

## **Costs Law Update - Jones v Caradon Catnic Ltd**

A success fee set at over 100% represents a material breach of the conditional fee agreement rules declared the Court of Appeal in an important decision that appears not to have received the attention which it clearly deserved.

In the case of *Jones v Caradon Catnic Ltd* [\[2005\] EWCA Civ 1821](#) the Court was faced with a case run under a CCFA where the solicitors, Thompsons, had prepared a risk assessment, in June 2001, seeking a success fee of 120%. It was argued for the Defendants that this exceeded the Conditional Fee Agreements Order 2000 and that because it was not compliant with the Order the CCFA was unenforceable.

The Claimant argued that there had been no breach as the CCFA itself stated that the success fee “in no case will be more than 100%” and that this therefore operated over the defective risk assessment. Secondly, even if there were a breach, it was not material as there was no danger of more than 100% being enforced by the courts and therefore there was no prospect of either the client or defendant suffering.

The Court rejected those submissions and found that there was a clear breach of the Order. Because of the operation of the CCFA, the breach would not have an adverse effect on the protection provided to the client. Therefore, the Court’s attention should be devoted to the administration of justice when determining whether the breach was material. It was accepted that the maximum success fee was plainly central to the regime on which lawful CFAs or CCFAs were made. Ignoring this provision, even if the result was that no one was a loser, was inimical to the administration of justice. The CCFA was therefore found to be unenforceable.

The judgment contained some interesting comments concerning the recent changes to the CFA/CCFA regulations. It was recognised that the statutory scheme had now been revoked and that there were no longer any regulations concerned with consumer protection, which was now dealt with by the Law Society’s disciplinary mechanisms. However, so far as the administration of justice was concerned, that side of the statutory scheme has not been revoked and was still in force. Therefore it seems that the same decision would have been reached had the CFA/CCFA been made under the new regime.

This case is worth studying closely due to the evidence that emerged as to how Thompsons’s risk assessments were produced.

## **Contact**

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