

# NWL Costs Update – October 2022

## Amount of Solicitors Bill for 1/5<sup>th</sup> Rule

### Marta Karatysz v SGI Legal LLP [2022] EWCA Civ 1388

#### The Background

The underlying litigation was a simple RTA case which settled for damages of £1,250 plus fixed costs and disbursements totalling £1,116 inclusive of VAT.

The Case was run by the Respondent under a CFA, with a success fee of 100% subject to the statutory cap of 25% of the total amount of any general damages for pain, suffering and loss of amenity and damages for pecuniary loss, other than future pecuniary loss.

The Respondent paid the Appellant £794.50 (damages less £455.50 for the success fee, VAT and ATE premium of £143) but did not provide a bill of costs or invoice.

The Appellant instructed Checkmylegalfees.com Limited (who later merged with Clear Legal Limited) and on their request a bill was delivered on 15.01.18 which consisted of four items:

Basic Charges - £1,717 plus VAT  
Success Fee of 100% capped at 25% of damages - £260.42 plus VAT  
Medical report £216 inclusive of VAT  
ATE premium £143

Total (not stated in the bill) £2,731.90.

The bill then showed  
Less monies received from Aviva - £1,116  
And balance payable by the client £455.50

In other words, £1,571.50 (again not shown) payable by the client.

Part 8 Proceedings were issued by the Client and there followed a complex provisional assessment, oral hearing, and an appeal to the High Court the full details of which are set out in the Judgements and not repeated here.

The net result was costs allowed on assessment of £1,394, which in turn meant a repayment was due to the client of £177.50 (£1,571.50 - £1,394).

But the real issue of importance (to both sides) was not the small amount of money paid back to the Appellant but who paid the not inconsiderable costs of assessment.

#### The Real Issue

Section 70(9) of the 1974 Act provides that the costs of an assessment are paid by the solicitors if the amount of the bill is reduced by one fifth, but otherwise by the client.

The main issue to be decided was the amount of the statute bill.

The Appellant maintained it was £2,731.90 as had been determined at the original assessment. The Respondent argued it was £1,571.50 as determined by Lavender J in the High Court Appeal. If it was the former, then the bill would have been reduced by more than 20% (down to £1,394) and if the latter reduced by less than 20%.

#### The Decision

The Court of Appeal quickly determined the real issue at paragraph 49:

"I have, however, decided that the proper question for the court to ask in determining "the amount of the bill" under section 70(9) is, in respect of the category or categories of costs being assessed, "what is the total sum that the bill is demanding be paid to the Solicitors, whether or not all or part of that total sum has actually been paid".

In this case the:

"Only sensible interpretation of the Bill as a whole was that it was demanding whatever had already been paid, namely £1,116 by Aviva plus £455.50 by the Client, totalling £1571.50 – notwithstanding that that sum is not stated on the face of the Bill as it should have been".

The appeal was dismissed with costs.

### Thoughts

A big victory for Claimant Solicitors, particularly considering the clear warning given by the Court of Appeal to firms such as [checkmylegalfees.com](http://checkmylegalfees.com) who pursue costs in these low value cases:

"The Client allowed *checkmylegalfees.com* to bring this costly case on her behalf when she had almost nothing to gain. As Lavender J demonstrated at [42], she recovered £177.50 before DJ Bellamy, which was all that was really at issue except massive sums by way of costs. The process whereby small bills of costs are taxed in the High Court is to be discouraged. It is far more economic to use the Legal Ombudsman scheme which is a cheaper and more effective method of querying solicitors' bills in these circumstances. Moreover, whilst it has not been necessary to decide whether there were "special circumstances" in this case under section 70(10), because the Client has not succeeded on her appeal, there remains a lesson to be learned from this case. Firms such as *checkmylegalfees.com* and their clients should be in no doubt that the courts will have no hesitation in depriving them of their costs under section 70(10) if they continue to bring trivial claims for the assessment of small bills to the High Court, even if those bills are reduced on the facts of the specific case by more than one fifth under section 70(9). The critical issue is and always will be whether it is proportionate to bring this kind of case to the High Court. In this case, it was not."

This would appear to sound the death knell for the [checkmylegalfees.com](http://checkmylegalfees.com) business model.

But the Court of Appeal was also not impressed with how confusing bills (in both this case and *Belsner*) were and gave general guidance:

"Properly drawn bills ought in future to state the agreed charges and/or the amounts that the solicitors are intending by the bill to charge, together with their disbursements. They should make clear what parts of those charges are claimed by way of base costs, success fee (if any), and disbursements. The bill ought also to state clearly (i) what sums have been paid, by whom, when and in what way (i.e. by direct payment or by deduction), (ii) what sum the solicitor claims to be outstanding, and (iii) what sum the solicitor is demanding that the client (or a third party) is required to pay".

If you have any queries on this case or need guidance on your solicitor client bills, please let us know.