



**Neutral Citation Number: [2025] EWHC 126 (SCCO)**

**Case No: KB-2022-MAN-000260**

**SCCO Reference: SC-2023-APP-000351**

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

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

Date: 23/01/2025

**Before :**

**COSTS JUDGE LEONARD**

**Between :**

**AKS**

**Claimant**

**(A protected party by BXG her grandmother and  
litigation friend)**

**- and -**

**National Farmers Union Mutual Insurance Society  
Limited**

**Defendant**

Hearing date: 25 October 2024

**Approved Judgment**

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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COSTS JUDGE LEONARD

### **Costs Judge Leonard :**

1. This judgment addresses an application filed on 13 June 2023 by Seth Law Limited (“Seth Law”).
2. Seth Law represented the Claimant in proceedings against the Defendant, claiming damages for injuries sustained in a road traffic accident on 27 February 2017. The proceedings concluded in November 2022 with an order made by HHJ Sephton KC, sealed on 18 December 2022, approving a damages settlement of £3.7 million.
3. Paragraph 2 of HHJ Sephton’s order provided for the Defendant to pay the Claimant’s costs of the claim. Paragraph 4 required the costs payable by the Claimant to Seth Law to be subject to detailed assessment under CPR 46.4(5) and CPR 21.12(1A) (now CPR 21.12(2)).

### **The Applicable Law**

4. On its face the application of 13 June 2023 seeks an assessment under Civil Procedure Rule (“CPR”) 47 and an award to Seth Law of a success fee of “25% of the Claimant’s award”.
5. Following an enquiry made by me through my clerk, Seth Law confirmed, in an email to the court dated 3 July 2023 enclosing a copy of HHJ Sephton’s November 2022 order, that their application was actually for assessment between solicitor and client under CPR 46.4 and/or approval of a costs settlement under CPR 21.
6. The relevant provisions of the Civil Procedure Rules are as follows.
7. A protected party is a party to litigation who lacks capacity to conduct the proceedings (CPR 21.1(2)(d)).
8. CPR 21.10 provides that, where a claim is made on behalf of a protected party, no settlement, compromise or payment in respect of that claim shall be valid without the approval of the court. (Hence HHJ Sephton’s November 2022 order).
9. CPR 46.4(2)(a) provides that where money is ordered or agreed to be paid to, or for the benefit of, a child or protected party, the court must order a detailed assessment of the costs payable by, or out of money belonging to, the child or protected party (hence paragraph 4 of HHJ Sephton’s November 2022 order). The amount payable to the legal representatives by the child or protected party will, by virtue of CPR 46.4(4), be limited to that amount.
10. CPR 46.4(3) and Practice Direction 46 at paragraph 2.1 create a number of exceptions to CPR 46.4(2), none of which apply to this case. The general rule, (which does apply in this case) is that if any element of solicitor’s costs falls to be deducted from a protected party’s damages rather than recovered from an opponent, then the solicitor’s costs must first be assessed by the court. The assessment will be on the indemnity basis under CPR 46.9.
11. As the Claimant is a protected party, any proposed compromise of her claim for costs under paragraph 2 of HHJ Sephton’s November 2022 order must be approved by the court. Nor can Seth Law claim from her a success fee (which, being irrecoverable

against the Defendant, must be deducted from her damages) without that success fee first being assessed by the court.

### **The Procedural History**

12. On 31 July 2023, Seth Law sent an email to the court requesting that their June 2023 application be withdrawn as if the matter had been “dealt with” by the Claimant’s court-appointed Deputy, Mrs Coral Williams of Robinson Wilson Solicitors. They sought a refund of the application fee.
13. I replied through my clerk to the effect that there must be a solicitor/client assessment under CPR 46.4. It might, I observed, be that the assessment should proceed in Manchester rather than the SCCO, but I was unable to understand the reference to the application having been “dealt with” by the Claimant’s Deputy, because a Deputy does not have that power. Absent a better explanation, I said that I would list the matter for directions.
14. I did not receive the explanation I needed. Accordingly, I made an order listing the matter for a remote directions hearing on 27 October 2023, and requiring that Seth Law attend.
15. On the day of the hearing Seth Law sent an email requesting that it be vacated “as the matter has been settled”. I refused to vacate the hearing, which was attended by Ms Vally, a paralegal at Seth Law. I understood Ms Vally to tell me that court approval had already been obtained for a payment of Seth Law’s success fee from the Claimant’s damages. I invited her to submit evidence to that effect, and through my clerk I sent her a link to the published guidance on applications of this kind.
16. On 31 October 2023, Ms Vally sent me a copy of an order made on 22 May 2023 by District Judge Ellington in the Court of Protection. The order dismissed an application by Mrs Williams for authority to pay costs to Seth Law. The recitals to the order read as follows:

“(1) By an order dated 1 November 2022 Coral Williams of Robinson Wilson Solicitors (“the Deputy”) was appointed as deputy for the property and affairs of...” (the Claimant, who appears to have been named in the application notwithstanding the anonymity order made in December 2022).

