IN THE SENIOR COURTS COSTS OFFICE CASE NO. 1305534

B E T W E E N :

Keah M B O’Reilly

Claimant

and

## H R Richmond Ltd

## Defendant

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|  | AGREED AND APPROVED NOTE OF JUDGMENT ON COSTSmade by Master O’Hare on 16 September 2014 |  |

1. The bill in this case proceeded to a provisional assessment conducted by Costs Officer Martin. The receiving party then made a written request within the 21 day time allowed by rule 47.15(7) for an oral hearing indicating two topics upon which he wanted a review, namely the hourly rate allowed and the amount of time spent on documents. Once the matter was listed for an oral hearing, and outside the 21 day time limit, the paying party wrote to Mr Martin requesting him to consider two further items at the hearing “by way of cross-review”, namely the number of routine letters allowed and the amount of time allowed for drafting the bill.
2. At the oral hearing all four items were considered. Mr Martin allowed substantial increases in respect of the items raised by the receiving party subject to reductions, which I am told were only nominal, in respect of the items raised by the paying party. In the result, the receiving party achieved a net increase of some £771 from the £5109 provisionally allowed. This being an increase of only 15% Mr Martin ordered the receiving party to pay the paying party’s costs of the oral hearing.
3. CPR 47.15(10) makes the following provision as to which party should pay the costs of an oral hearing following a provisional assessment under CPR 47.15:

“Any party which has requested an oral hearing will pay the costs of and incidental to that hearing unless –

(a) it achieves an adjustment in its own favour by 20% or more of the sum provisionally assessed; or

(b) the court otherwise orders.”

1. The matter came to me on an appeal from Mr Martin which was brought by the receiving party. This is my decision on two points raised by Mr Carlisle, the advocate for the appellant: (1) should the court “otherwise order” if the party who requested the oral hearing achieves an adjustment in his favour exceeding 20% of the value of the items upon which he requested a review; and (2) should the court “otherwise order” in the particular circumstances of this case?
2. I reject Mr.Carlisle’s argument that if one achieves an above 20% increase on the items raised in the oral hearing that ought to be a special circumstance overcoming the penalty on costs under CPR 47.15(10)(a). The reason the penalty is there is to avoid costs to other parties of matters considered to be small. So a party can apply for a small increase, but will not get costs, just as the Court now considers Part 7 claims for less than £10,000 to be small matters to be determined without full costs.
3. Mr.Carlisle asks rhetorically when else might the Court use the discretion under 47.15(10)(b) if not in instances such as this. One can never predict all circumstances but two especially spring to mind –

(i) where both sides request a hearing but neither gets an adjustment of 20% or more; and

(ii) where the receiving party achieves enough of an increase which, albeit less than 20%, justifies a Part 36 offer he had made, if that offer had been made before the provisional assessment took place.

1. As to the second issue, Mr Jones, counsel for the paying party, argued that the paying party’s letter to Mr Martin did not request a hearing but merely invited him to review additional matters at the hearing requested by the receiving party. In his submission, the 20% rule applies only to a written request which leads to the oral hearing subsequently listed. I reject those submissions. I view with concern the notion that, once a receiving party has requested an oral hearing, the paying party can then raise additional items in order to offset any increase his opponent obtains without being at risk as to the costs of the hearing if those additional items do not improve his position by 20% or more. I do not think that was what was intended by the rule makers.
2. In this case, I think it would have been a better exercise of the Costs Officer’s discretion to refuse to consider the additional points raised by the paying party because they were raised out of time. However, since they were considered, they should have been treated as if made as part of a written request for an oral hearing.
3. Because the paying party requested a review of additional matters at the oral hearing and, because those matters had no substantial effect on the sum provisionally allowed, the paying party also should have been penalised in the costs of that hearing.
4. It seems to me inappropriate to require each party to pay the other party’s costs of the oral hearing. Instead the order which Mr Martin should have made is “no order for costs”. I can achieve that now by simply setting aside his order that the receiving party should pay the paying party’s costs of the oral hearing.
5. In relation to the appeal overall therefore the receiving party is the winner and is entitled to his reasonable costs of the appeal.