

Bird v Acorn Group Limited

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Summary: Court of Appeal to determine the applicable costs regime for “disposal hearings”

Bird v Acorn Group Ltd

In October 2016, the Court of Appeal is set to determine the issue of costs applicable in disposal hearings.

Conflicting first instance decisions have arisen in cases which have dropped out of the MOJ Portal – either because they have “timed out” or liability has not been admitted - but have subsequently been listed for a “disposal hearing”. Typically, if a case is listed for a disposal hearing, it is not allocated to a track. Another difficulty with disposal hearings is that it is unclear which stage of the Fixed Costs Matrix such a case has reached. If a case is issued and listed for disposal before allocation, should post-issue pre-allocation costs apply or do post-listing pre-trial costs apply? Alternatively, should fixed trial costs apply, the matter having reached a conclusion? Understandably, disposal hearings have caused some confusion when it comes to costs.

In May 2016, HHJ Wood QC made a leapfrog order to send the case of Bird v Acorn Group directly to the Court of Appeal, stating as follows:

“It is apparent that there are a number of conflicting decisions from judges at first instance in relation to the application of the fixed-costs regime, and in particular whether the columns set out in the tables are to be considered individually or sequentially in stages, and whether a disposal amounts to a final hearing”.

In Bird (a public liability claim) the claimant argued for costs of £3,790 plus 27.5% of the damages plus the trial fee (i.e. the third column in Table 6D). The Defendant contended that the first column still applied, the parties reaching a settlement prior to the claimant issuing proceedings under Part 7. This amounted to £2,450 plus 17.5% of the damages.

At first instance, District Judge Campbell ruled in favour of the claimant, saying that once the matter was listed for disposal, “the case, in my view, moved into column 3...There is absolutely nothing in the rules that tells the court or the parties that they must move sequentially through the columns”.

The significance: Parties should be aware that the courts may be inclined to stay costs decisions in disposal hearings pending this decision. We will update in October!

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