



CMG Training

The Irish Institute of Professional Education

Welcome!

Solicitors Costs Course CMG Legal Costs Seminar

17th September 2026



Abacus

The Law Costs Consultants

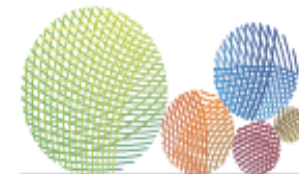
Speakers

Michael Monaghan – Director
Jamie O’Gorman BL – Counsel



CMG Training
The Irish Institute of Professional Education

www.abacuslawcosts.ie
Email: Michael@abacuslawcosts.ie



Abacus
The Law Costs Consultants

Overview

- Solicitor Client billing LSRA
- Party and party billing LSRA and new format Bill
- Latest developments in legal costs – Covid procedures / adjudications / rulings
- Recent Court decisions including Court of Appeal
- Payment on account under Order 71
- New personal injury guidelines and its impact on costs
- Jurisdictional issues the impact of Brexit
- Opportunities and pitfalls –



Solicitor & Client Costs

- Section 150 of LSRA 2015
- Section 152 – provision of a bill of costs
- Potential recovery of party & party costs
- Solicitor & client adjudication – time limits
- Maintenance & champerty – third party funding and ATE insurance



Estimates of costs:

- Section 68 of the Solicitors (Amendment) Act 1994
- Section 150 of LSRA 2015 -



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Estimates of costs:

150. (1) A legal practitioner shall, whenever required to do so under this section, provide to his or her client a notice (in this section referred to as a “notice”) written in clear language that is likely to be easily understood by the client and that otherwise complies with this section.

(2) On receiving instructions from a client, a legal practitioner shall provide the client with a notice which shall —

(a) disclose the legal costs that will be incurred in relation to the matter concerned,

or

(b) if it is not reasonably practicable for the notice to disclose the legal costs at that time, set out the basis on which the legal costs are to be calculated.



Estimates of costs:

(3) Where *subsection (2)(b)* applies, the legal practitioner concerned shall, as soon as may be after it becomes practicable to do so, provide to the client a notice containing the information specified in *subsection (2)(a)*.

(4) A notice shall:

(a) subject to *subsection (2)(b)*, specify the amount of legal costs —

(i) certified by the legal practitioner as having been incurred as at the date on which the notice is provided,



Estimates of costs:

- (ii) certified by the legal practitioner to be of a fixed nature or otherwise certain to be incurred (or if it would be impracticable for the legal practitioner to so certify, the basis on which they are to be charged), and
 - (iii) insofar as is practicable, certified by the legal practitioner to be likely to be incurred;
- (b) specify the amount of value-added tax to be charged in respect of the amounts referred to in *paragraph (a)*;
- (c) set out the basis on which the amounts were or are to be calculated, explained by reference to the matters set out in *paragraph 2 of Schedule 1*;
- (d) contain a statement of the legal practitioner's obligation under *subsection (5)*:



Estimates of costs:

(e) if the matter which is the subject of the notice involves or is likely to involve litigation, provide —

(i) an outline of the work to be done in respect of each stage of the litigation process and the costs or likely costs or basis of costs involved in respect of each such stage, including the likelihood of engaging a practising barrister, expert witnesses, or providers of other services,

(ii) a statement of the legal practitioner's obligation under *subsection (6)*,

(iii) information as to the likely legal and financial consequences of the client's withdrawal from the litigation and its discontinuance, and



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Estimates of costs:

- (iv) information as to the circumstances in which the client would be likely to be required to pay the costs of one or more other parties to the litigation, and information as to the circumstances in which it would be likely that the costs of the legal practitioner would not be fully recovered from other parties to the litigation;
- (f) specify a period, which shall be not longer than 10 working days, for the purposes of *subsection (7)*.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Paragraph 2 of Schedule 1 – LSRA 2015

- a) the complexity and novelty of the issues involved in the legal work;
- b) the skill or specialised knowledge relevant to the matter which the legal practitioner has applied to the matter;
- c) the time and labour that the legal practitioner has reasonably expended on the matter;
- d) the urgency attached to the matter by the client and whether this requires or required the legal practitioner to give priority to that matter over other matters;
- e) the place and circumstances in which the matter was transacted;



Paragraph 2 of Schedule 1 – LSRA 2015

- f) the number, importance and complexity of the documents that the legal practitioner was required to draft, prepare or examine;
- g) where money, property or an interest in property is involved, the amount of the money, or the value of the property or the interest in the property concerned;
- h) whether or not there is an agreement to limit the liability of the legal practitioner pursuant to s. 48 of the LSRA (limitation of legal practitioner's liability by contract);
- i) whether or not the legal practitioner necessarily undertook research or investigative work and, if so, the timescale within which such work was required to be completed; the use and costs of expert witnesses or other expertise engaged by the legal practitioner and whether such costs were necessary and reasonable.



