
Low Value Protocol claims - should fixed costs or QOCS apply to appeals?

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Where personal injury claims are pursued within the Low Value Protocols and the first instance claim is subject to fixed costs, what costs should be allowed in relation to an appeal against the decision of the Court? Are the costs of the appeal subject to qualified one-way costs shifting? The Court of Appeal considered these questions in its recent judgment in *Wickes Building Supplies Limited v Blair*, the judgment in which was handed down on 21 January 2020.

The substantive issues in this case related to the impact of the late service of documents on claims proceeding to Stage 3 hearing in the Low Value Protocols.

Whilst Rule 52.19 of the Civil Procedure Rules 1998 gives an appeal Court the discretion to limit the recoverable costs of the appeal *in any proceedings in which costs recovery is normally limited or excluded at first instance*, through providing that discretion the appeal Court is not compelled to limit the costs.

In this case, taking into account the point of practice raised in the appeal and the importance of this case for other Low Value Protocol claims, together with the Court's view that the losing respondent's first appeal was unmeritorious, the Court chose not to exercise its discretion to limit costs and ordered the respondent to pay the appellant's costs, to be assessed if not agreed. This judgment confirms that the question of whether the costs of appeals should be fixed will be decided by the appeal Courts on a case by case basis.

Turning to the question of qualified one-way costs shifting, as the appeal related to the outcome of the respondent's personal injury claim, QOCS applies and, as this claim did not fall into the exceptions where the protection is lost by a claimant, the appellant would not be able to recover its costs.

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