

No advocacy then no fee in fixed recoverable costs cases

Jean Crawshaw v Alfred Dunhill Limited
County Court Sheffield, 16 November 2017 before District Judge Bellamy

Background

The claimant attended a golf tournament with her husband when she tripped over unmarked cabling and sustained injury.

The claimant sought disclosure of the contract between Alfred Dunhill and IMG Ltd amongst other documentation. When not disclosed, they issued a pre-action disclosure application. Upon disclosure of the required documentation, the issue was resolved without the need for a hearing.

The claimant had notified the claim on the portal and the claim settled save for the issue over the cost of the application.

The Issue

Following the Court of Appeal's finding (*Sharp v Leeds City Council [2017] EWCA Civ 33*) that the fixed costs regime applies to the costs of a pre-action disclosure application, an issue arose as to whether a claimant is entitled to recover "advocate's costs" in circumstances where no advocacy was provided.

The Rules

CPR 45.29H (1) provides that the fixed costs of an interim application shall be for a sum equivalent to "one half of the applicable Type A and Type B costs in Table 6 or 6A."

Type A and B costs are defined in CPR 45.18(2) as:

- Type A fixed costs means the legal representative's costs and are fixed at £250
- Type B fixed costs means the "advocate's costs" and are fixed at £250

The term "advocate" is defined in CPR 45.18(3) as, "a person exercising a right of audience as a representative of, or on behalf of, a party".

Outcome

The court found that the claimant had no entitlement to the "advocate's costs" because no advocacy had been required.

The court agreed with the defendant's submissions that:

- The word "applicable" in CPR 45.29H (1) would not be needed if the rules intended both Type A and B costs to be recoverable in every case.
- The rules would have provided for one fixed fee to cover the legal representative and the advocate if that was the intention.
- The costs of the legal representative and the advocate have been intentionally separated under the rules.

...continued overleaf

- In *Sharp v Leeds City Council* [2017] 4 WLR 98, the court awarded only Type A costs in identical circumstances.
- The separation of a legal representative's costs from the advocate's costs incentivises parties to settle prior to a hearing.

Keoghs Comment

Once again common sense has prevailed and the outcome casts persuasive doubt on the finding in *Skowron v Rollers Roller Disco* where the County Court found that advocate's costs were recoverable even where no advocacy had been required.

Although *Skowron* has been roundly discredited by prominent legal "bloggers" claimant solicitors such as Irwin Mitchell have sought extensively to rely upon it.

The decision in *Crawshaw* can now be used to oppose claims for "advocate's costs" in cases where no advocacy was required. Keoghs will continue to resist such claims as and when they arise.

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