Paragraph 2 of Schedule 1 – LSRA 2015

- j) the use and costs of expert witnesses or other expertise engaged by the legal practitioner and whether such costs were necessary and reasonable.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Stages of litigation – Section 150(4)(e)

- Section A – costs before commencement of proceedings
- Section B – costs from commencement of proceedings to trial/settlement date
- Section C – costs incurred during course of trial/settlement and up to determination of the proceedings
- Section D – costs incurred subsequent to trial



Estimate to be provided under each stage, of:

- Solicitors' charges
- Fees of Counsel
- Fees of experts
- Fees of other legal services providers



Section 150(5):

(5) Where the legal practitioner becomes aware of any factor that would make the legal costs likely to be incurred in a matter significantly greater than those disclosed or indicated in a notice relating to that matter provided under this section, he or she shall, as soon as may be after he or she becomes aware of that factor, provide the client concerned with a new notice.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Section 150(6):

(6) Where a matter which is the subject of a notice under this section involves or is likely to involve litigation, the legal practitioner shall not, in relation to that matter, engage a practising barrister, expert witness or provider of any other service without first, to the extent practicable —

- (a) ascertaining the likely cost or basis of cost of engaging the person,
- (b) providing the client with the information referred to in *paragraph (a)*, and
- (c) having complied with *paragraph (b)*, satisfying himself or herself of the client's approval (whether express or implied) of the engaging of the person.



The “cooling off” period – Section 150(7)

(7) A legal practitioner shall not, during the period referred to in *subsection (4)(f)* that is specified in a notice, provide any legal services in relation to the matter concerned, unless –

- (a) the client concerned confirms that he or she wishes to instruct the legal practitioner to continue to provide legal services in connection with the matter concerned, or
- (b) *subsection (8)* applies.



Section 150(8):

(8) A legal practitioner to whom *subsection* (7) applies shall, notwithstanding that subsection, provide legal services in relation to the matter concerned where —

- (a) in the professional opinion of the legal practitioner, not to provide those legal services would constitute a contravention of a statutory requirement or the rules of court or would prejudice the rights of the client in a manner that could not later be remedied,
- (b) a court orders the legal practitioner to provide legal services to the client, or
- (c) where the matter involves litigation, a notice of trial has been served in relation to the matter or a date has been fixed for the hearing of the matter concerned.

(9) The legal practitioner shall provide his or her client with clarification in relation to a notice, as soon as is reasonably practicable after having been requested to do so by the client.



Section 150(10):

(10) Where a practising solicitor, having received instructions from a client in relation to a matter, proceeds to instruct a practising barrister in relation to that matter —

- (a) an obligation on the barrister under this section to provide a notice shall be fulfilled where the barrister provides the notice concerned to the solicitor,
- (b) a duty owed by the barrister under *subsection* (6), (7) or (9) to his or her client shall be construed as a duty owed by the barrister to the solicitor, and



Sanctions for non-compliance with Section 150

- Possible complaint to the Legal Services Regulatory Authority
- Section 50(2) of the LSRA 2015
- Solicitor/client adjudication of costs



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Section 157(6):

(6) A Legal Costs Adjudicator shall not confirm a charge in respect of a matter or item if the matter or item is not included in a notice referred to in section 150 or, as the case may be, is not the subject of an agreement referred to in section 151, unless the Legal Costs Adjudicator is of the opinion that to disallow the matter or item would create an injustice between the parties.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Section 151 - Agreement regarding legal costs, etc.

(1) A legal practitioner and his or her client may make an agreement in writing concerning the amount, and the manner of payment, of all or part of the legal costs that are or may be payable by the client to the legal practitioner for legal services provided in relation to a matter.