“(2) By a COP9 application notice dated 30 March 2023 the Deputy requested authority to pay Seth law costs of £78,750 pursuant to a Conditional Fee Agreement.

(3) The application is an originating application and should be made on notice on form COP1 with all supporting documents to include substantive evidence as to why the order is needed and why it should be made.

(4) It does not appear that a professional deputy should normally require an order in these circumstances.

(5) Insufficient information has been provided and the application is procedurally incorrect.”

17. On 6 December 2023, I had my clerk send a further email to Seth Law pointing out that District Judge Ellington's order of 22 May 2023 did not support Ms Vally's assurance to me that court approval has already been obtained for a payment of a success fee from the Claimant's damages, that without court approval Seth Law was not entitled to take payment from the Claimant's damages, and that without clear evidence of court approval I would be listing the matter for further directions.
18. On 19 December 2023 Seth Law emailed a letter to the court asserting that recital (4) to District Judge Ellington's order 22 May 2023 meant that the payment of costs to Seth Law from the Claimant's damages was a matter for Mrs Williams' discretion, and that she had exercised that discretion to pay their success fee. Again they requested a refund of their application fee.
19. Seth Law's assertion as to Mrs Williams' discretion was, of course, incorrect. The provisions of the CPR to which I have referred (and to which I had already drawn Seth Law's attention) have the force of law, and the law requires that before any success fee is deducted from the Claimant's damages, it must be assessed by the court.
20. Accordingly, on 24 January 2024 I made an order reciting the reasons why the explanation given by Seth Law for deducting costs from the Claimant's damages was not accepted; listing a hearing on 11 April 2024 for the assessment of any such deduction; and giving directions for Seth Law to provide the court with the information needed for that assessment.
21. The order also provided for Seth Law, by 4 pm on 14 February 2024, to send a copy of the order to Mrs Williams and to the Claimant's Litigation Friend, and to file with the court confirmation that that had been done; and for any party affected by it (including Mrs Williams and the Claimant's Litigation Friend) to apply, within 14 days of receiving it, for the order to be set aside or varied.
22. No-one applied to set aside or vary the order of 24 January 2024. Nor, by 14 February 2024, did Seth Law provide the required confirmation that copies had been sent to the Mrs Williams and Litigation Friend. Seth Law simply ignored the court's response to their letter of 19 December 2023 and the directions given to ensure that the court was provided with the information required for the assessment of their success fee.
23. The proceedings were then delayed, and the assessment date of 11 April rendered abortive, by errors on the part of the court office. By a further order dated 11 June 2024, I restarted the process on notice to Mrs Williams and Seth Law, and relisted the assessment for 23 July 2024.
24. In the meantime, as I now know, Seth Law was closed down by the Solicitors Regulation Authority with effect from 13 June 2024, and has been in compulsory liquidation since 24 April 2024. Samira Seth, former sole director and principal solicitor at Seth Law, was referred to the Solicitors Disciplinary Tribunal on 19 December 2023 and in October 2024 was fined £7,000 and restricted indefinitely from practising as a sole practitioner, sole manager or sole owner of an authorised or recognised body, and from being a compliance officer for a legal practice or for finance and administration. The judgment of the tribunal has not yet been published.

25. Although Mrs Williams, on 22 June 2024, confirmed that the Litigation Friend had been put by her on notice of the hearing and of the court's directions, nobody attended the assessment hearing on 23 July 2024. The court was left with nothing by reference to which to judge the reasonableness of Seth Law's success fee.
26. Accordingly, on 1 August 2024 I made an order assessing at nil the amount to be deducted from the Claimant's damages. The order provided for Mrs Williams to send a copy to the Claimant's Litigation Friend, and incorporated a right to apply to set it aside or vary it.
27. Mrs Williams did apply to set the order aside, having located a number of documents which she provided to the court with a view to assisting the assessment. Mrs Williams' application was relisted for a remote hearing on 25 October 2024. The hearing was attended by Mrs Williams and, as her advocate, Mr Alexander Bunzl of counsel, for whose submissions I am grateful.

