



Case No: SC-2019-APP-000182

**IN THE HIGH COURT OF JUSTICE**  
**SENIOR COURTS COSTS OFFICE**

Thomas More Building  
Royal Courts of Justice, Strand,  
London, WC2A 2LL

Date: 18 August 2021

**Before:**

**COSTS JUDGE HAWORTH**

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**Between:**

<b>Daniel Harford</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>Music Store Professional UK/DV247 Ltd</b>	<b><u>Defendant</u></b>

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**Ms Sarah Robson** (instructed by **Pinney Talfourd LLP**) for the **Claimant**  
**Mr Robert Marven QC** (instructed by **DWF Costs Ltd**) for the **Defendant**

Hearing dates: 17 June 2020  
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**Approved Judgment**

**Costs Judge Haworth:**

**Background**

1. The sole issue for determination is.  
  
“Whether the Claimant acted unreasonably in not using the Protocol for Low Value Personal Injury Claims (Employers Liability and Public Liability Claim (the EL/PL Protocol)) and whether he should be limited to the Portal costs per CPR 45.24(2)(b)(ii).”
2. By way of a consent order dated 8 July 2019 the County Court at Romford transferred this claim to the Senior Courts Costs Office and directed the listing of a preliminary issue as to whether the Claimant should be limited to portal costs.
3. On 17 June 2020 I determined the preliminary issue in favour of the Defendant, finding that the Claimant acted unreasonably in not using the portal and thus only

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CPR 45III fixed portal costs and disbursements were recoverable. On that date I gave the parties an *ex-tempore* judgment with written reasons to be follow.

4. In the light of further written submissions from Counsel, on 28 October 2020 I approved an amended order.

**Facts**

5. The Claimant brought a claim for damages against his employer following an accident on 8 April 2015. The Claimant was employed to carry out inspection and/or repair work on public address systems. Following the accident he felt pain in his groin, together with stiffness in his lower back, when lifting heavy personal address speakers, guitar amplifiers and other items. On 17 April 2015, the Claimant's GP diagnosed a potential inguinal hernia. Subsequent investigations revealed that he had also sustained two lumbar sacral prolapsed discs in his spine.
6. A letter of claim was sent on 26 May 2017 stating that the claim was not suitable for the Portal. Liability was denied on 13 September 2017. The Claimant underwent a number of investigations and treatments. Evidence was gathered in respect of both general and special damages. Part 8 proceedings were issued with a stated value of the claim between £10,000 and £50,000.
7. A witness statement from Stephen Francis Peter Green dated 11 June 2020 the Claimant's solicitor, set out how he initially valued the claim, and why he concluded that the value was initially in excess of £25,000. Whilst he formed the view that the claim was likely to be a higher value claim, once all the evidence was finalised and Counsel's advice obtained, it was apparent that the claim was no longer worth in excess of the Portal limit. The Claimant accepted an earlier offer made by the Defendant in settlement of his damages in the sum of £11,200.

**The Law**

8. The EL/PL Protocol states:

“15. The EL/PL Protocol applies to disease claims where the claim is for less than £25,000 damages but is above the fast-track limit ...”

9. Relevant provisions of the EL/PL Protocol include the following: -

“Preamble

2.1 The Protocol describes the behaviour the Court expects of the parties prior to the start of proceedings where a Claimant claims damages valued at no more than £25,000 in an Employer's Liability Claim or a Public Liability Claim. Civil Procedure Rules 1998 enable the Court to impose cost sanctions where this protocol is not followed.

Aims

3.1 The aim of this Protocol is to ensure that:

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- (1) The Defendant pays damages and costs using the process set out in the Protocol without the need for the Claimant to start proceedings.
- (2) Damages are paid within a reasonable time.
- (3) The Claimant's legal representative receives the fixed costs at each appropriate stage."

10. CPR 45.24 states the following:

"45.24(2) Subject to paragraph (2A) where a judgment is given in favour of the Claimant, but

the Court determines that the Defendant did not proceed with the process set out in the relevant protocol because the Claimant provided the insufficient information on the claim notification form.

The Court considers that the Claimant acted unreasonably -

By discontinuing the process set out in the relevant protocol and starting proceedings under Part 7; or

By valuing the claim at more than £25,000 so that the Claimant did not need to comply with the relevant protocol; or

Except for paragraph (2A) in any other way that caused the process in the relevant protocol to be discontinued; or

The Claimant did not comply with the relevant protocol at all despite the claim falling within the scope of the relevant protocol.

The Court may order the Defendant to pay no more than the fixed costs in Rule 45.18, together with the disbursements allowed in accordance with Rule 45.19."