(2) An agreement under *subsection (1)* may include all the particulars required by *section 150(4)* and if it does –

(a) the legal practitioner need not also provide a notice referred to in *subsection (2)* of that section, and

(b) references to the notice under that section shall be taken to include references to the agreement.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Section 151 - Agreement regarding legal costs, etc

(3) An agreement under *subsection (1)* shall constitute the entire agreement between the legal practitioner and the client as respects the provision of legal services in relation to the matter concerned, and no other amount shall be chargeable in relation to those legal services, except to the extent otherwise indicated in the agreement.

(4) An agreement under *subsection (1)* shall, in an adjudication under this Part, be amenable to adjudication by the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator.



Section 152 - Legal practitioner to provide bill of costs

- (1) A legal practitioner shall, as soon as is practicable after concluding the provision of legal services in relation to a legal matter for a client, prepare and sign a bill of costs, which shall contain the particulars specified in this section and shall be in such form (if any) as may be specified in rules of court
- (2) Subject to *subsections* (5) to (7), a bill of costs shall contain the following particulars:
 - (a) a summary of legal services provided to the client in connection with the matter concerned;
 - (b) an itemised statement of the amounts in respect of the legal costs in connection with the legal services;



Section 152 - Legal practitioner to provide bill of costs

- (c) the registration number of the legal practitioner for the purposes of value-added tax, and the amount of value-added tax chargeable in respect of the amounts referred to in *paragraph (b)*;
- (d) where time is a factor in the calculation of the legal costs concerned, the time spent in dealing with the matter;
- (e) the amount, where known to the legal practitioner, of any damages or other moneys that are recovered by, or payable to, the client and that arose from the matter in respect of which the legal services were provided;
- (f) the amount of any legal costs recovered by or payable to the legal practitioner concerned on behalf of the client, including costs recovered from another party, or an insurer on behalf of another party, to the matter concerned.



Section 154 – Application for adjudication of legal costs

(4) Where a legal practitioner provides a bill of costs in accordance with *section 152* to his or her client and the client considers that any matter or item or the amount charged in respect of any matter or item in the bill of costs is not properly chargeable, taking account of the provisions of this Act, and any rules of court relating to costs payable to legal practitioners by clients, the client may apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

(5) (a) Where a legal practitioner provides a bill of costs in accordance with *section 152* to his or her client and the bill of costs or any part thereof remains unpaid on the expiry of a period of 30 days from the date on which the bill of costs was provided, the legal practitioner may apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.



Section 154 – Application for adjudication of legal costs

(b) Where a barrister has, in accordance with *section 152(8)*, provided a bill of costs to a solicitor, and the bill of costs or any part thereof remains unpaid on the expiry of a period of 30 days from the date on which the bill of costs was provided, the solicitor concerned may, with the consent of the barrister, apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

(c) An application to the Chief Legal Costs Adjudicator pursuant to *paragraph (a)* or *(b)* may not be made after the expiry of 12 months after the date on which the bill of costs concerned was provided to the client under *section 152*.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Section 154 – Application for adjudication of legal costs

(7) Subject to *subsection (8)*, an application to the Chief Legal Costs Adjudicator by a client pursuant to *subsection (4)* may not be made after the expiry of 6 months after the date on which the bill of costs concerned was provided to the client under *section 152*, or 3 months from the date of payment of the bill of costs, whichever first occurs



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Costs of a solicitor/client adjudication – Section 158

- (2) Where an adjudication concerns only legal costs as between a legal practitioner and his or her client, and the Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid is less than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the party chargeable to those costs shall pay the costs of the adjudication.
- (3) Where a Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid in respect of the legal costs referred to in *subsection* (2) is 15 per cent or more than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the legal practitioner who issued the bill of costs shall be responsible for the costs of the adjudication.
- (4) Where *subsection* (3) applies, the Legal Costs Adjudicator may determine that the costs of the adjudication be set-off against the aggregate amount determined.



The importance of:

- Maintaining time records
- Solicitor and client billing updates
- Determining the outlay carried by the firm



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Reimbursement of costs in the event of success and an order for party and party costs

- OLCA Annual Reports



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Litigation funding

- Third Party Funding
- Maintenance and champerty
- ATE insurance



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Litigation funding

- **Maintenance** is the giving of assistance by a third party which has no interest in the litigation, to a party in litigation.
- **Champerty** is where the third party, which is giving the assistance, will receive a share should the litigation succeed.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Litigation funding

Persona Digital Telephony Ltd., and Sigma Wireless Networks Ltd v The Minister for Public Enterprise, Ireland, and the Attorney General, and by order Denis O'Brien [2017] IESC 27

- The common law principles of maintenance and champerty remain in force – any changes to the law in this area must be driven by the legislature.