### **The Documentation**

28. The documents Mrs Williams has been able to supply are limited, comprising as they do a relatively small set of copies of correspondence, file notes and documents from the Seth Law's file, along with a set of medical records. They do however shed some light on the case.
29. From about September 2017 Seth Law acted for the Claimant under a CFA which provided for success fee of 25% of Seth Law's "basic charges". The retainer documentation, which appears to have been sent to the Claimant by post, included a form signed by the Claimant on 19 September 2017, confirming that she had read, understood and accepted Seth Law's CFA and terms of business. There does not appear to have been any real risk assessment; the success fee in the CFA refers to an entirely generic definition of risk, with no mention of the facts of the case:

"The success fee percentage reflects the following:

- (a) the fact that if you lose, we will not earn anything;
- (b) our assessment of the risks of your case;
- (c) any other appropriate matters;
- (d) the fact that if you win we will not be paid our basic charges until the end of the claim;
- (e) our arrangements with you about paying expenses and disbursements.
- (f) the arrangements about payment of our costs if your opponent makes a Part 36 offer or payment which you reject on our advice, and your claim for damages goes ahead to trial where you recover damages that are less than that offer or payment."

30. There would appear to have been a first face to face meeting on 20 February 2018 between Ms Samira Seth, Principal solicitor and sole director of Seth Law, and the Claimant and her grandmother BXG, who was to be her Litigation Friend, at which meeting BXG adopted the CFA.
31. The Defendant admitted liability on 15 May 2018.
32. The only real risk assessment I have seen is a document headed “initial risk assessment”. It is undated but refers to the Defendant’s admission of liability and to other events post-dating the CFA, including a conflict check on 12 August 2019. The risk assessment describes the Claimant as a “new client” despite the fact that Seth Law had by that point been advising and representing the Claimant for at least two years.
33. The risk assessment refers to the fact that the Claimant sustained her injuries as a passenger in a car driven by her brother, who clipped the kerb, lost control and swerved to the other side of the carriageway, colliding head on with another vehicle. It describes the claim as high value and low risk.
34. A receipted invoice dated 10 July 2023 from Seth Law addressed to Robinson Wilson (Mrs Williams’ firm) acknowledges receipt of a success fee of £73,750 (not, as stated in DJ Williams’ order, £78,750).
35. I also have the written settlement advice of Mr Stephen Grime KC, dated 18th August 2022, prepared for the purposes of court approval of the Claimant’s damages settlement.

### **Conclusions on the Application**

36. Before explaining my conclusions on the assessment of the success fee I should make two preliminary observations. First, it may well be that this application should have been made in Manchester, but if so that is a mere procedural error which does not invalidate it unless I make an order to that effect (CPR 3.10). In the light of what has happened, that would clearly be inappropriate. The application was made to this court and can be determined by this court.
37. Second, Seth Law filed with their application of June 2023 a copy of a certified bill of costs (“BOC”). The BOC was evidently prepared for the purposes of the assessment of costs payable by the Defendant to the Claimant. It is not, or not necessarily, a statement of the costs claimed by Seth Law from the Claimant. It would appear however that no complete, comprehensive solicitor/client bill was ever rendered by Seth Law to the Claimant. In consequence the BOC is the only guide available to the fees charged and disbursements incurred by Seth Law in representing the Claimant against the Defendant.
38. The BOC comes to £267,117.27. Mrs Williams has supplied an uncertified copy with rather lower figures, but I have adopted the figures from the certified version.
39. Seth Law’s application of June 2023 confirms that costs settled at £220,000. That is just under 82.5% of the total BOC. Even bearing in mind that the settlement figure would have incorporated some elements of interest and assessment costs, that indicates

a costs settlement well within a reasonable range, and there is no difficulty in approving it.

