



Costs Newsletter

February 2017

£400 club - the decision is looming!

Many of you will recall my stark warning from last year in respect of the case of *Iqbal & Anr v Leek & Anr*. The appeal has now been leapfrogged to the Court of Appeal. The Court of Appeal has invited the Law Society to intervene in a highly significant hearing this month in which insurers are trying to recover millions of pounds in RTA claims portal fees from Claimant solicitors in the so-called `£400 club`.

The Law Society have already provided written submissions in the case which is due to be heard this month.

According to Horwich Farrelly, which is acting for the Defendant insurer, between 2010 and 2013, a significant number of claims were submitted to the portal by Claimant solicitors where stage 1 costs of £400 were paid, even though the claim did not progress beyond that point.

The firm stated that their concern was many of the abandoned claims were speculative and perhaps fraudulent.

The Defendant contends that the stage 1 payments were made on the account of costs and amount to being an interim payment, therefore should be payable if the claim was unsuccessful. A conservative estimate of the potential recovery by insurers from Claimant solicitors is £10m.

Our advice would be for solicitors to watch this space, especially if they have enjoyed the £400 club! The only saving grace is that the Court of Appeal may not find in favour of the Defendant due to upheaval and windfall this will generate.

Inside this issue

Page 1

£400 club - the decision is looming!

Page 2

Pre-action disclosure application are no longer a loop hole for standard costs

Threshold to rise for fee remission

Page 3

Clinical Negligence claims and no reprieve

Pre-action disclosure are no longer a loop hole for standard costs

The court in *Sharp v Leeds City Council* [2017] EWCA Civ 33, a paving stone trip claim, heard that PAD applications were commonplace in personal injury claims. Here, the case left the portal and then the Claimant had to make a PAD application. District Judge Heppell in Wakefield ordered costs of £1,250.00 under part 46.1.

On appeal, however, HHJ Saffman considered the PAD application to be an interim application within the meaning of part 45.29H, meaning costs payable were reduced to fixed costs of £305.

In our opinion, the decision is disheartening to Claimants. If Claimants can only recover £305 for a PAD application then arguably there is little point in making such an application when one considers the court fee, time taken to draft the application and attend a hearing. The judgment does little to entice Defendant's to comply with the relevant protocol for any matter which commences within the portal.

Following the judgment, Lord Justice Briggs has suggested the Civil Procedure Rule Committee might have to increase the level of fixed costs so as to incentivise Defendants to comply with their disclosure obligations. Whether this will be done, however, is a different matter and it is our opinion that the fixed costs cap for such applications will not be increased in light of the government seeking to extend the fixed costs regime.

Threshold to rise for fee remission

At the end of January the Ministry of Justice announced plans to increase the threshold for the court and tribunal fee remission scheme to around the level of the national living wage. The move was specifically aimed to alleviate the impact that fees have had on the volume of employment tribunal claims, but will apply to all civil and family cases.

The MOJ has proposed raising the gross monthly income threshold for a single person from £1,085 to £1,250, meaning anyone earning less than this would be fully exempt from fees. This is approximately the gross monthly income that a single person over the age of 25 working full-time for the NLW (40 hours per week at a rate of £7.20 per hour).

The same differentials as currently for coupled (an additional £160 of gross monthly income per month) and for those with children (an additional £245 of gross income per month per child) would be maintained.

Our advice again, is to watch this space and in any event check whether your clients are eligible for a full or partial fee remission. Applications for fee remission or help with fees have to be made within 3 months of proceedings being issued. If you fail to make the necessary investigations and the other side raises this as an issue at costs stage and highlights the fact that the Claimant was eligible, then this can have severe cost consequences. Lastly, on this point, depending upon your retainer with your client, any shortfall in respect of disbursements is likely to fall on you and not your client. Our motto is that it's better to be safe than sorry!

Clinical Negligence claims and no reprieve

The NHS Litigation Authority is to press the government to set the threshold for cases subject to fixed recoverable costs at £100,000, rather than the proposed £25,000. This news comes only days after the Department of Health consultation advised that they had originally been looking at an upper limit of £250,000, despite concerns that it was taking place before the outcome of Lord Justice Jackson's review of fixed recoverable costs, among other relevant reviews.

Sir Rupert is now conducting a series of meetings around the country to gather views on the issue. The NHSLA have advised that they will be advocating for a fixed recovery costs regime up to £100,000, with a potential extension of up to £250,000 following a review. It is unclear whether the NHSLA is adopting a two-pronged approach by trying to convince both the Department of Health and Lord Justice Jackson of its position. However, it would seem unlikely that, if the government does not agree and keeps the limit at £25,000, any recommendation by Lord Justice Jackson to increase it would not carry much weight.

We hope you found this newsletter informative. Should you have any queries with respect to the articles, please do not hesitate to get in touch with Rebecca Whitworth, Senior Costs Manager here at JFS at r.whitworth@jfsllp.co.uk or call her on: 01254 918 744

Our skilled Costs Team provide a cost effective, dedicated and tailored costs recovery service and are on hand to assist with all costs issues on Personal Injury, Catastrophic Injury, Industrial Disease, Clinical Negligence, Court of Protection, Civil and Commercial matters.

For more information about the services we offer, please get in touch with our Client Relationship Team on 0845 653 7529.