Litigation Funding

- *“The court was asked not to be seduced into changing the law in the interests of what the court might perceive to be just. It may be said that in light of modern issues such as Ireland being an international trading state, issues arising on international arbitrations, and in the Commercial Court, it might well be appropriate to have a modern law on champerty and the third-party funding of litigation. However, that is a complex multifaceted issue, more suited to a full legislative analysis. This is reinforced by the retention of the old statutes by the Statute Law Revision act 2007, and by the work of the Law Reform Commission”.*

After The Event Insurance

Permissible in Ireland ?

Greenclean Waste Management Limited –v- Leahy [2015] IECA
97



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Court of Appeal observations on ATE policies:

- An ATE policy can, in principle, provide security for costs.
- An ATE policy cannot provide as good security as a payment into court or a bank bond or guarantee except in very rare cases.
- An ATE policy must provide some security (i.e., it must not contain terms which entitle the insurer to avoid liability to pay the defendant's costs) to be relied on as security for costs.
- If the ATE policy is insufficient security, the amount of security fixed could be potentially reduced to take account of any realistic possibility that an ATE policy would cover the defendant's costs.



Party and Party Costs



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Taxation : New Terminology

- Taxation now adjudication
- Taxing Master now Legal Costs Adjudicator
- Taxing Office now Office of the Legal Costs Adjudicators
- Master Magee – Chief Legal Costs Adjudicator



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



New requirements on the Chief Legal Costs Adjudicator:

- Register of determinations
- Strategic plan every three years
- Business plan every year
- Annual report



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Recent Changes

- The Rules of the Superior Courts (Costs) 2019
- SI 584 of 2019 – 3rd December 2019
- New format for party & party Bills of Costs



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Sections for new format bill:

- Section A – costs before commencement of proceedings
- Section B – costs from commencement of proceedings to trial/settlement date
- Section C – costs incurred during course of trial/settlement and up to determination of the proceedings
- Section D – costs incurred subsequent to trial
- Section E – costs not relating to the proceedings or costs not falling under Sections A to D

Details in each section of:

- Solicitors' costs
- Fees of Counsel
- Fees of experts
- Other expenses



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Bill columns:

- 1. Item number (each item for which a charge is made is consecutively numbered)
- 2. Date on which or between the work was undertaken
- 3. Description of work
- 4. Costs claimed
- 5. For Legal Costs Adjudicator's use (to record amount disallowed if any in respect of column 4)



Appendix W scale – revised allowances

- Originating summons - €75.00
- Statement of Claim/Defence - €75.00
- Verifying affidavit - €35.00
- Other affidavits - €25.00 and €10.00 per exhibit
- Notice to Produce - €15.00
- Warning letter for application in default of pleading or for extension - €15.00
- Setting down for trial - €75.00
- Notice of Appeal/Respondent's Notice - €75.00
- Printed copies – 20 cents per page



Offers to Settle

- Without prejudice offers in adjudication proceedings
- Section 154(10) of LSRA 2015 – costs of adjudication now “up for grabs”
- Timeframe
- “Out of time” Applications
- Yvonne Melia –v- HSE



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Addition to Section 154(10) of LSRA 2015 with the following:

- Rules of Court may make provision for:
 - (e) A procedure whereby a party to an adjudication may, upon notice to another party-
 - (i) pay into court a sum of money, or
 - (ii) make an offer by way of tender to the other party, in satisfaction of the costs of the other party that are the subject of the adjudication, and:
 - (f) The respective liability of the parties referred to in paragraph (e) for the costs of the adjudication where the amount of a payment or offer referred to in that paragraph is equal to or greater than the amount of the costs concerned that, in the adjudication, are determined to be paid.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Order 99, Rules 57 to 61 - Rules of The Superior Courts (Costs) 2019

- Lodgement or tender in respect of costs
- Default position is that costs of adjudication will follow the event (Order 99, Rule 60(3))
- Court Duty 8% of amount as allowed on Adjudication



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Clarification on the Tender Process in Costs

Yvonne Melia –v- HSE



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie

Section 168(2) LSRA 2015 – the order for costs may include an order that a party shall pay-

