

COUNCIL
30/03/2022

Strategic Litigation Group update – Annex 1

Author: Legal Services Department

Classification - Public

Freedom of Information

Not applicable as this paper is public

Summary:

The Law Society intervenes in cases where it is able to provide the court with balanced, informative and useful submissions as the voice of the profession advocating fundamental rights and freedoms and promoting the rule of law. A decision on whether to intervene in a case is informed by policy considerations.

In making a decision, the Society considers a number of factors and seeks to balance them in determining whether it is in the Society's best interests to intervene in a case. These factors include political, strategic, stakeholder, reputational, human rights, equality, representational, sectional, financial and business considerations. Our interventions demonstrate the Society's active role in supporting and representing solicitors and promoting access to justice in the public interest. The following is a summary of litigation currently underway.

Recommendations:

This paper is for: noting

Assessments. This should be either a summary of what is in the paper (cross-referenced to the relevant paragraph), or, if the issues are very straightforward, a full statement of the relevant position.

Financial	The majority of cases which are the subject matter of this report fall under one of the 'permitted purposes' of section 51 of the Legal Services Act 2007. Occasionally, a case may involve only issues that fall outside of the 'permitted purposes,' but are, nevertheless, issues of strategic importance to the profession or to the Society.
Risk	Possible risks arising in each of the cases which are the subject of this report, were assessed prior to, or at the beginning of the Law Society's involvement.

E D & I	N/A
Organisational Values	The Society will only become involved in strategic litigation which meets the criteria set out in its policies for representational litigation. These require that the Society's involvement will engage at least one of the Society's organisational values.
Consultation	There will have been consultation with the relevant policy teams and committees for each case which is detailed in this report.

Promoting justice for all

(1) *Cam Legal v Belsner* (new)

On 24th May 2021 the Strategic Litigation Group ('SLG') accepted a recommendation that the Law Society should intervene in these proceedings, in which Cam Legal Limited are appealing against a decision of the High Court to the effect that a solicitor acts as a fiduciary prior to entering into a retainer and is therefore obliged to ensure that the client had provided 'informed consent' to a CFA that is part of the retainer, on the basis of information provided by the firm. That information had to meet the requirements of Civil Procedure Rules Part 46.2. This meant providing a specific example of the outcome to be expected if the claim settled at stage two of the pre-action protocol for low value PI claims in RTA'. The case is acknowledged to be a test case.

The case is important to the profession because unless the decision is overturned, it will become more difficult for members to recover the costs anticipated under a CFA. This will make it more difficult for some firms to continue to provide services to clients with low value personal injury claims which in turn will lead to less access to justice for those of modest means. It is also important because the CFA at the heart of the proceedings was based on a modified version of the Law Society's model CFA.

Following permission for the amendment of the grounds of appeal, the Law Society issued its application for permission to intervene on 16 September 2021.

The court granted permission to intervene on 15 December 2021, granting the Law Society an hour to make oral submissions and the right to apply for further time if required.

This matter came before Court of Appeal on 22 and 23 February 2022. The case was adjourned to a date to be fixed to allow the parties to address the court on several issues of law that arose, unexpectedly during the hearing. The Law Society was asked to file evidence as necessary to assist the court.

Speaking up for the profession

(2) *R (On behalf of the Law Society) v Legal Aid Agency* (ongoing)

The Law Society issued proceedings in 2020 against the Legal Aid Agency challenging its decision to implement a new cost assessment regime, which, in essence, would have seen it assessing its own bills and removing the right to court assessment in almost all civil claims above £2,500, without adequate consultation.

Following the commencement of proceedings by the Law Society, the Lord Chancellor offered to settle the matter on agreed terms. The terms included, among other things, the launch of a proper consultation exercise and, pending the outcome of the consultation, the return to court assessment for all bills at the election of the practitioner. This has proved popular with the profession.

The MoJ has yet to publish the outcome of the consultation but, given the popularity of the current arrangements, which are actually more advantageous to the profession than those that had been in place before the abortive transfer to the LAA, it is difficult to envisage the LAA fully implementing its plan of transferring all assessments from the courts.

The MoJ has not so far published the outcome of the consultation. It appears that the current position is favourable to the profession as they may elect whether to have a court assessment or an LAA assessment for civil bills. The LAA may have been monitoring the claims to gather data to inform its decision whether to retain the scheme it had abandoned by moving to full LAA assessment, but that will not become clear until they publish the outcome of the consultation which they were obliged to undertake as a term of the consent order settling the

proceedings. The MoJ announced on 9 November 2021 that it would retain the current process under which practitioners can choose to have their civil legal aid bills assessed either by the court or the LAA until November 2022, when the Lord Chancellor will again consult on the matter. Between now and then the MoJ will gather data to assist them with framing the forthcoming consultation. The announcement was the subject matter of the following article in the Gazette for 9 November 2021, details of the article can be found [here](#)

There have been no new developments since the last report. The LAA will continue for the foreseeable future to allow solicitors to elect whether they wish their civil legal aid bills to be assessed by the LAA or by the courts. The LAA will be collecting data in the meantime to inform its eventual decision on a permanent arrangement following the consultation.