Court of Appeal provides much needed clarity on QOCS where there has been pre and post 1st April 2013 CFAs

Published 29 June 2018

In *Catalano v Espley-Tyas Development Group Ltd [2017] EWCA Civ 1132*, DAC Beachcroft, who represented the Defendant, won in the Court of Appeal on the interpretation of the transitional rules following the introduction of Qualified One-Way Costs Shifting (QOCS).

The Claimant presented a claim for noise induced hearing loss as a result of working in allegedly noisy factories owned by the Defendant in the 1960s. She entered into a CFA with her solicitors in June 2012, but her application for ATE insurance was declined. On 1 April 2013 QOCS came into force. The Claimant then entered into a new CFA in July 2013, which is said to have replaced the prior agreement. DAC Beachcroft were instructed to defend the claim. The Claimant then discontinued her claim the day before the Trial.

The issue for the Court to decide was whether the Claimant could benefit from QOCS to prevent the Defendant recovering their costs, in circumstances where the original 2012 CFA had been terminated and the discontinuance was served under the July 2013 CFA.

The Claimant's sought to rely on the case of *Casseldine v The Diocese of Llandaff, Cardiff Court Court, July 2015* in which the Claimant's solicitors terminated the pre April 2013 CFA, allowing the Claimant to enter into a second agreement with another firm, post April 2013. Additionally, in this case, the Claimant's unsuccessful application for ATE insurance should result in her having the benefit of QOCS.

The Defendant's case was that notwithstanding that there was no ATE insurance in place, the definition of " pre commencement funding" was still met and it wasn't the intention of CPR 48.2 to allow a Claimant to cherry pick the advantages of both regimes.

The Court agreed with the Defendant on the basis that the Claimant could not " have the best of both worlds " and her appeal was dismissed. QOCS did not apply as she initially had a QOCS exempt, pre April 2013 CFA in place, notwithstanding that that agreement was subsequently replaced.

Jonathan Bingham, Partner and Head of Costs said " The judgment is welcome news for insurers as it brings much needed clarity to the operation of the QOCS rules, particularly when a unmeritorious claim is abandoned and there is a pre-April 2013 CFA in place".

Authors

Jonathan Bingham
Birmingham
+44 (0) 121 698 5379
jbingham@dacbeachcroft.com