- (a) a portion of another party's costs,
- (b) costs from or until a specified date, including a date before the proceedings were commenced,
- (c) costs relating to one or more particular steps in the proceedings,
- (d) where a party is partially successful in the proceedings, costs relating to the successful element or elements of the proceedings, and
- (e) interest on costs from or until a specified date, including a date before the judgment



Conduct – Section 169(1) LSRA 2015

169(1) A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties, including –

- (a) conduct before and during the proceedings,
- (b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings,
- (c) the manner in which the parties conducted all or any part of their cases,



Conduct – Section 169(1) LSRA 2015

- (d) whether a successful party exaggerated his or her claim,
- (e) whether a party made a payment into court and the date of that payment
- (f) whether a party made an offer to settle the matter the subject of the proceedings, and if so, the date, terms and circumstances of that offer, and
- (g) where the parties were invited by the court to settle the claim (whether by mediation or otherwise) and the court considers that one or more than one of the parties was or were unreasonable in refusing to engage in the settlement discussions or in mediation.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Costs of Mediation - Mediation Act 2017

- Section 7 – Agreement to mediate:
- Prior to the commencement of the mediation, the parties and the proposed mediator shall prepare and sign an agreement to mediate appointing the mediator and containing the following information:
- 7(b) – the manner in which the fees and costs of the mediation will be paid
- 7(g) – such other terms (if any) as may be agreed between the parties and the mediator.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Mediation Act 2017

- Section 20(1)(b) – unless ordered by a Court or otherwise agreed between the parties, the parties shall share equally the fees and costs of the mediation.
- Mediation instead of Adjudication ?



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Party and Party practical implementation

- Obtaining a hearing date via the portal
- Mention Hearing / Case management
- An opportunity to bring to LPA's attention the key issues which may arise in the adjudication so the appropriate direction can be agreed and Preliminary Issues identified.
- File inspection



Indemnity Principle

- Attorney General (McGarry & Others –v- Sligo County Council [1991] 11.R.99

“Nothing can be recovered in a party and party taxation unless three conditions are fulfilled, namely:

(a) That the Court has made an Order for costs in favour of the parties



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Indemnity Principle

(b) That the matters claimed have been properly incurred

(c) That the party in question is under legal liability to pay them"

In essence your claim for costs from your opponent on a Party & Party basis cannot exceed your client's liability for costs on a solicitor client basis



The Adjudication in practice

- Adjudication
- Adversarial
- Reference to Bill of Costs and files
- Emphasis on the nature and extent of the work undertaken, the complexity of the matter and the level of quantum in issue.



Submissions to the LCA

The presentation of evidence:

- (a) by Solicitor
- (b) By Counsel
- (c) By expert

This is provided under the directions of the LCA who may request a precis of evidence be submitted in advance of the giving of the evidence

- The importance of timesheets and attendance notes
- Estimates provided to the client / the Receiving Party as per Section 150 of the LSRA



Adjudication

- Counsel's Brief fee was an estimate provided ?
- Is the Brief fee reasonable ? - Analysis
- Experts' fees – Terms & Conditions – were these shared with the Paying Party, in particular in relation to cancellation fees?
- Examination of the files by the LSRA and the provisions of their ruling
- Appealing a ruling – back to the same LCA via objections
- If a party remains to satisfy appeal to the High Court?



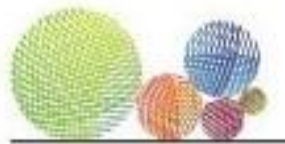
Correct Court? - Pitfalls

- Correct Court / jurisdiction?
- Differential costs orders / exaggerated claim?
- Case studies:

Molin -v- SITIKA and
O'Malley -v- McEvoy [2018] IECA 240

The cases commenced in the High Court which is jurisdiction of €60,000.00 (personal injury cases, €75,000.00 in other cases)

Plaintiffs succeeded in their claims but were awarded damages of approximately €35,000.00 in each case, significantly under the monastery jurisdiction of the High Court which the proceedings were commenced



Correct Court? - Pitfalls

Defendant's sought differential costs Order as the High Court trial concluded the High Court refused to grant the Orders sought by the Defendants.

