

TRANSCRIPT OF PROCEEDINGS

Ref. F20YM309

IN THE COUNTY COURT AT ST HELENS

Corporation Street
St Helens

Before **DEPUTY DISTRICT JUDGE AKERS**

IN THE MATTER OF

PAULINE POWLES (Claimant)

-v-

CARL ALEXANDER HEMMINGS (Defendant)

MISS L HALLIWELL appeared on behalf of the Claimant
MR S FISHER appeared on behalf of the Defendant

JUDGMENT

23rd APRIL 2021, 15.50–15.58
(AS APPROVED)

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JUDGE AKERS:

1. The court is dealing with an application brought by the claimant for various items of cost in this matter. The parties between them have narrowed the issues down and the sole issue for the court to determine today is whether or not agency fees attached or claimed as part and parcel of an overall claim for a psychological report sought in this case, in the sum of £900 inclusive of VAT, are recoverable in this case. The claimant says that they are, and invites me to consider a judgment of the county court, a decision of His Honour Judge Wood QC hearing an appeal in the matter of *Beardmore v Lancashire County Council*. That was a decision from 1 February 2019 in which His Honour Judge Wood did allow agency fees. However, in reply the defendant cites the Court of Appeal's subsequent decision of *Aldred v Chan* from 8 October 2019, a decision which postdates the decision of His Honour Judge Wood QC.

2. For various reasons, which I will come on to in a moment, the claimant says that the decision of *Aldred* is entirely distinguishable on the facts from the instant case, but the issue is this. The psychological report itself is claimed as invoiced at £900 inclusive of VAT. The defendant requested a breakdown as to how that £900 was arrived at. That breakdown document is before the court and I see from that, that £350 represents the fee for consultation, examination and production of the actual report. The remaining £400 goes to items such as issuing a consent form; chasing and retrieving the completed form; issuing an instruction letter and supporting details to the expert; quality checking the medical report before sending to claimant representatives; collection and query resolution with a costs draftsman and third parties; considering claimant's expert's dates of availability and preparing correspondence to a solicitor, and so on – these are all items which the defendant says are agency fees, that they are not recoverable and that they are already dealt with within the fixed costs regime.

3. The defendant takes me, in particular, to paragraphs 48, 51 and 52 of *Aldred*. I turn first to paragraph 48. Paragraph 48 is a paragraph addressing whether or not counsel's fees – because counsel's fees were the issue in *Aldred v Chan* – could be described as a disbursement, and paragraph 48 concedes that in the vast majority of cases they would be. It goes on, however, to say that the subject of the disbursement had already been allowed for in the fixed recoverable costs. Paragraph 48, therefore, dealing with counsel's advice in an infant approval case, disallows the claimant of a disbursement in its entirety because the Court of Appeal was of the view that the same was provided for within fixed recoverable costs.

4. Paragraph 51 of the judgment goes on to say that if an item of work is deemed, or can be said implicitly, to be within the fixed recoverable costs within table 6B of CPR 45.29C, then it will not be separately recoverable as a disbursement – the Court of Appeal used the example of a brief fee being the most obvious example of that analysis.

5. And then at paragraph 52 – and I paraphrase here – counsel's fees are a disbursement, but if the item of work to which they relate is deemed to be within the fixed costs regime, they will not be recoverable in addition to those fixed recoverable costs.

6. Miss Halliwell, on behalf of the claimant, seeks to persuade me that *Aldred* is entirely distinguishable on its facts because it was considering the recoverability of counsel's fees in infant approval matters which is different to the issue that we are considering in this case, and that in any event their Lordships in the Court of Appeal there were considering the applicability of 45.29 I (h) which deals with any other disbursement reasonably incurred due

to a particular feature of the dispute, whereas in this case we are looking at part 45.29 I (2) (a) which is the cost of obtaining medical reports.

7. It seems to me, though, that the issues are entirely applicable to the facts of the instant matter, because we are looking at items of work which are deemed, or could be deemed to be within the fixed recoverable costs, which is effectively the administration of the claim; the dealing with correspondence, the to-ing and fro-ing between the parties, the obtaining of further documentation. These are all subsumed within the fixed costs which are awarded to a party within table 6B, they are not separate items of disbursement.

8. The defendant argues that, effectively, the claiming of these additional items of expense from the breakdown provided really a double accounting; effectively, it is seeking to claim profit costs twice, or items of work which should be claimed within profit costs twice.

9. Miss Halliwell takes me to paragraph 50 of *Aldred v Chan* which does, I agree, quite clearly say that disbursements are one-off items which are for specific items of work, not easily addressed by reference to the same general considerations that we have discussed. I agree with her, to the extent that, yes, a disbursement is a specific item of work which is not easily addressed by reference to these considerations, but the disbursement in question in this report amounts to £350 plus VAT because that is what the claimant's own breakdown tells me it is. The claimant's own breakdown goes on to tell me that the remainder of the charge, the remaining £400, relates to various items of agency work, which from the submissions that I have heard and the authorities that I have been referred to, for the reasons that I have set out, I find are not recoverable in this case. They are items which, in my judgment, fall fairly and squarely within the analysis of their Lordships in *Aldred v Chan* as being items which are part and parcel of the fixed recoverable costs within table 6B of CPR 45.29C, so as a consequence, the psychological report in this case will be limited to the figure set out in the claimant's own breakdown which is £350 plus VAT.

This transcript has been approved by the Judge