

Fixed Recoverable Costs: No advocacy – No fee!

Christopher Boxall discusses

Christopher Boxall discusses the first instance decision in *Crawshaw v Alfred Dunhill Limited* (County Court Sheffield, 16.11.2017 before District Judge Bellamy).

Facts

The Claimant suffered injury by tripping over unmarked cabling at a golf tournament. There was an application for pre-action disclosure relating to (amongst other information) the contract between Alfred Dunhill and IMG Ltd. However, voluntary disclosure was made, removing the need for a hearing.

The claim was eventually notified on the portal and settled, save for the narrow issue of the cost of the application for pre-action disclosure. In short, is a Claimant entitled to recover 'advocates costs' if no advocacy is provided?

The Rules

Fixed Recoverable Costs apply to the costs of pre-action disclosure applications (*Sharp v Leeds City Council* [2017] EWCA Civ 233).

CPR 45.29H (1) limits fixed costs of interim applications to a sum equivalent to 'one half of the applicable Type A and Type B costs in Table 6 or 6A.'

CPR 45.18(2) defines Type A fixed costs as the legal representative's costs. Type B costs relate to the 'advocate's costs'. Both costs are fixed at £250.

The Decision

The court held that the Claimant was not entitled to recover Type B 'advocates costs' since no advocacy had been conducted or required.

In reaching the above decision, District Judge Bellamy found merit in the following points:

- The costs of the legal representative and the advocate were separated under the fixed costs regime by intention. It was clearly not intended that there would be a single fixed fee to cover both parties;
- The separation of the advocacy fee serves as an incentive for parties to settle prior to a hearing;
- The word 'applicable' in CPR 45.29H made clear that Type A and B costs were not automatically recoverable in every case.

Discussion

The above ruling may seem like a logical and common-sense approach – because it is. Although a first instance decision, it is persuasive and will be a useful tool for practitioners who are opposing claims for advocacy fees in cases where no advocacy was required.

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