

Case Analysis

The following selection of cases are examples of results achieved:

Case:	CPD Limited v. A L (A Firm of Solicitors) 4 December 2003 SCCO
Issues:	Whether the charges of the solicitors to the client should be limited to the costs estimates given to the client. If not so limited by what amount should those charges be allowed in excess of the estimates?
Outcome:	Costs Judge Master Seager-Berry held that the charges should be limited to the costs estimates given. The solicitors were ordered to pay the costs of the defendant on the indemnity basis as the client had offered to pay 25% of the charges.

Case:	D V v. J V (F) Limited 16 June 1998 Durham County Court
Issues:	The bill of costs of the claimant for detailed assessment claimed professional fees in the sum of £61,596 of an expert Mr J a consulting engineer. The defendant's case was that it was agreed that Mr J should be paid a fee of £600 plus his expenses and such sums as might be allowed on taxation in respect of his expert evidence. Beyond the amount of £650 plus VAT there should be no allowance made as the basis of the additional claim was a contingency fee. The claimant's case was that it was agreed that he was entitled to be paid a fee at a scale rate, which was the foundation of his claim.
Outcome:	After disclosure of documents and detailed submissions the court ruled that beyond the agreed fee of £650 plus VAT no further fee could be allowed because the basis of the claim was rooted in contingency. The claimant was ordered to pay the costs of the defendant of the detailed assessment in full, as the solicitors for the claimant had wrongly certificated the bill of costs confirming that the charges in the bill of costs were no more than the claimant was liable to pay.

Case:	Stables v. City of York Council 13 October 2008 Leeds County Court
Issues:	The appeal raised two issues in relation to the detailed assessment of the claimant's costs: <ol style="list-style-type: none"> 1. Whether the District Judge was wrong to restrict the costs up to the date of an aborted fast track trial in November 2005 to the costs statement prepared for the purpose of that trial. 2. Whether the District Judge was wrong in making an order for disclosure of the claimant's solicitor's time records. <p>Before the abortive fast track trial in November 2005 statement of costs was filed by the solicitors for the claimant covering all base costs up to the date of that anticipated trial. The fast track trial was adjourned for further medical evidence to be obtained. The case then settled without trial taking place. The bill of costs for detailed assessment to November 2005 included base profit costs that were 40% higher than those in the statement of costs filed before the abortive trial. On behalf of the defendant it was asserted that the base costs of the claimant up to November 2005 should be limited to those stated in the statement of costs. The solicitors for the claimant had stated in the statement of costs</p>

	<p>that those were the defined costs of the claimant to that point. The claimant contended that in effect the District Judge imposed a retrospective costs cap; that the defendant did not provide any evidence of reliance; that in any event the fact that the costs claimed exceeded the costs estimate by more than 20% was only <i>evidence</i> that the costs were unreasonable or disproportionate and not conclusive, and that the District Judge was wrong to limit the costs up to the November 2005 trial merely on the evidence of the statement of costs.</p> <p>Given the significant difference in the times claimed in the bill of costs up to November 2005 with those in the statement of costs, it was submitted that disclosure of the time records of the solicitors for the claimant was appropriate. On behalf of the claimant it was contended that the District Judge erred in ordering disclosure because the time records were the subject of litigation privilege. The District Judge ordered the disclosure and held that the time records were not the subject of litigation privilege.</p>
Outcome:	<ol style="list-style-type: none"> 1. The court on appeal held that the District Judge was right to regard the statement of costs as a defined statement of the costs reasonably incurred up to the date of the fast track trial in November 2005; that the declaration required for such a statement places it in a different category to a mere costs estimate. 2. The court held the time records, subject to any reductions appropriate, were not the subject of litigation privilege and it was in the case management powers of the District Judge to direct their disclosure.

Case:	Miss Joanne Cohen v. Yorkshire Water Services Ltd 16 February 2005 Leeds County Court District Judge Spencer
Issues:	<p>The legal aid certificate issued to the claimant as to its scope covered all steps up to and including a trial on liability. In advance of the liability trial agreement as to liability was reached between the claimant and the defendant. The solicitors for the claimant failed to secure an amendment to the legal aid certificate to cover quantification of the claim. On behalf of the defendant it was submitted:</p> <ol style="list-style-type: none"> 1. That the legal aid certificate was spent after the agreement of liability had been reached; 2. That the claimant was not entitled to recover any costs as to quantum following the agreement as to liability against the Legal Services Commission; 3. There could not be a private retainer between the claimant and her solicitors, whilst there was a legal aid certificate technically in force; and 4. Accordingly the claimant could not recover costs as to the work done as to quantum following the liability agreement as this would amount to a breach of the indemnity principle. <p>Those representing the claimant sought to rely upon indications given by the Legal Services Commission that the work done as to quantum was covered by the certificate. Further, it was contended that because there was no liability trial an amendment to the certificate was not required.</p>

