

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE WIGAN COUNTY COURT

No.G04YX204

Darlington Street
Wigan,
Lancashire
WN1 1DW

Tuesday, 24 August 2021

Before:

DEPUTY DISTRICT JUDGE AYERS

B E T W E E N :

NICOLA CROMPTON

Claimant

- and -

SUSAN MEADOWCROFT

Defendant

MISS F. COSGROVE (Costs Lawyer, of Kain Knight Ltd for and on behalf of Minster Law Solicitors) appeared on behalf of the Claimant.

MISS S. ROBSON (instructed by BLM LLP) appeared on behalf of the Defendant.

J U D G M E N T

THE DEPUTY JUDGE:

- 1 I am dealing here with matter number G04YX204, a matter of Crompton and Meadowcroft. This is a matter pertaining the costs of the proceedings. This was a claim brought by Miss Crompton following a road traffic accident on 7th January 2017. That claim was submitted via the portal on 9th January 2017, exited after fifteen days. Liability was admitted 8th March 2017.
- 2 Proceedings were issued early in 2020, served upon the defendants April 2020 and subsequently a defence was filed. An offer to settle was made by the defendants in May 2020 at a time when the CRU Certificate was not available. That certificate was obtained in June. There was a degree of clarification, and in July 2020 the settlement offer was accepted.
- 3 In the meantime, the court had sent out directions questionnaires. They had been responded to and the matter was allocated to the multi-track on 10th September 2020 by Deputy District Judge Wilson. Notice of allocation was sent out at that time, but of course at the time of allocation to the multi-track the case had already effectively finished in that the settlement offer that had been made by the defendants had by then been accepted, so, this is not a case which had been allocated to the multi-track, it is a case that had entered the portal, come out of the portal and been resolved, been settled, before allocation.
- 4 The issue that is before me today is a preliminary question as to whether the claimant's solicitors (the claimant, Miss Crompton's solicitors) be allowed to seek costs on the standard basis or whether their costs would be constrained and within the fixed costs regime.
- 5 Points of dispute together with supplemental points of dispute have been raised and responded to. Under CPR 45.29B a claimant in such matters is entitled to fixed costs and disbursements, but CPR 45.29J entitles a claimant to go beyond the fixed costs regime if there are exceptional circumstances making such appropriate; and indeed that allows for such costs, if not fixed costs, to be determined either summarily or via detailed assessment; so, the question is whether in the instant case there are exceptional circumstances.
- 6 I am very grateful to have had the assistance of Miss Cosgrove on behalf of the claimant and Miss Robson on behalf of the defendant, the claimant being the receiving party, the defendant the paying party. Both Miss Robson and Miss Cosgrove have provided me with detailed skeleton arguments, and both have referred me to relevant case law. They have both made persuasive and articulate oral submissions, and I am thankful for the assistance they have provided me with.
- 7 As I say, I've been referred to a number of authorities. The "lead case", if I call it that, is the case of *Qader v Esure Services Ltd*, a Court of Appeal decision, but I have also been referred to other and indeed in a couple of instances more recent decisions, and Miss Cosgrove refers me to the judgment of Her Honour Judge Howell in a case, a Welsh case, *Lloyd v 2 Sisters Poultry Limited*, Her Honour Judge Howell dealing with the appeal from a deputy district judge's decision.
- 8 Miss Cosgrove for the receiving party (the claimant) says that this case, the case before me, is far from a straightforward case and is not the nature of case that the fixed costs regime was intended to encompass or envisage. There are a number of aspects to the case that she would say are of particular relevance – the quantity of experts, and in this case medical experts; the extensive medical disclosure. This was a case where the claimant's solicitors

had to consider that their client might suffer disablement as a consequence of her injuries. They had to refer to Ogden tables in calculating the impact going forward as regards her financial loss. The settlement figure when it ultimately was resolved was outside of the anticipated fast track limit, and indeed this is a case which the court ultimately – albeit after the event, as it were – deemed to be suitable for the multi-track. And of course, if this case had been allocated to the multi-track before its settlement, then we would not be in the fixed costs regime.

- 9 The defendant says, yes, the nature of the fixed costs regime means that there are swings and roundabouts; that there are cases where fixed costs mean that a claimant's representation would be a winner, as it were; and a case where a claimant's representation would be a loser by the very nature of the rigidity of a swings and roundabouts system, but that's the way it goes – sometimes you win, sometimes you lose – and that this is one of those cases, potentially at least, where the claimant's representation would be on the wrong side of that relationship. It may be the case that the claimant's representatives carried out an amount of work that was greater than will be properly reimbursed under the fixed costs regime, but they have to take that on the chin because that is the nature of the scheme and that those that set up the scheme, as it were, anticipated that that would be the case.
- 10 But, yes, there were additional experts in this case. There was an additional work that was done, but that in itself does not meet the test of exceptionality that the rules provide for here, that the bar is a high bar and that the claimants do not overcome the bar here.
- 11 As I've mentioned, Miss Cosgrove refers me to the case of *Lloyd v 2 Sisters* and the observations of Her Honour Judge Howells. Of course, we do have to have regard to the fact that this was an appeal. A deputy district judge had made an order in favour of the receiving party in that particular case and that decision was being challenged. Her Honour Judge Howells was satisfied, having heard arguments on behalf of both the paying and the receiving party, that the deputy district judge had not erred in his or her original decision; that the learned deputy had considered all the matters that it was necessary to consider in making that original decision; and in being satisfied that the test of exceptionality had been met, and the appeal brought by the paying parties in that case did not succeed.
- 12 So, it is fair to say that Her Honour Judge Howells was not actually addressing the test in itself, but recognising that there was a test and considering whether or whether or not the learned deputy had approached the matter correctly and exercised their judicial function in an appropriate matter (sic); so the fact that in that particular case on appeal the original decision was upheld – whilst is of some assistance it certainly is not determinative when it comes to the manner in which I should determine today's case.
- 13 That said, having looked at the matter in hand, looked at the circumstances of this claimant's claim, I am satisfied that the work required by those representing the claimant was significantly greater than might have been anticipated and that in this case there was exceptionality; and I do deem it appropriate to allow the claimant to depart from the fixed costs regime so as to be properly reimbursed in respect of the work done and the costs incurred on their client's behalf.
- 14 In taking that view I am not simply being persuaded by the fact that the court, post-event, determined that this case should be allocated to the multi-track. I am taking into account the fact that there were an unusual number of expert witnesses, medical witnesses, who were addressing the issues deriving from the injuries sustained by the claimant; that there were unusual features; there was the potential that this claimant might suffer permanent disability, albeit and thankfully for her it would seem that did not prove to be the case; and I am

satisfied that there were issues with regards to the calculation of her potential loss that merited investigation and a more extensive amount of work incurred.

- 15 It is right that the nature of a fixed costs regime does mean that one has to look closely at the circumstances of any particular case if exceptionality is being argued, but here I am satisfied that there was sufficient exceptionality to overcome the threshold, and I'm satisfied that the claimant's application should succeed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript has been approved by the Judge.