Court report

Gary Knight highlights some interesting recent costs cases

***Briggs & 598 Ors v First Choice Holidays & Flights Ltd* (2016)**
A very detailed and considered decision of Costs Judge Jennifer James in this case has appeared on Lawtel. The decision is worth looking at in full, but below are some highlights.

As expected from the name of the case, this was a group action resulting from illness – of varying severity – on holiday. Base costs were just under £2m, while additional liabilities increased the defendants' liability to a shade under £4.5m; with base costs of £3,000 per claim. A payment on account of costs was made in the sum of £1.8m. The total damages awarded were £1.7m, divided between the claimants depending on severity of symptoms.

A number of preliminary issues had been raised by the paying party following service of the claimants' bills (generic and individual).

Delay
The defendants sought a sanction for the delay in commencing detailed assessment. As the Notice of Commencement served was only a few days past the three months' timeframe specified by CPR r47.7, the costs judge considered this to be minimal, and found that it did not justify any sanction. But the defendants argued that the application for a detailed assessment had not been made until some 11 months after the order – there was dispute between the parties as to whether time had been extended by reason of attempts to settle. The costs judge considered that some delay was appropriate while attempts were made to settle the issue of costs, but found that there was some unnecessary delay in the request. Finding both sides equally at fault, she reduced the period for attracting interest by half.

The defendants considered that the claimants had acted unreasonably in not pursuing the claims of 152 claimants who had not been taken ill (but had had their holidays ruined) via mediation run by ABTA. The costs judge agreed; the scheme covered non-personal injury claims of up to £25,000 per booking, and would have adequately covered the 152 claimants' complaints at a costs of £40,000, rather than the £456,000 base costs claimed. The costs judge considered it was neither 'reasonable nor proportionate' to incur such costs by pursuing those matters in the group litigation. She held that the maximum the defendants should pay in respect of each claim was the maximum ABTA fee; considering the finding did not 'infringe the sanctity of the agreed costs order'.

The costs judge considered costs were disproportionate on application of the pre-Jackson (1 April 2013) test as set out in CPR r44.4 (3). The claimants had failed to keep costs to a reasonable and proportionate level; and many of the claimants belonged to family groups - which ought to have resulted in savings on overlapping work. The judge found that the robust defence did not constitute bad conduct, and considered that the sheer number of claimants did not make the matter particularly complex; noting that the claimants solicitors held themselves out as holiday claims experts.

The hourly rates sought were disputed – the claimants claimed partners at £255 and £265, while the defendants offered £220. Senior paralegals claimed at £165 received an offer of £125. Rates for associate solicitor and costs draftsman were accepted as claimed (with no detail provided in the judgment). The costs judge allowed the rates sought, but said that the work undertaken would be scrutinised.

The success fees sought were in dispute. Initially, the defendants sought to have the success fee disallowed on the ground that the statement of reasons provided was defective because it was not contemporaneous. The claimants responded to this by referring to CPR 47 at section 32.5(c), requiring the receiving party to submit either a copy of the risk assessment or a statement of reasons.

The costs judge agreed with the claimant's position that the statement of reasons was by definition not contemporaneous – or else, why not just file the risk assessment? She could not find that the statement of reasons having being produced after the facts was, in itself, enough of a flaw to deny the claimants their entitlement to a success fee.

The claimants sought 67% for matters settled within the pre-action protocol period, and 100% thereafter. The defendants proposed 25% across the board on the basis that 'every claim was more or less bound to win something'. Regard was given to other group action claim judgments, and applying her 'years of experience' the costs judge allowed 67% for the first tranche of CFAs, as it was not unreasonable for the claimants to anticipate the claims would be fought. However, Judge James did not consider the end of the pre-action stage to be a reasonable 'trigger' for the increase to 100%. She suggested that a reasonable trigger would have been three months to the trial date. The costs judge also considered offers made, and accepted the defendants'

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CASE ROUNDUP