Case No: 011LR422

IN THE COUNTY COURT AT PORTSMOUTH
SITTING AT SOUTHAMPTON

Date: 25/02/2022

Before :

HIS HONOUR JUDGE GLEN

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Between :

Ashley Melloy (1) **Kelly Marie Pearce (2)**	**Claimants**
- and -	
UK Insurance Limited	**Defendant**

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Christopher Richards (instructed by **Carpenters Solicitors**) for the **Claimants**
Alexander Whatley (instructed by **Keoghs LLP**) for the **Defendant**

Hearing dates: 22 February 2022

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JUDGMENT

His Honour Judge Glen:

1. This judgment addresses a short but not unimportant point on the application of the fixed costs regime contained with CPR45. It arises at the end of a short trial of an otherwise unremarkable claim for damages for personal injuries sustained by the Claimants as a result of a road traffic accident. Although the claim was allocated to the Fast Track, it was dealt with by me because of the desperate shortage of judicial resources on the District Bench. As this trial has been adjourned on more than one occasion, it is fortunate that there was room in my list to hear it.

The facts

2. On 3 December 2019 the Claimants were passengers in a motor vehicle when it was struck from behind by another vehicle driven by the Defendant's insured. As a result, they suffered relatively modest 'whiplash' type injuries. A

Claims Notification Form (CNF) in form RTA1 for each Claimant was sent to the Defendant on 12 December in accordance with the provisions of The Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the Protocol'). Because the Defendant denied liability, the claim did not proceed along the path envisioned by the Protocol. Instead, the Claimants issued a Part 7 claim for damages on 23 July 2020. The outcome of that claim was an award by me of general damages of £1,750 and £1,500 for the First and Second Claimants respectively and in each case, £265 special damages for physiotherapy treatment. This outcome was more favourable to the Claimants than Part 36 offers made by them at an earlier stage.

The issue.

3. I have separately resolved issues arising under CPR36 and in relation to the indemnity costs payable. However, one matter remains outstanding. Mr Richards for the Claimants contends that the costs order must contain a separate award under Section C of Table 6B to CPR45 in respect of each Claimant. Mr Whatley for the Defendant concedes that a separate award can be made under paragraph (b) of that Section (in respect of the additional 20% of the damages awarded) but that otherwise only a single award can be made.

4. The submissions were short and to the point. Mr Richards anchors himself to the reasons given by His Honour Judge Pearce sitting at Chester County Court in *Neary & Neary v. Bedspace Resource Limited*. In essence, these were that the Protocol and therefore CPR45.29A contemplate only a single claim and a single claimant. Accordingly, each such claimant is entitled to recover the

fixed costs in Table 6B. Mr Whatley argues that 'the claim' for this purpose is the claim as issued on 23 July 2020. There is only one such claim (even though there are two claimants) and therefore there can only be one award of fixed costs.

The Rules and the Protocol

5. The Protocol defines a claim as being *"...a claim, prior to the start of proceedings, for payment of damages under the process set out in this Protocol"* and a claimant as *"...a person starting a claim under this Protocol..."*. It is common ground that only one claimant can be included in a Protocol claim.

6. Claims which no longer proceed under the Protocol are dealt with by Part IIIA of CPR45:

> *"45.29A*
>
> *this section applies—(a) to a claim started under—(i) the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol')*
>
> *...*
>
> *where such a claim no longer continues under the relevant Protocol or the Stage 3 Procedure in Practice Direction 8B..."*
>
> *45.29B*

Subject to rules 45.29F, 45.29G, 45.29H and 45.29J, and for as long as the ***case*** *is not allocated to the multi-track, if, in a* ***claim*** *started under the RTA Protocol, the Claim Notification Form is submitted on or after 31st July 2013, the only costs allowed are—*

(a) the fixed costs in rule 45.29C;

(b) disbursements in accordance with rule 45.29I.

[Emphasis supplied]

45.29C

(1) Subject to paragraph (2), the amount of fixed costs is set out in Table 6B.

(2) Where the claimant—

(a) lives or works in an area set out in Practice Direction 45; and

(b) instructs a legal representative who practises in that area,

the fixed costs will include, in addition to the costs set out in Table 6B, an amount equal to 12.5% of the costs allowable under paragraph (1) and set out in Table 6B.

…

(4) In Table 6B—

(a) in Part B, 'on or after' means the period beginning on the date on which the court respectively—

(i) issues the claim;

(ii) allocates the claim under Part 26; or

(iii) lists the claim for trial; and

...