Outcome:	The District Judge held the information provided by the Legal Services Commission to the solicitors for the claimant was incorrect in law. No weight could be given to those indications. The District Judge held that the claimant never had permission to deal with quantum. This legal aid certificate was very badly handled due to a misunderstanding. All costs relating to quantum from 25 June 2003 were disallowed.
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Case:	K v. HBC 30 January 2004 & 21 April 2004 Hartlepool County Court
Issues:	At the first detailed assessment hearing on behalf of the defendant, it was proved that the bill of costs of the claimant contained serious and significant errors and false statements. These concerned significant travel costs of the solicitors for the claimant (it was found that a statement that the solicitor spent some 10 hours travelling to a meeting with the client was untrue), statements regarding grades of fee earner, charging rates and time expended. At the conclusion of the first hearing the District Judge agreed with the submission on behalf of the defendant that he should give notice to show cause why all profit costs of the claimant should not be disallowed. The solicitor for the claimant filed a statement in advance of the notice to show cause hearing. It seems that he delegated responsibility for the preparation of the bill of costs and replies to the costs draftsman.
Outcome:	The District Judge said "A line must be drawn somewhere. I am not holding that Mr Baker was dishonest. The problem is that he put his faith in the Costs Draftsman who did not warrant it. A certificate to a bill is important. It warrants that the bill is accurate and complete. The errors were significant and serious." All profit costs were disallowed. The claimant was ordered to pay the costs of the defendant. (Subsequent to the detailed assessment the conduct of the cost draftsman was reported to the Association of Law Cost Draftsmen and he was subsequently dismissed from the Association after the Tribunal found him guilty of misconduct).

Case:	F v. Y NHS Foundation Trust 18 December 2014 York County Court
Issues:	Provisional assessment of the cost of the claimant took place. The court allowed a grade A rate for the conduct of this fast track case. The court allowed a grade C rate for the unqualified cost draftsman. The individual items in the bill of costs were substantially allowed as claimed with the objections of the defendant in the points of dispute largely being overruled. The defendant proceeded to a review of the provisional assessment.
Outcome:	At the review hearing the court ruled that no more than a grade B fee earner rate was justified. The court held that the appropriate rate for the unqualified cost draftsman was the grade D guideline hourly rate. The court held that the fees charged through medical agency for medical

	<p>evidence were too high. The court significantly reduced the time claimed. The fee for the main medical report was reduced.</p> <p>The costs claimed were £23,478.99. In addition the claimant sought to recover interest on those costs and also the costs of the assessment proceedings – the costs schedule of the claimant was in the amount £4,537.46. The costs were provisionally assessed on 4 July 2014 in the amount £18,068.97. The costs were reduced to £16,043.07 at the hearing on 18 December. Whilst the claimant had beaten the first offer made, she had not beaten the second offer of the defendant. The claimant was allowed the costs of the assessment proceedings up to 21 days from the date of the second offer and ordered to pay the defendant's costs from that date.</p>
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Case:	Paul Bottomley -v- Leeds Mental Health Teaching NHS Trust 3 November 2014 Leeds County Court
Issues:	<ol style="list-style-type: none"> 1. As to the grade of fee earner it was argued on behalf of the defendant that the fee earner had no qualifications and in the absence of evidence of litigation experience the rate applicable should be the Grade D guideline rate. Counsel for the claimant argued that the work done by her justified a grade C rate. 2. Whether there was use of a medical agency. The bill of costs contained fees of a medical agency and the cost of correspondence by the solicitors for the claimant with a medical agency.
Outcome:	<ol style="list-style-type: none"> 1. The District Judge accepted that the fee earner was a Grade D fee earner and not a Grade C fee earner. He said that as she was unqualified she could not be put in at a grade high than Grade D. 2. As to the medical agency issue the District Judge told counsel for the claimant she was missing the point raised. He read the letters and held that the point was that both the solicitors for the claimant and the medical agency were charging for doing the same work. There was no evidence of any work done by the agency. The District Judge made modest allowances for correspondence by the claimant's solicitors. The fee of the agency was reduced to a figure reflecting the view of the District Judge as to what the expert might reasonably have charged. He said that bills of costs should be drawn up in a more open and transparent basis. He indicated to counsel for the claimant that she should advise her instructing solicitors of this and of his concerns at the bill as drawn. (The defendant had made a Part 47.19 offer that had not been bettered and was entitled to the costs of the assessment).

Case:	R v. Sood Costs Law Reports 520
Issues:	What amounts to "serious and complex fraud" for the purposes of triggering 200% uplift on basic legal aid rates?

	<p>The defendant in criminal proceedings faced 4 counts within an indictment of assisting another to obtain the benefit of criminal conduct. In other words, “money laundering”. The defendant was found not guilty. In relation to preparation work enhancement of 200% was claimed.</p> <p>The determining officer had refused to allow more than 100% uplift on the basis that he was not satisfied that the case concerned serious and complex fraud”.</p>
Outcome:	<p>Costs Judge Master Rogers held that this was a case of serious and complex fraud entitling the solicitors to 200% enhancement as claimed.</p>