

SLATER & GORDON SUBMISSION TO CIVIL JUSTICE COUNCIL

Executive Summary

Slater & Gordon was established in 1935 in Australia. It focused its practice on representing workers and their families, particularly those who suffered a serious injury or illness as a result of an accident or wrongful actions of a third party. Slater & Gordon today is Australia's leading national consumer law firm. In February 2012 Slater & Gordon entered the UK legal market acquiring Russell Jones & Walker. Since then it has acquired John Pickering & Partners, Goodmans, Fentons, Pannone and the personal injury practice of Taylor Vinters. It aims to be the largest consumer law firm in the UK. There are 70 offices in Australia and 18 in the UK.

We would like to see:

- a. More guidance and consistency from the judiciary and more training for the judiciary in relation to proportionality and costs budgets.
- b. Amendments to the costs budgeting rules (a) to limit the number of cases to which costs management applies, (b) to clarify when Precedent H has to be lodged and (c) to clarify whether Precedent H needs to cover quantum where a split trial on liability is required.
- c. More resources for the courts to enable the costs budgeting process to be implemented properly and consistently.
- d. A restriction on the defendant's right to have costs assessed at the end of a case if the costs budget is met, or penalties if they fail to achieve more than a 20% reduction.
- e. New rules to restore common sense in relation to the Mitchell decision, ensuring that there is proper access to justice for all.

1. Proportionality

- 1.1 With the greatest respect, it is our experience of cost budgeting that there is an urgent requirement for greater consistency and we feel there is a need for further training in order to achieve this aim.
- 1.2 We respectfully ask the courts to note that the current inconsistency borne out of the introduction of cost budgeting has a direct impact on clients. The Solicitors Regulation Authority requires us to be clear on all cost exposure to the client. However, we are concerned that the current processes will result in confusion and unnecessary anxiety.
- 1.3 We are also acutely aware of the administrative burden posed on the judiciary in the post-cost budgeting environment. Our suggestion to save the courts valuable time and resource is that a cap be placed on all cases where costs are likely to exceed £50,000. This places a burden on parties to ensure that files are costed accurately and any cases exceeding the cap would rightfully result in heavy sanctions imposed by the courts.

2. Costs Management/Budgeting

- 2.1 In Lord Justice Jackson's final report he identified the need for the court to take on the important role of costs management as a necessary part of case management. He said

it was no longer acceptable for the question of costs to be left to the end when the costs had already been spent.

- 2.2** In order for claimants to obtain access to justice their cases have to be prepared and pursued properly. The process of preparing a budget that accurately sets out the work required on a case is a time consuming one and as a result is expensive. It is in the defendant's interests to pitch their own budget low to give a stark comparison with the claimant's budget. A defendant's budget will rarely be relevant at the end.
- 2.3** We have heard judicial concern expressed at their lack of training, and also the obvious problem judges face in having to consider proportionality before the outcome of the case is known, with two very different versions of the case being put forward.
- 2.4** We also face the same problem in relation to Budgets as we do in relation to proportionality. A Budget could be reviewed by a number of different judges with a number of different outcomes. For our clients' sake we need more clarity and consistency.
- 2.5** The budgeting process is an important one, designed to control costs, but at present it does not seem to be working. Time and costs are being wasted.
- 2.6** There is uncertainty as to whether a costs' budget should include liability and quantum if the claimant is seeking a split trial on liability.
- 2.7** There is also uncertainty as to when the costs budget needs to be lodged. Is it with the Directions Questionnaire or prior to the subsequent CMC? The cautious approach has to be to lodge it with the Directions Questionnaire. Clarity is required in relation to this.
- 2.8** If a Costs Budget is set and adhered to, the Defendant should not subsequently be able to call for a detailed assessment of the costs.

3. Mitchell

- 3.1** We believe the consequences of the Mitchell decision are of much concern. We do not seek to defend incompetent solicitors. But good, hardworking solicitors and their clients should not be punished for what are events beyond their control. However, we believe that the impact of Mitchell creates an unnecessarily hostile and adversarial environment between claimant and defendant lawyers. This has direct and damaging implications on access to justice. Is it right that a claimant should not be allowed to use a key witness statement if the witness falls ill just prior to the deadline for signed statements to be served?
- 3.2** The Mitchell decision appears to be even more draconian than the old County Court Order 17 Rule 11(9). The automatic strikeout in that rule led to endless satellite litigation with the rule falling into disrepute and disappearing completely when the CPR came into force.
- 3.3** Lord Justice Jackson's report in 2010 put forward a "coherent package of interlocking reforms, designed to control costs and promote access to justice". The creation of all this satellite litigation increases the costs and denies access to justice. It is a drain on valuable judicial resource. The courts are already stretched and we have no doubt that they will be overwhelmed by applications to extend time (in advance and after the event) and applications for relief. This does not just affect those cases. It affects every case if

the overall amount of judicial time is reduced. All cases will be slowed down. Again there will be a windfall to insurers.

Slater & Gordon Lawyers
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