



**Informing Progress** - Shaping the Future

## FOIL UPDATE 6<sup>th</sup> February 2023



### *HO* to be reversed

The Civil Procedure Rules Committee (CPRC) has at last addressed the problem thrown up for defendants by the original wording of CPR 44.14, as highlighted in the cases of *Ho v Adekun* and *Cartwright v Venduct*. The amendments come into effect on **6<sup>th</sup> April 2023**.

The key wording amends Part 44. 24, so that Part 44.14 reads (with emphasis added):

*(a) in paragraph (1), for “damages” substitute “, or agreements to pay or settle a claim for, damages, costs”; (b) after paragraph (1), insert— “(2) For the purposes of this Section, orders for costs includes orders for costs deemed to have been made (either against the claimant or in favour of the claimant) as set out in rule 44.9.*

The explanatory notes to the Statutory Instrument (SI) giving rise to the amendments confirm that amending rule 44.14 (dealing with the effect of qualified one-way costs shifting (QOCS)), will allow the court in cases falling within the scope of the QOCS regime to order that the parties’ costs liabilities be set-off against each other, having previously found that this rule, properly construed, did not allow the court to do so; and to include within this rule, as well as deemed orders, agreements to pay damages or costs, so to allow the off-setting of costs orders made in favour of a defendant and ensure that offers made under Part 36, and, for example, settlements concluded by way of a Tomlin Order, come within the rule.

The SI also deals with minor changes to other rules and some general tidying-up, including removing references to “Part 20 claim” (a term no longer used) to refer to counterclaims or other additional claims.

FOIL President **Nicola Critchley** comments:

*These amendments restore the balance within the QOCS regime and reflect what appears to have been the intention of the regime suggested in the original MOJ consultation. The rule changes are largely positive but one aspect that is disappointing is the transitional provisions, as the amendments to QOCS will only apply to claims **issued** after 6 April 2023. We may see a rush to issue proceedings prior to that date.*

The full SI may be found at: [The Civil Procedure \(Amendment\) Rules 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

This publication is intended to provide general guidance only. It is not intended to constitute a definitive or complete statement of the law on any subject and may not reflect recent legal developments. This publication does not constitute legal or professional advice (such as would be given by a solicitors' firm or barrister in private practice) and is not to be used in providing the same. Whilst efforts have been made to ensure that the information in this publication is accurate, all liability (including liability for negligence) for any loss and or damage howsoever arising from the use of this publication or the guidance contained therein, is excluded to the fullest extent permitted by law.