11. CPR 44.11 states:

"44.11(1) The Court may make an order under this rule where -

a party or that party's legal representative in connection with a summary or detailed assessment fails to comply with a Rule, Practice Direction or Court order; or

It appears to the Court that the conduct of a party or that party's legal representative, before or during the proceedings, or

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in the assessment proceedings was unreasonable or improper.

(ii) Where paragraph (1) applies, the Court may:

disallow all or part of the costs which are being assessed; or.

order the party at fault or that party's legal representative to pay costs at which that party or legal representative has caused any other party to incur ...”

## **Submissions**

### **Claimant**

12. For the Claimant it was submitted that the decision not to use the Portal was a reasonable decision because the claim was felt to be worth above the portal upper limit. That decision was objectively reasonable. It was also submitted that the valuation of a claim is more of an art than a science and is a prediction of what a Court is likely to award and no more. Ms Robson submitted that the Defendant must show that the Claimant's assessment of the likely value of the claim was so unreasonable that the Court should drastically limit their costs entitlement to Portal costs.
13. Further, CPR 45.24(2) was engaged only “*where a judgment is given*” [my emphasis]. In this case the claim settled with no judgment having been entered, and accordingly CPR 45.24(2) was not applicable.

### **Defendant**

14. For the Defendant it was submitted that fixed costs apply by virtue of one of two alternative routes. First, in accordance with CPR 45.24(2)(b)(ii) by valuing the Claim more than £25,000 so that the Claimant need not comply with the relevant Protocol. In that situation, the Court may order that the Defendant pay no more than fixed costs in Rule 45.18, together with the disbursements allowed in accordance with Rule 45.19.
15. Dealing with the submission that judgment was needed to be given in favour of the Claimant, before Rule 45.24(2) is engaged, Mr Marven argued that the Claimant accepted a late Part 36 offer. There had been no further settlement of the cost position, not least because of the parties' disagreement as at the basis on which the Claimant's costs should be determined. Thus, pursuant to CPR 36.12(5) the Court can make an order for costs. It was argued that any such order constituted a judgment for the purposes of Rule 45.24(2)(b)(ii).
16. As an alternative, it was submitted that the analysis of the Court of Appeal in *Williams v Secretary of State for Business* [2018] EWCA Civ 852 4 WLR 147 lead to the same conclusion. The Appeal Court held that at where the Protocol should have

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been used, and its non-use was unreasonable, the provisions of CPR 44.4 requiring a Judge to assess costs having regard to the conduct of the parties, provided ample scope for the Judge assessing costs to allow only the fixed costs set out in the Protocol.

**Discussion**

17. At paragraph 56 of *Williams*, Lord Justice Coulson said this:

“56. In my view it is at this point at paragraphs 2.1, 3.1 and a warning at 7.59 of the EL/PL Protocol become relevant. Taken together, these paragraphs comprise a clear indication that if a claim should have been started under a protocol but was not, and it was unreasonable that the claim was not so started, then by the operation of the Part 44 conduct provisions, the Claimant should be limited to the fixed costs that would have been recoverable under the EL/PL Protocol.”
18. I had the benefit of a statement from the Claimant’s solicitor, Stephen Francis Peter Green, dated 11 June 2020 which set out the instructions provided by the Claimant to him, his initial valuation of the claim, the further medical evidence obtained by him in 2017, his reasons for issuing proceedings, allocation to track and Counsel’s advice on quantum, which valued the claim at significantly less than £25,000.
19. I am satisfied that on reviewing the facts of this case, bearing in mind an accident in 2015, a letter of claim on 26 May 2017, coupled with the fact that the second medical evidence does not appear to have been obtained until 15 January 2018, less than three months before the expiry of limitation, to proceed with the claim outside the EL/PL Protocol was unreasonable. In my judgment, the reason for the issue of proceedings on 19 March 2018 was conditioned by the expiry of the limitation period without thought to the benefits of the Protocol and its undoubted relevance in these proceedings.
20. For those reasons, I am satisfied that in accordance with the provisions of CPR 44.11, I have the discretion to disallow all or part of the costs of this claim, and accordingly the fixed costs set out in CPR 45.18 Table 6A shall apply in the sum of £4,205.
21. If I am wrong in relation to my interpretation of the facts of this case, I prefer the submissions of the Defendant to those of the Claimant. I am satisfied that by virtue of the Claimant’s acceptance of the Part 36 offer, pursuant to CPR 36.13(5) in itself constitutes a “*judgment*” [my emphasis] for the purposes of 45.24(2)(ii) CPR which is thus engaged.
22. In conclusion I am satisfied that in this case the Protocol should have been used and its non-use was unreasonable. As regards CPR 44.11 and at 45.24(2)(b)(ii), I am satisfied that these provisions provide ample scope for discretion on my part to only allow the fixed costs to set out at Protocol.
23. An amended order dated 25 November 2020 was approved by me. Time for permission to appeal is extended to 21 days from the handing down of this judgment.

