

Video Transcript: What does ‘at a proportionate cost’ mean within the Civil Procedure Rules?

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Hello, my name is Rob Jago and I am the module convenor for Civil and Criminal Procedure. The question I am asking in my Vlog today is “What does ‘at a proportionate cost’ mean within the Civil Procedure Rules?”

Students who are studying the Civil Procedure Rules (CPR) as part of the module Civil and Criminal Procedure will know that the overriding objective under CPR 1.1 is to deal with cases justly. However, since 2013 and the Civil Justice Reforms on Costs which came from the Review of Costs in Civil Litigation by Sir Rupert Jackson this now includes the term ‘and at a proportionate cost’. This change was to recognize that resources are finite and there was a growing concern within the case law that proportionality should run alongside reasonableness when it comes to the awarding of costs.

Costs have historically been governed by a test of reasonableness and there were recognized shortfalls with this test. As Buxton LJ indicated in the case of *Willis v Nicolson* [2007] and I quote: ‘Proportionality played no part in the taxation of costs under the Rules of the Supreme Court. The only test was that of reasonableness.’

Since 2013 the emphasis has however changed and to illustrate this change the Senior Courts Costs Office of the High Court recently considered the case of *May and May v Wavell Group PLC and Bizarri* [2016]. The case involved the celebrity guitarist Brian May (from the pop group Queen) who, with his wife, brought an action in the County Court for private nuisance which is linked to their allegation of an excessive noise in the development of their neighbours’ basement. The claimants settled the case through the Part 36 offer regime prior to the defendants entering their defences. The settlement was for £25,000. The issue for the Court, however, was one of costs. To bring the claim the claimants had spent £208,236.54, which was nearly ten times the final settlement figure. The question for the Court was how much of these costs could be reasonably and proportionately recovered.

Master Rowley delivering judgment indicated that costs are to be assessed on the standard basis in accordance with CPR 44.3(2), which requires a two stage test where firstly any costs assessment should be proportionate to the matters in issue, even if reasonably incurred, and secondly where there is doubt as to proportionality this should be in favour of the paying party.

On that basis Master Rowley firstly reduced the costs as reasonable to £99,655.74 and then secondly considering the proportionality of the costs he reduced it further to £35,000 plus VAT.

Following this decision Brian May himself has indicated on his website that the decision is one, which is ‘likely to make it almost impossible for the man in the street to fight back for justice against the bullies who trample all over him.’ But for civil practitioners it is likely to remind them that they will need to advise their clients that where costs do significantly exceed damages an assessment will take place, which could reduce those costs dramatically. The case also serves as a useful reminder of the merits of Alternative Dispute Resolution in cases such as this because clearly there is a suggestion that mediation may have been appropriate in this case.

During this case it was asked ‘what price tranquillity?’ The answer would appear to be a hefty one and a reminder to students that civil justice is often costly and ‘at a proportionate cost’ can

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sometimes involve 'the Court wielding a blunt instrument rather than a precision tool' to conclude with the words of Master Rowley.

Thank you!