defer entering into mediation whilst the vehicle remained on the Claimants' property.

The Wethered Estate Ltd. and (1) Michale Davis (2) Alison Davis (3) Foundations for Living [2005] EWHC 1903 (Ch)
www.lawtel.com

Staged premiums

The Claimant claimed damages for personal injuries arising from a road traffic accident. The case was allocated to the fast track. At trial it was held that the Claimant was one third responsible for the accident and damages of £3,345.63 were awarded (£5,018.45 on a 100% liability basis).

The Defendant had denied liability at various stages and because of the risks associated with establishing liability, a staged insurance policy was obtained which provided for a higher premium to be paid on the issue of proceedings and again before trial. The total premium paid was £1,890.00.

This sum was found to be reasonable, proportionate and recoverable, having regard to the fact that liability had been consistently denied. The Defendant had not shown that there was any alternative policy available and it was also considered that a staged premium policy gave an incentive to the parties to settle before too much expense had been incurred.

Jenny Tyndall v Battersea Dogs Home (2005)
SCCO Ref: 0500466
www.lawtel.com



Profit Pointers...

Recording your
attendance
at court

WE looked in the July issue of **Costs Recovery News** at the importance of maintaining good file notes on files.



This is particularly important when attending court. The file note for a court attendance should contain all of the following information:-

- Name of client and file reference
- Details of date, court and judge
- Names of the representatives of all parties.
- Issues dealt with during the hearing
- Order made and date of next hearing
- Action required by fee earner
- Details of time spent and disbursements

Adopting this format for recording attendances at court increases effectiveness and profitability and minimises costs drafting time.

What more can a fee earner want?



What's in an estimate?

THE 40th update to the CPR gives the Court an explicit power to order a party to file and serve a costs estimate at any point in the proceedings (not just when filing allocation and listing questionnaires). There is also a new Section 6 in the Costs Practice Direction.

Reading between the lines in recent case law, it seems that there will be an even greater emphasis placed on costs estimates in the future.

Crucially, Section 6.5A provides that if there is a 20% or more difference between the base costs claimed on detailed assessment and the costs shown in an estimate previously filed, a statement must be provided which explains the difference.

CFA regulations disappear

AS discussed in the September issue of **Costs Recovery News**, the CFA Regulations were revoked on 1st November 2005. Primary responsibility for client care, contractual and guidance matters is being moved to the Law Society's Professional Rules of Conduct. The **Solicitors' Practice (Client Care) Amendment Rules 2005** came into force on 1st November 2005.

From that date solicitors acting under a CFA will need to inform their clients of the circumstances in which clients may be liable for their own costs and the other party's costs, the client's right to a costs assessment wherever the solicitor intends to seek payment of costs by the client and any interest the solicitor has in recommending a particular policy or other funding. The latter applies equally to the situation where a solicitor may be paid commission for recommending a particular insurance policy and where a solicitor is required by virtue of being on a panel, to obtain funding or insurance from a particular source.

www.lawsociety.org.uk/professional/conduct/guidance



VAT and overseas clients guidance Part 2

AS we saw in the last edition of **Costs Recovery News**, the recent guidance from the Legal Services Commission seems to have thrown up a number of difficulties:-

- The VAT provisions apply to ALL work done on behalf of an overseas client, not just work done to establish a client's right to stay.
- If VAT is not to be charged, and the initial payment on account of £287.50 has been received following the grant of legal aid, it seems that the whole of the payment should be treated as profit costs.
- The guidance anticipates VAT refunds being made which will have to be credited to individual legal aid accounts - more than a little work for cashiers and fee earners.

- In relation to inter partes costs, it may be necessary to deal with all matters, other than VAT, on the basis that VAT may be paid at some time in the future.

We are in contact with the Law Society which is still in consultation with HM Revenue and Customs and the position may therefore change. Our standard practice is to continue to include VAT but to highlight the position when the claim for costs is returned.

Ref: Legal Services Commission Focus (August 2005)

Office move now complete

WE are delighted to report that our move into new premises in the centre of Melton Mowbray is now complete. Please note the new address.

Jo's training is proceeding apace and we are already seeing the benefits of Vanessa's extra working day. Karen has risen magnificently to the challenge of managing our office move and ensuring as little disruption to operations as possible. Not content with passing one exam this year, Sharene has now taken what will, hopefully, be her last exam before qualifying as a legal executive.

We are also busy expanding the services we provide by moving into training and business development. More news on that soon.



DEBORAH BURKE COSTING LIMITED
Law Costs Draftsmen and Consultants

COSTING TEAM:
Debbie Burke, Madeleine Smith, Sharene Goddard and Jo Ridge

OFFICE MANAGER:
Karen Holdsworth

ACCOUNTS:
Vanessa Hirst

COURIER & TRAINING COURSES:
Maria Jenkinson

DIRECTORS:
Martin and Debbie Burke

Equity House
47 Burton Street
Melton Mowbray
Leicestershire LE13 1AF

Telephone: 01664 482866
Fax: 01664 482867
DX 26776 Melton Mowbray
E-Mail: enquiries@dbcosting.co.uk



The Association of Law Costs Draftsmen

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