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**LAW**

CoA: Claimant limited to fixed costs even where Part 36 accepted late

By John Hyde | 23 July 2018

Fixed costs apply to low-value claims even when the defendant has waited more than 18 months to settle the claim, the Court of Appeal ruled today. In the long-awaited *Hislop v Perde* judgment, Lord Justice Coulson said the claimant could not argue that the delay – even with no apparent justification – triggered an ‘exceptional circumstances’ provision set out in Civil Procedure Rules.

Lawyers for the road traffic accident victim had argued for indemnity costs because the case was settled out of time. In November 2014, Hislop offered to accept a £1,500 settlement in accordance with Part 36 rules. Perde rejected this offer initially, then accepted it in June 2016, a week before trial.

By then Hislop’s costs were £2,372 by way of fixed costs up to December 2014 (the deadline for accepting the Part 36 offer) and £5,534 onwards, which were sought on an indemnity basis.

On first instance, the County Court rejected the claim for indemnity costs, an order which was overturned on the initial appeal by Judge Walden-Smith. She did not interfere with the decision not to award indemnity costs, but ruled that costs after December 2014 should be assessed on the standard basis.

In his ruling, Coulson LJ stressed the same Part 36 rules apply to both claimants and defendants, and the ‘exceptional circumstances’ provision still acts as a deterrent to parties delaying accepting an offer. But he said there could equally be no ‘presumption’ that a defendant’s late acceptance of a claimant’s Part 36 offer can always be regarded as exceptional.

The Court of Appeal also ruled in the same judgment on *Kaur v Committee* (for the time being) of Ramgarhia Board Leicester, where the personal injury claimant offered to accept £2,000 to settle her claim in September 2016.

The offer was rejected, but after further negotiations the defendant made its own Part 36 offer of £3,000, which was accepted by the claimant.

On this occasion, the County Court awarded costs on the standard basis after September 2016, as the judge concluded the claimant should not be worse off simply because the defendant had made a higher offer months later.

On the leapfrogged appeal, Coulson LJ allowed the challenge and ruled Kaur was entitled to fixed costs up to the relevant stage when she accepted the defendant’s offer.

He added: '[The district judge's] approach was based on the erroneous assumption that the board's offer deprived Mrs Kaur of a right to indemnity costs. She had no such right, so it inevitably follows that the district judge failed to exercise his discretion properly.'

Following the judgment, [Stephen Hines, president of the Forum of Insurance Lawyers](#), said: 'This is a really positive decision for defendants, who had feared another re-write of the rules was in prospect following *Broadhurst v Tan* (in which it was found that a claimant who beats his own offer at trial may get indemnity costs). Further erosion of the sanctity of the fixed costs rules has rightfully been put to bed by this judgment.'