The Defendants appealed the decision of the High Court to the Court of Appeal and the appeal Court said the High Court had erred in refusing to grant the differential costs Orders



Correct Court? - Pitfalls

- 2 key factors to take into consideration:
 - (1) The award of damages fell substantially below the High Court jurisdiction
 - (2) The Defendants have put the Plaintiffs on notice that they did not expect the Plaintiffs to meet the jurisdictions and that they would be seeking the differential costs Order if the Plaintiff did not reach the jurisdiction at trial
 - (3) Establishes the importance from the Plaintiffs' perspective of undertaking a detailed analysis of the value of the claim and the quantum in issue and from the Defendants' respective to put the Plaintiffs on notice that differential costs Orders will be sought if the level of quantum awarded is less than the High Court jurisdiction



Data Protection Actions

- S.117 of the Data Protection Act 2018
- S.117(3) the Circuit Court shall, subject to subsection (5) and (6) concurrently with the High Court has jurisdiction to hear and determine data protection actions
- S.117(5) the compensation recoverable in a data protection action in the Circuit Court shall not exceed the amount standing prescribed, for the time being by law, as the limit of that Court's jurisdiction in tort



High Court Practice Direction 71 – Payment on account of costs pending taxation.

- Mechanism in which a party who is awaiting payment of their costs on foot of an order can apply to the Judge to have a portion of the costs paid to them prior to adjudication.
- Done by way of application and most commonly an affidavit – solicitor must give an undertaking to reimburse any overpayment post-adjudication.
- The party seeking the payment on account should be able to provide the Judge with a Bill of Costs, even one in short form.
- As a general observation – 33% of the Bill of Costs is the usual amount ordered. – *Heeney v Depuy International Limited and HSE [2017] IEHC 355*.



High Court Practice Direction 71 – Payment on account of costs pending taxation

- Payment on Account can only be dealt with by a Judge and not the Legal Costs Adjudicator.
- *Jose Monteriro Da Silva & Ors. v Rosas Construtores S.A & Ors. [2017] IEHC 365* – decision of Mr. Justice Keane in which he refused to grant payment on account as the he had made a final order and as such the Court was now *functus officio*.
- Matter must be kept live by the party who wishes to seek a payment on account. Liberty to apply should be sought at the conclusion of a case.
- PD 71 initially brought in to help combat delays in the then Taxing Master's Office – applicant need not prove there is a delay in the OLCA to apply for a payment on account as per decision of Mr. Justice Barr in *Anteck v MIBI & Ors. [2017] IEHC 503*.



Relevant Caselaw

- Gerard McCaughey v Irish Bank Resolution Corporation Ltd & Anor [2013] IESC 17
- Background to the proceedings is the collapse of an Investment fund during the financial crisis
- Plaintiff was unsuccessful and had an order for costs awarded against him.
- Before the Adjudication the Plaintiff withdrew his representation – uncontested adjudication – service had been proven by the appearance of Plaintiff's Counsel at Callovers.



Gerard McCaughey v Irish Bank Resolution Corporation Ltd & Anor [2013] IESC 17

- Absence of one party does not guarantee a higher rate of recovery nor does one win by default. LCA reduced instructions fee for work done pre-proceedings from the €588,137 claimed to €137,500 on a party and party basis.
- Counsel's Fees - €100,000 for SC and €65,000 for BL were awarded as claimed. With refreshers at €5,000 and €3,500 respectively. LCA remarked at para 44 that *"It is to be noted that the plaintiff engaged two Senior Counsel and one Junior Counsel. I would not have been surprised to observe if the Defendant had a second Senior Counsel"* (Would it have been recoverable?)



Michael P. Fingleton v Central Bank of Ireland [2016] IEHC 1

- Judicial Review proceedings challenging a Notice of Inquiry.
- Respondent was successful and had an order for costs awarded in their favour
- Briefed two Senior Counsel and one Junior Counsel – (Undertaking of the Bar Council in 1987)



Michael P. Fingleton v Central Bank of Ireland [2016] IEHC 1

- Para 23; -

“It is against that back ground, that the Respondent made the case for recovering the fees of two Senior Counsel and one Junior Counsel. It would have to be fairly stated that it was clear from the submissions that Mr Gallagher SC, handled the preponderance of the day to day issues arising in the case. Also, it occurs to me that the case for allowing two Senior Counsel in a case of this nature, on a party and party basis, would be unusual. Whilst, there can be no hard or exhaustive list of cases where the fees of one Senior and One Junior or indeed, even two Senior Counsel or two Junior Counsel might be recoverable, it is a fair statement to make that normally in cases involving Judicial Review, that one Senior and One Junior Counsel are recoverable on a party and party basis. In addition, I am mandated by s. 155 (5) to ascertain the nature and extent of the work, who did the work and, if possible, the time taken to do the work. The fact that the second Senior Counsel was retained at a level of half of that agreed to for the First Senior Counsel, is indicative of the burden sharing of work.”



