

MARTIN LANCHESTER CONSIDERS THE LATEST CASE RELATING TO FIXED COSTS, SHARP V LEEDS CITY COUNCIL [2017] EWCA CIV 33



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Martin Lanchester considers the latest case relating to fixed costs, *Sharp v Leeds City Council* [2017] EWCA Civ 33 which was handed down by the Court of Appeal this week. Martin was previously instructed in the appeal of *Davies v ASDA Stores Ltd* 2015 (unreported) in which HHJ Denyer QC reached the same conclusion as the Court of Appeal when hearing the case on appeal in Bristol.

In *Sharp v Leeds City Council*, the appeal centred on whether the fixed costs provisions under Part IIIA CPR45 for cases commenced within the EL/PL portal applied to the costs awarded for applications for pre-action disclosure (PAD). Whilst this issue has been the subject of a relatively small number of appeals at first instance this decision establishes that fixed costs will apply.

The facts of the case are unremarkable and concerned a tripping incident in 2014 whereby Miss Sharp injured her wrist. A claim notification form was issued against Leeds City Council through the portal under the Pre-action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims ("the EL/PL Protocol"). However, the claim eventually left the portal process and continued under the Personal Injury Protocol with an application being made for PAD by the Claimant in February 2015.

The application did not result in a hearing as disclosure was eventually complied with but the Claimant sought and was awarded its costs for making the application in the sum of £1,250. The Defendant successfully appealed on the basis that the costs should have been determined by the fixed costs applicable to personal injury cases commenced in the portal as the application was an interim application under CPR45.29H and as such the costs were limited to £305.

The Court of Appeal upheld this decision on the basis that the fixed costs regime applied to the costs of the application for PAD. The judgment of LJ Briggs (with whom LJ Irwin and LJ Jackson agreed) was that once the claim had commenced in the portal the fixed rates were intended to apply so as to ensure *"proportionality in the conduct of small or relatively modest claims."*

The judgment did recognise the merits of the appellant's submission that limiting the costs to such a modest sum would do little to deter Defendant's from failing to comply with PAD. However, the Court held that the remedy would be better applied either by the application of exceptional circumstances under CPR45.29J, or by the level of fixed costs being reviewed by the Rule Committee. The Court was also concerned that any decision that allowed applications for PAD subject to assessed costs would risk giving rise to an undesirable form of satellite litigation.

Whilst the appeal concerned the application of EL/PL claims it would clearly apply to RTA claims that commenced in the RTA portal. The decision will be welcomed by Defendants who will benefit from all applications of this type being limited to the low level currently allowed under CPR45.29H. It will be interesting to see whether the courts will be more open to finding exceptional circumstances under CPR 45.29J or whether evidence can be obtained to demonstrate that the level of the fixed costs are too low to allow applications for PAD to be effective.