

From: Michael McNally [mailto:M.McNally@warners.law]
Sent: 25 June 2021 14:47
To: 'clerk@boroughgreen.gov.uk' <clerk@boroughgreen.gov.uk>
Cc: 'mike.taylor@boroughgreen.gov.uk' <mike.taylor@boroughgreen.gov.uk>
Subject: Dispute with Fiona Barton (BOR30/5)

Hi

In addition to the letter to Pitmans agreeing to settle on the basis of the Part 36 Offer, I was also asked (by [REDACTED], I think) if I could set out the costs of litigating as opposed to settling. I last wrote to you about this on 14 May, so what I have done below is to update the figures I gave you then, to take account of the proposed settlement on the basis of [REDACTED]'s Part 36 Offer (rather than our last Part 36 Offer):

1. Case settles shortly on the basis of Barton's Part 36 Offer of 3 June 2021

a. Warners' fees

You have to date been billed a total of £22,350.00, inclusive of Warners' fees, counsel's fees, disbursements and VAT. If the case settles shortly, assume that unbilled work in progress since the last bill will come to about £3,000.00; assume therefore that Warners' total costs for the case come to £25,350.00.

b. Damages payable

[REDACTED]'s Part 36 Offer is to settle at £16,000.00.

c. [REDACTED]'s legal costs

On the basis of the estimates which Pitmans have given us, I estimate that [REDACTED]'s costs, if we agree to settle on the basis of her Part 36 offer of 3 June 2021, will be about £23,000.00 all in. In practice, I expect to knock at least 20% off [REDACTED]'s legal costs at detailed assessment (if the case has to go to detailed assessment) – assume therefore that your liability to pay [REDACTED]'s costs is about £18,500.00. **Est total £59,850 if we settle out of Court**

2. The case fights to trial

a. Warners' fees

In my email to you of 24 March 2021, I estimated that, if the case was fought all the way through to trial and couldn't be settled, then your own legal costs (inclusive of my firm's fees, counsel's fees, court fees and expert's reports) would be likely to reach £50,000.00 to £75,000.00 plus VAT.

b. Damages payable

This would be entirely up to the trial judge of course and my own view is and always has been that the trial judge would be likely to award [REDACTED] (if she won the case at all, which is not certain) far less than the £17,000.00 she is seeking and would be more like £3,000.00. There is nonetheless a risk that the judge might award [REDACTED] everything she is asking for in which case the damages payable to [REDACTED] would be about £17,000.00.

c. Legal costs payable to [REDACTED]

If the case had to be fought to trial, then it is likely that [REDACTED]'s legal costs would be at least as much as yours and probably more. You should therefore assume that [REDACTED]'s legal costs would be £70,000.00 to £90,000.00 plus VAT all in. If however, Barton won, but was awarded less than your Part 36 Offers, then she would have to pay your legal costs from the dates of those offers. Whatever cash sum [REDACTED] was awarded, I am confident that her misfeasance claims will fail and so her costs should be heavily reduced to reflect this, however much cash she is awarded.

Total costs if we fight and lose - £137,000 to 182,000

Best regards

Michael

Michael McNally

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