

A selection of relevant cases: June 2015

Duty to the court

East of England Ambulance NHS Trust v Sanders UKEAT/0217/14/RN at [48]-[51]

This judgment is a reminder of three points of wider application:

- (1) that lawyers must ensure that they comply with the rules and practice directions, and be aware that a failure to do so which affects a LiP - whether or not the court is also affected - may lead to adverse consequences for the lawyer or the lawyer's client;
- (2) that lawyers should be seeking to identify practical steps that might be taken, in the interests of both the court and their own client, to assist the smoother running of a case or a hearing, including through assisting the LiP to follow what is going on and to understand the points of law to be made, and then to take any such steps as can be taken without undue cost or adverse impact on their own clients; and
- (3) that there will often be a 'duty to the court' basis for taking a particular course which benefits a LiP.

Compliance with practice directions and court orders

Court of Appeal (Re W [2013] EWCA Civ 1177), A Local Authority v. DG [2014] EWHC 63 (Fam) and LB Bexley v. V [2014] EWHC 2187 (Fam)

Compliance with court orders, including interlocutory orders, is to be expected of all parties, including LiPs.

Hobson v West London Law Solicitors [2013] EWHC 4425 QC

A High Court decision to strike out a claim as a result of the failure by the claimant, a LiP, to comply with rules and court orders, where the claimant's inaction had serious implications for the litigation process and the defendant.

Re M (Placement Order) [2010] EWCA Civ 1257 [2011] 1 FLR 1765

The Court of Appeal upheld the decision of a circuit judge to strike out an appeal, or purported appeal, against the making of a placement order for want of compliance both with the relevant rules and with court directions: per Wilson LJ: '*rules require compliance*' even where the proposed appellant is a LiP.

Costs

AQ Ltd v Holden [2012] IRLR 648

The Employment Appeal Tribunal held that a court was entitled to take into account that a party was a LiP in deciding whether to order costs against them. The following points arose:

- (1) although the law is the same whether a litigant is or is not professionally represented, the application of that law, and the court's exercise of its discretion, must take in to account whether a litigant is professionally represented.
- (2) a tribunal cannot and should not judge a LiP by the standards of a professional representative.
- (3) justice requires that tribunals do not apply professional standards to such people, who may be involved in legal proceedings for the only time in their life. They are likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser.
- (4) even if the threshold tests for an order for costs are met, the tribunal has discretion whether to make an order, and that discretion must be exercised having regard to all of the circumstances.

LiPs and legal aid funding

Q v Q; Re B (A Child); Re C (A Child) [2014] EWFC 31

In this trio of cases the President of the Family Division considered the position of LiPs who were ineligible for legal aid funding. The President concluded that if all other avenues for funding have been explored and no funding can be obtained by any other means, HMCTS should bear the cost of the funding of interpreters and the translation of documents; the funding of attendance at the hearing of an expert witness; and, if the judge is satisfied that neither the requirements of Rule 1.1 of the FPR and Articles 6 and 8 of the ECHR can otherwise be met, the funding of legal advice.

The implications of this judgment have yet to be seen. At the time of writing, HMCTS had not accepted that it should bear these costs and there is no practical mechanism for securing such funding.

'Unbundled' services

Padden v Bevan Ashford Solicitors [2011] EWCA Civ 1616

This case demonstrates the importance of advising a client properly and exercising a duty of care even if acting for a limited purpose.

Duty to the client

See Khudados v Hayden [2007] EWCA Civ 1316 @ paragraph 38:

'The question is to what extent if at all a barrister who must promote and protect fearlessly and by all proper and lawful means his lay client's best interests is bound to disclose evidence favourable to the other side. I draw the distinction between evidence favourable to the other side and law in the form of all relevant decisions and legislative provisions which may be unfavourable towards the contention which he argues. It seems to me that the better view is that a barrister would fail in his duty to his own client were he to supplement the deficiencies in his opponent's evidence. The fact that the other side is a litigant in person cannot make any difference as to the manner in which he fulfils his duties to the client, to the other side and above all to the court.....'.