TABLE 6B

Fixed costs where a claim no longer continues under the RTA Protocol				
A. If Parties reach a settlement prior to the claimant issuing proceedings under Part 7				
Agreed damages	At least £1,000, but not more than £5,000	More than £5,000, but not more than £10,000	More than £10,000	
Fixed costs	The greater of— (a) £550; or (b) the total of— (i) £100; and (ii) 20% of the damages	The total of— (a) £1,100; and (b) 15% of damages over £5,000	The total of— (a) £1,930; and (b) 10% of damages over £10,000	
B. If proceedings are issued under Part 7, but the case settles before trial				
Stage at which case is settled	On or after the date of issue, but prior to the date of allocation under Part 26	On or after the date of allocation under Part 26, but prior to the date of listing	On or after the date of listing but prior to the date of trial	
Fixed costs	The total of— (a) £1,160; and (b) 20% of the damages	The total of— (a) £1,880; and (b) 20% of the damages	The total of— (a) £2,655; and (b) 20% of the damages	
C. If the claim is disposed of at trial				
Fixed costs	The total of— (a) £2,655; and (b) 20% of the damages agreed or awarded; and (c) the relevant trial advocacy fee			
D. Trial advocacy fees				
Damages agreed or awarded	Not more than £3,000	More than £3,000, but not more than £10,000	More than £10,000, but not more than £15,000	More than £15,000
Trial advocacy fee	£500	£710	£1,070	£1,705

Discussion

7. The answer to this issue must be derived from a construction of the relevant Rules against the context of the purposes of the Protocol and the fixed costs regime. Mr Whatley suggested that to award two sets of fixed costs would result in a windfall to the Claimants' Solicitors out of all proportion to the actual additional work involved in representing more than one client. Whilst that may be so, it is of the essence of any fixed costs regime that there will be swings and roundabouts. The outcome cannot inform the construction except in the most exceptional case (as in *Qader v. Esure Services Ltd. [2016] EWCA Civ 1109*).

8. At first sight, the word 'claim' might be taken to denote the court proceedings. That is certainly its conventional meaning and this construction is supported by the wording of CPR45.29C(4)(a) which talks about 'the claim' being issued, allocated and listed (although I note that Table 6B in fact talks about 'the case' and 'the proceedings').

9. By contrast the wording of CPR45.29A appears to contemplate a claim that may have started life under the Protocol but has a continuing existence outside of it. It is interesting to note that a distinction is drawn in CPR45.29B between 'the case' in the context of allocation and 'a claim' in the context of costs. This must be taken to be a deliberate choice of words by the Rules Committee given that it differs from the wording suggested by Briggs LJ in *Qader*. Standing back, one wonders how the provisions of CPR45.29C(2) could sensibly be applied if only one award can be made, where one claimant

qualifies and the another does not. Finally, Section A of Table 6B clearly contemplates an award of costs of 'the claim' prior to any proceedings being issued.

10. In my judgment (and in comity with HHJ Pearce) the expressions 'claim' and 'claimant' have an autonomous meaning for the purposes of Part IIIA of CPR45. They refer to the claim started by, and the claimant who submitted, the CNF and not to the claim or claimant in the proceedings. This conclusion is it seems to me supported by such authority as exists.

11. In *Sharp v. Leeds City Council [2017] EWCA Civ 33*, the Court of Appeal had to consider the question of whether an application for pre-action disclosure was caught by the fixed costs regime as an interim application, or whether it was a free standing application subject to ordinary costs rules. Holding that it was the former, Briggs LJ said this:

> *"For those reasons it seems to me entirely apposite for a PAD application to fall within the description of interim applications in rule 45.29H, as being "an interim application … in a case to which this section applies". The "case" in which the application is made is, in my view, the claim for damages for personal injury, during and in the pursuit of which the PAD application is made. It is plainly an application for an interim remedy within the meaning of Part 25, and it is in my view "interim" in the fullest sense, because it follows the*

institution of the "claim" by the uploading of a CNF on the Portal, even though no proceedings under Part 7 have yet been issued, and precedes the resolution of the claim by settlement or final judgment."

12. In *West v. Burton [2021] EWCA Civ 1005* the Court of Appeal was faced with the unusual situation of a claimant who had died shortly after submitting the CNF. In addressing the position of the Executor who carried on the claim on his behalf and holding that he was not 'the claimant' for the purposes of Part III of CPR45, Sir Nigel Davies said this:

"If a "claim" and "claimant" for the purposes of the fixed costs regime are to be equated with the meaning which they conventionally bear in the context of legal proceedings, then, given the provisions of section 1(1) of the 1934 Act and CPR r 19.8, the force of Mr Mallalieu's arguments is clear-cut. But I do not consider that is how this scheme works. As the judge noted, the word "claim" (and thence "claimant)" is not here being used in the Protocol in a formal sense. Rather it is being used as descriptive of a demand for damages prior to the start of any legal proceedings. Indeed, it is noticeable that, under the Protocol, a defendant is defined so as (primarily) to connote the insurer. The definition of "claim" in paragraph 1(6) of the Protocol is thus not to be equated with the definition of "claim" contained in CPR r 2.3. Read as a whole, the Rules and the Protocol

are, in my opinion, drafted on the footing that the claimant throughout remains the person who issued the CNF."

Conclusion.

13. In my judgment, where there are two or more claimants in proceedings for damages that fall within Part IIIA of CPR45, each such claimant (assuming that they have each submitted a CNF) is separately entitled to the costs set out in Table 6B.