

Costs Law Update – Excessive Success Fees

A few months ago we reported on the Court of Appeal's decision in *Jones v Caradon Catnic Ltd* [2005] EWCA Civ 1821 (see our earlier [Costs Law Update](#)) where the Court was faced with a case run under a Collective Conditional Fee Agreement where the solicitors, Thompsons, had prepared a risk assessment seeking a success fee of 120%. This was held to exceed the maximum success fee allowable under the *Conditional Fee Agreements Order 2000* and rendered the costs irrecoverable.

In so far as a firm of Thompsons' size can have failed to understand the rules, it should not come as too much of a surprise to learn that this problem may be more widespread. At Gibbs Wyatt Stone we have recently come across a conditional fee agreement with counsel where a similar error has been made, with the success fee set at 105%. This figure was arrived at with 100% relating to the prospects of success and an additional 5% to reflect the postponement of payment of those fees. There has clearly been a failure to understand that the 100% maximum applies to the total success fee, not simply that part which will be claimed between the parties. The result is that counsel's CFA is inevitably unenforceable.

We always advise that both solicitors' and counsels' CFAs are viewed before costs are agreed to ensure that the agreements are compliant

Contact

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