

***BRUNO MANUEL DOS SANTOS MENDES V HOCHTIEF (UK)  
CONSTRUCTION LTD [2016] EWHC 976 (QB) -  
the correct application of cpr 45.49c***

**by**

**Sharan Sanghera, 3PB Personal Injury barrister**

***Held:*** The Court held that the trial advocacy fee is recoverable where a Claim is settled on the day of trial but before the trial is actually commenced.

***Facts:*** The appellant appealed against a recorder's refusal to award a fixed trial advocacy fee under the fixed costs scheme.

The appellant issued a Claim under the Pre-Action Protocol for Low Value Personal Claims in Road Traffic Accidents so that the costs were subject to the fixed costs regime set out in CPR 45 Pt.IIIA. The matter was listed for a one day trial and, on the day of trial, the parties reached settlement. A consent order was made that day and the appellant was awarded damages plus costs. The recorder refused to award the fixed trial advocacy fee as listed under CPR45.29C Table 6B Section C. He concluded that no such sum was recoverable because the case had been settled before the final contested hearing had commenced.

The appellant submitted that the settlement did not occur prior to the date of trial so that section B of Table 6B in CPR r.45.29C was inapplicable and the court had to deal with the costs under section C instead. He argued that, in any event, the claim had been disposed of at trial so the trial advocacy fee was recoverable.

The Court held that the final column in section B of Table 6B contained an obvious typographical error. The relevant heading ought to read "on or after the date of listing but prior to the date of trial". It was clear that section B did not apply to the circumstances because the case was not settled prior to the date of trial. It did not strain the language of the rule to conclude that the case was disposed of at trial, albeit by way of settlement rather than judgment. There were sound policy reasons for concluding that the interests of justice would be better served if the advocate was not penalised financially for negotiating a settlement at the door of the court. The recorder had erred and the trial advocacy fee was recoverable.

Appeal allowed.

Sharan Sanghera

2 June 2016

3 PB Barristers