
What Happens When A Solicitor Provides The Client With No Guidance As To Costs?

1. You would hope that, these days, situations where a solicitor has provided his client no guidance as to costs would be rare. One came before Master Leonard in a Solicitors Act assessment of a bill for work representing the client's son, who had been arrested and charged with murder following a fight in Crete. The client's son denied any involvement.
2. The solicitor's brief was to marshal evidence in the UK (many of the witnesses lived here) and, as matters unfolded, to go to Cyprus and attend court and assist the Greek legal team.
3. For those services, the solicitor presented a bill for, in effect, £80,000 plus VAT. This came as a complete shock to the client, who had never expected a bill anywhere near that big. He, therefore, sought an assessment of the bill under section 70, Solicitors Act 1974.
4. There were issues of fact between the client and the solicitor as to whether or not indications as to costs, including rates, had been given. The client said there had been none, the solicitor said there were indications of rates and, to an extent, amounts. The court decided those issues in favour of the client and, therefore, held on the facts that the solicitor had given no guidance as to costs whatsoever.
5. That led to the question of how the bill should be assessed. The client submitted that there should be a cap on the amount of the bill which was in accordance with such expectations as the client had. The client submitted that it could not be right that a

solicitor is in a better position if he gives no estimate than if he gives an estimate that turns out to be wrong. The court agreed.

6. In the end, on the facts, Master Leonard held that the solicitor's entitlement could not exceed a further £8,000 over the £10,000 that the client had paid on account and that those sums were inclusive of VAT because there had been no discussion of VAT.
7. At paragraphs 24 and 26 of his judgment, Master Leonard distilled the following principles from (mainly) *Master Cigars Direct Limited v Withers LLP* [2007] EWHC 2733 and *Master Cigars Direct Limited v Withers LLP* [2009] EWHC 651, as follows:

“24. *If, on the assessment of costs between a solicitor and a client, it is found (a) that the solicitor has never provided the client with an estimate of the costs that the client was likely to pay and (b) that if a proper estimate had been given, the client would have paid less than the solicitor is claiming, it may be appropriate to limit the amount payable by the client to the solicitor to an amount that it is reasonable, in all the circumstances, to expect the client to pay. That may be less than would otherwise be payable for work reasonably done by the solicitor at a reasonable rate.*

25. *In order to demonstrate that it is right to limit the solicitor's recoverable costs in that way, it is not necessary for the client to prove, on the balance of probabilities, that he or she would, if adequately advised, have acted in a different way which would have turned out more advantageous to him or her. It may be sufficient that the failure to provide adequate advice deprived the client of an opportunity of acting differently, though that is likely to carry less weight, particularly where it is not possible to do more than speculate as to the way in which the client might have acted, if properly advised*

26. *The ultimate aim will always be to identify the sum that, in all the circumstances, it is reasonable for the client to pay.”*

8. This decision handed down on 12th February 2019 in the SCCO in *Eric Christopher Dunbar v Virgo Consultancy Services Ltd* is important in that most cases of this type have focussed on circumstances where an estimate has been given which has proved inadequate. It shows that the courts will be willing to assist a client (especially an

individual not versed in litigation) who has been the victim of such poor client care and has been presented with a bill that far exceeds his reasonable expectations.

SIMON EDWARDS

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39 Essex Chambers

81 Chancery Lane
London, WC2A 1DD