Personal Injury Guidelines in the context of Legal Costs

- Early days but emerging trends
- Tender Offers – Examination of the relevant date in personal injury summons and whether or not the claim has been assessed by PIAB.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Personal Injury Guidelines in the context of Legal Costs

Differential Costs Orders

- One of the most under utilised weapons in a solicitor's arsenal
- Application is made to the Judge on the day.
- Advise sending a letter informing Plaintiff that you believe they have issued proceedings in the wrong court and that in the event they are successful, but below the threshold, you will be applying to the Judge for a differential costs order.
- District Court set to become the personal injury venue for most new cases - Costs will be on the scale.
- Examination of the Guidelines



Jurisdiction

- *Jurisdiction*
- *Forewarned is Forearmed*

Compliance adherence to rules and obligations is key



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Jurisdiction Issues

England and Wales

- Representation in the jurisdiction of England & Wales
- S.25 Solicitors Act 1974
- Costs where unqualified person acts as a Solicitor

(1) No costs in respect of anything done by any unqualified person acting as a Solicitor shall be recovered by him, or by any other person in any action, suit or matter



Jurisdiction Issues

England and Wales

S.25 of the Solicitors Act 1974 is expanded upon by Halsbury's Laws of England at legal professions (volume 65 (2020) para 435):

"a person practising as a Solicitor must have in force a practising certificate issued by the Solicitors Regulation Authority (SRA) or be exempt from holding such a certificate and a Solicitor is not qualified to act as a Solicitor unless they have in force such a certificate. This applies to any admitted person. A Solicitor whose name is on the role is considered an unqualified person if he does not hold a practising certificate and cannot recover his costs in respect of anything done by him or by any other person in any action, suit or matter, not event on detailed assessment by a client who has submitted to pay what is found due on assessment"



Jurisdiction Issues

Northern Ireland

- If you intend to practise as a Solicitor in Northern Ireland you must:
 - Have been admitted as a Solicitor (e.g. concluded the training)
 - Have your name on the Role (a list of all Solicitors of the Court and Judicature in Northern Ireland)
 - Hold a practising certificate
 - Hourly rates
 - Master Moore- His approach to non NI Lawyers



Jurisdiction Issues

The importance of the Acting as Agents status



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Agents – North of Ireland

- Article 19 of Solicitors (NI) Order 1976

“McCullie & Another –v- Butler [1961] 2All ER 554”

“Moyle Interconnector Limited –v- Nexans Norway AS and Alcatel-Lucent Norway AS”

(Taxing office reference T/HC/14/00588)



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Solicitors fees as a disbursement: North of Ireland

Taxing Master in Northern Ireland in *“Moyle Interconnector Limited and Nexans Norway AS and Alcatel-Lucent Norway AS* 10th December 2014, former Taxing Master Wells made the following comments:

“I am satisfied that the fees paid to a lawyer not qualified and practising in Northern Ireland are disbursements and the charges for advice and instructions are recoverable, providing that they are reasonable and necessarily incurred and are reasonable in amount”.



CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



4 principles : "*McCullie v Butler*" concerning the costs of foreign agents in proceedings in Northern Ireland:

- The cost of work done by a solicitor qualified in England and Wales, Scotland or the Republic of Ireland will be allowed if it was done as agent for the local solicitor.
- The costs of such work will be limited to work done in the agent's own jurisdiction;
- The cost of work which is inappropriate to the position of the agent will not be allowed; and
- As far as is possible there should not be duplication between the work done by the principal and that done by the agent.



Agents – England / Wales

“Societa Finanziaria Industrie Turistiche SpA v Lefebvre d’Ovidio de Clunieres di Balsorano : SCCO : 30th June 2006

Master Gordon-Saker decided that the reasonable costs of the Italian Lawyers were recoverable as foreign agents



CMG Training

The Irish Institute of Professional Education www.abacuslawcosts.ie Email: Michael@abacuslawcosts.ie



Thank You

Specific queries? – please contact us!

Michael@abacuslawcosts.ie

CMG

CMG Training

The Irish Institute of Professional Education

www.abacuslawcosts.ie

Email: Michael@abacuslawcosts.ie

