

Court Fee Remissions

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Recent increases in Court Fees have seen them rise to a point at which, for large proportions of the population, the cost of commencing proceedings appears to be unaffordable. In order to provide access to justice and maintain the right to commence proceedings, the Court Fee remission scheme has been extended to provide a reduced liability to pay Court fees to parties to litigation who are not in receipt of Benefits but have income and / or savings below thresholds. Applications for remission from Court Fees may be made up to three months from the payment of a Court fee.

As the Court Fees in many personal injury claims are not funded by the Claimants but instead by their solicitors, there are many cases in which applications for remission from Court Fees are not made. As the Court, when assessing costs, should not allow costs which have been unreasonably incurred, are Court Fees which were paid when the Claimant was entitled to fee remission (and therefore entitled to pay a reduced fee or no fee at all) “reasonably incurred”?

In the recent case of *Stoney v Allianz*, the Defendant challenged the recoverability of the Court fee claimed in the sum of £455.00. The Claimant’s solicitor accepted that no application for a fee remission was ever made despite the fact that the Claimant was unemployed and therefore was probably eligible for a fee remission. The firm’s explanation for this was that the solicitors’ firm would fund all disbursements, including Court Fees, on the Claimants’ behalf and they would not seek recovery from their clients provided that the clients had bought an After The Event Insurance policy which would reimburse disbursements. The Defendant, on the other hand, contended that the Court Fee was unreasonably incurred because the Claimant would have been entitled to a fee remission and could have avoided paying the Court Fee.

The Judge concluded that the Claimant was entitled to a full remission of the Court Fee, enabling him to pay no fee on commencing proceedings, and that the Claimant’s failure to complete the remission form meant that the disbursement was unreasonably incurred and not recoverable from the Defendant.

Whilst a first instance decision in the County Court, the findings of District Judge Jenkinson are a reminder that Claimants should consider carefully whether they are entitled to a fee remission either in whole or in part, and if so, should apply for fee remission.

A contrasting view was taken in the case of *Cook v Malcolm Nicholls Services* in April 2019. In that case, the Defendant sought to overturn a decision on a provisional assessment that the Defendant should pay the Court fees of £10,000.00; the Defendants argued that the Claimant should have sought a fee remission. Deputy District Judge Jones rejected the arguments raised and maintained that the Court Fee of £10,000.00, having been paid, was recoverable.

Both decisions were made by District Judges and therefore are not binding on other Judges. Where solicitors have paid Court Fees on behalf of their clients, as is common in practice, it remains unclear whether a failure to seek remission from fees will cause the Court Fee to have been incurred unreasonably, although in practice we find that many solicitors withdraw the claim for a Court Fee when challenged on this point, When seeking to challenge the recoverability of a Court Fee, careful consideration will need to be given to the merit of that challenge and the likelihood of it succeeding.

Authors



Peter Allchorne

Bristol

pallchorne@dacbeachcroft.com



David Williams

Leeds

dwilliams@dacbeachcroft.com



Jonathan Bingham

Birmingham

jbingham@dacbeachcroft.com