40. Seth Law's success fee of £73,750, however, raises concerns.
41. Mr Grime's settlement advice indicates that he assessed the Claimant's general damages at £200,000 and past losses at £95,000. That would put the statutory cap on Seth Law's success fee at £73,750 (25% of £295,000). That is exactly what Seth Law have charged.
42. It would appear however that Seth Law was never contractually entitled to claim from the Claimant a £73,750 success fee.
43. The CFA provides for a success fee of 25%. The BOC indicates that of the total claimed costs of £267,117.27, £130,945.70 plus VAT (totalling £157,134.84) represented Seth Law's profit costs. That is the best figure available to calculate Seth Law's maximum contractual success fee, which at 25% would be £39,283.71 including VAT. They have taken almost twice that amount from the Claimant.
44. Further, Seth Law's CFA, in standard fashion, defines the success fee as a percentage of "basic charges", defined in turn as "our charges for the legal work we do on your claim". Accordingly, their success fee must be calculated as an appropriate percentage of the basic charges actually rendered for their services to the Claimant.
45. The only evidence I have seen of Seth Law's charges to the Claimant is the invoice of 10 July 2023, which is for the success fee only (and remarkably, does not include any element of VAT, although both that invoice and the BOC carry a VAT registration number).
46. It is, however, still possible to work out what Seth Law's "basic charges" were, because they have not asked the court to approve any element of those charges not recovered from the Defendant. They have, in other words, settled for whatever was left from the £220,000 settlement figure after counsels' fees, disbursements, VAT and interest were accounted for.
47. According to the BOC counsels' fees and other disbursements come to £109,982.43. It follows that Seth Law's basic charges, inclusive of VAT, come to (£220,000 – £109,982.43) = £110,017.57. That figure stands to be adjusted by reference to accruing interest and any costs of assessment, but I do not have the information I need to make any such adjustment, which would in any event be a small one.
48. 25% of £110,017.57, including VAT, would be £27,504.39.
49. That is not however the end of the calculation. Seth Law's success fee, to be fully recoverable as against the Claimant, must be reasonable in amount.
50. CPR 46.9(3)(b) provides that a solicitor's costs are presumed to be reasonable in amount if their amount was expressly or impliedly approved by the client. That presumption is, however, rebuttable.
51. CFA success fees expressed, as in this case, as a percentage uplift on basic hourly charges, should reflect the risk to the solicitor, at the time of the CFA, of going unpaid

(see *C v W* [2008] EWCA Civ 1459). A solicitor claiming a success fee at a higher percentage than is justified by that risk will not be able to rely upon the presumption at CPR 46.9(3)(b) without informed consent from the client, and informed consent can only be given following a full and fair explanation (*Herbert v HH Law Ltd* [2019] EWCA Civ 527).

52. As to whether Seth Law's success fee reflects the risk to them, at the relevant time, of going unpaid, my view is that it does not.
53. The September 2017 CFA defines "win" widely, so that Seth Law will be paid if the Claimant derives any benefit whatsoever from her claim.
54. Nor, despite the wording I have quoted above, does the CFA incorporate any Part 36 risk for Seth Law. By "Part 36 risk" I refer to a fairly standard CFA term to the effect that if a client were to reject a formal "Part 36" offer on the solicitor's advice, and the client did not ultimately better that offer, the solicitor would go unpaid from the point where the time for accepting the offer expired. Seth Law's CFA provides only for waiver of their success fee from the point when notice of any such offer was received.
55. Given the circumstances of the accident, Seth Law's prospects of going unpaid for any period were always minimal.
56. In *C v W*, liability was admitted but quantifying the claim presented some difficulties and the solicitor had taken on the Part 36 risk. The Court of Appeal in that case assessed the success fee at 20%.
57. In this case, even given that there are always unforeseeable risks in litigation and that I am assessing on the indemnity basis, I cannot see that the circumstances could justify a success fee in excess of 15%.
58. This leaves the question of whether the Claimant or BXG gave informed consent to a success fee of 25%, well in excess of that figure. On the evidence, they did not. I have seen no evidence that at any time Seth Law discussed with either the Claimant or BXG their reasons for setting a success fee at the level they did. On the contrary, from what I have seen there was no real risk assessment at all until years after the success fee had been set.
59. On basic charges and VAT of £110,017.57, a success fee of 15%, inclusive of VAT, would come to £16,502.64. I am assessing Seth Law's success fee at that amount.
60. I will, accordingly, order that my order of 1 August 2024 be set aside and replaced with an order approving the costs settlement of £220,000 and assessing Seth Law's success fee at £16,502.64.
61. Seth Law has received a payment of £73,750. That is an overpayment of £57,247.36. I am assured (and do not doubt) that the payment of £73,750 was arranged by Mrs Williams in good faith, believing that it was due to Seth Law and on the understanding, following the Court of Protection's order of 22 May 2023, that it was within her discretion to arrange the payment in the performance of her duties as the Claimant's Deputy.



62. I am also assured (and again, do not doubt) that Mrs Williams arranged the £73,750 payment with the express authority of BXG, who had confirmed directly to Mrs Williams that both she and the Claimant agreed to it.
63. Mrs Williams was however mistaken about the scope of her discretion and the amount due to Seth Law. Nor is the approval of a Litigation Friend (or the Protected Party) determinative of the amount to be deducted from a Protected Party's damages to meet solicitors' costs. The law requires that the court determine the amount to be deducted in accordance with established principles.
64. It is incumbent upon Seth Law to repay to the Claimant the success fee overpayment of £57,247.36. In the normal course my understanding is that the repayment would be made to Mrs Williams on behalf of the Claimant. Regrettably, as Seth Law is in compulsory liquidation, it remains to be seen whether any repayment will be forthcoming.