

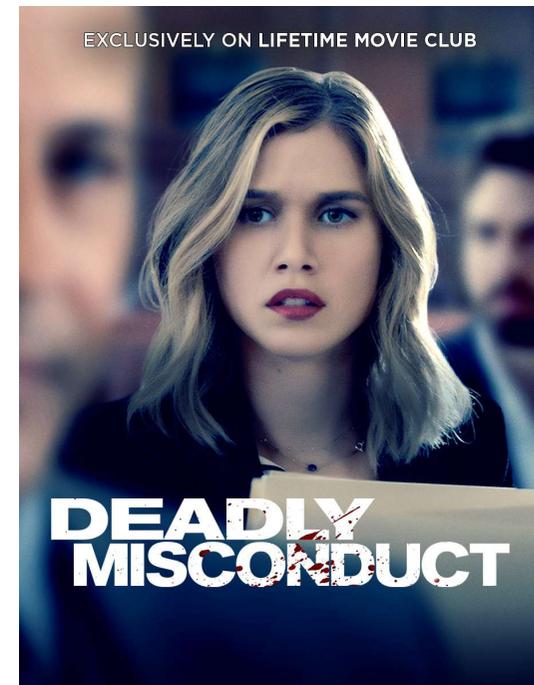
Unreasonable Conduct in Costs Proceedings

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What is unreasonable conduct?

- Misconduct
- Unreasonable behaviour
- Conduct



44.11- Powers in relation to misconduct

1) The court may make an order under this rule where –

(a) ...; or

(b) it appears to the court that the **conduct** of a party or that party's legal representative, before or during the proceedings or in the assessment proceedings, was **unreasonable** or improper.



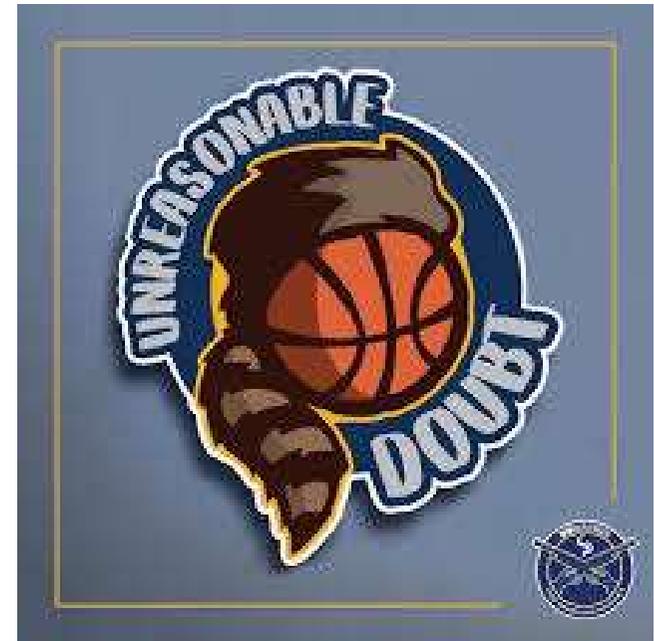
Lahey v Pirelli Tyres

It is unlikely that the draftsman intended that a legal representative could be ordered to pay costs under rule 44.14 in circumstances where a wasted costs order could not be made under section 51(6) of the 1981 Act in respect of costs incurred as a result of "any improper, unreasonable or negligent act or omission on the part of [the] legal representative"



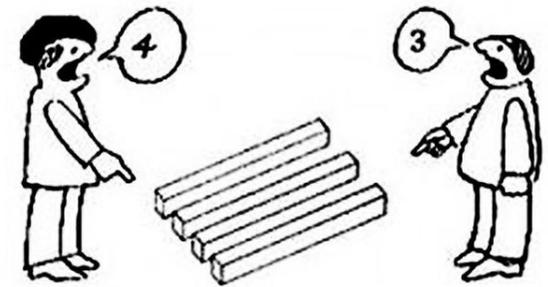
Ridehalgh v Horsefield (1)

"Unreasonable" - The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive.



Ridehalgh v Horsefield (2)

"Unreasonable" - But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently.



Ridehalgh v Horsefield (3)

"Unreasonable" - The acid test is whether the conduct permits of a reasonable explanation.

If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable



CPR 44.11

1) (b) ...the conduct of a party before or during the proceedings or in the assessment proceedings, was unreasonable...

(2) Where paragraph (1) applies, the court may –

(a) disallow all or part of the costs which are being assessed; or

(b) order the party at fault or that party's legal representative to pay costs which that party or legal representative has caused any other party to incur.

(a) disallow all or part of the costs which are being assessed

- MXX – costs of preparing the budget
- Gempride v Bamrah – (almost) all of the costs (50% on appeal)
- Singh v EUI – 50% of the costs
- Kapoor v Johal – all of the costs

An order under CPR rule 44.11 can only be made against a party or a party's legal representative. The jurisdiction is not compensatory: it is not necessary to show that the applicant has suffered any loss as a result of the misconduct. It is a jurisdiction intended to mark the court's disapproval of the failure of a party or of a legal representative to comply with his duty to the court by way of an appropriate and proportionate sanction.

(Para 14 Gempride v Bamrah)

(b) order the party at fault to pay costs it has caused any other party to incur



What is unreasonable behaviour?

CPR 27.14(1)(g) - such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably

CPR 45.13(3) - unreasonable behaviour is conduct for which there is no reasonable explanation

“It is a jurisdiction intended to mark the court’s disapproval of the failure of a party or of a legal representative to comply with his duty to the court by way of an appropriate and proportionate sanction.”

CPR 47.20(3) - What is conduct?

- (1) The receiving party is entitled to the costs of the detailed assessment proceedings except...
 - (2) ...
 - (3) ...some other order...all the circumstances...
- (a) The conduct of all the parties

CPR 44.2(5) - What is conduct?

The conduct of the parties includes –

- (a) conduct before, as well as during, the proceedings...;
- (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- (c) the manner in which a party has pursued or defended its case or a particular allegation or issue;
- (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim; and
- (e) whether a party failed to comply with an order for alternative dispute resolution, or unreasonably failed to engage in alternative dispute resolution.

CPR 47.20 – (Non) offers and conduct?

PD47 para 8.3 - The paying party must state in an open letter accompanying the points of dispute what sum, if any, that party offers to pay in settlement of the total costs claimed. The paying party may also make an offer under Part 36.

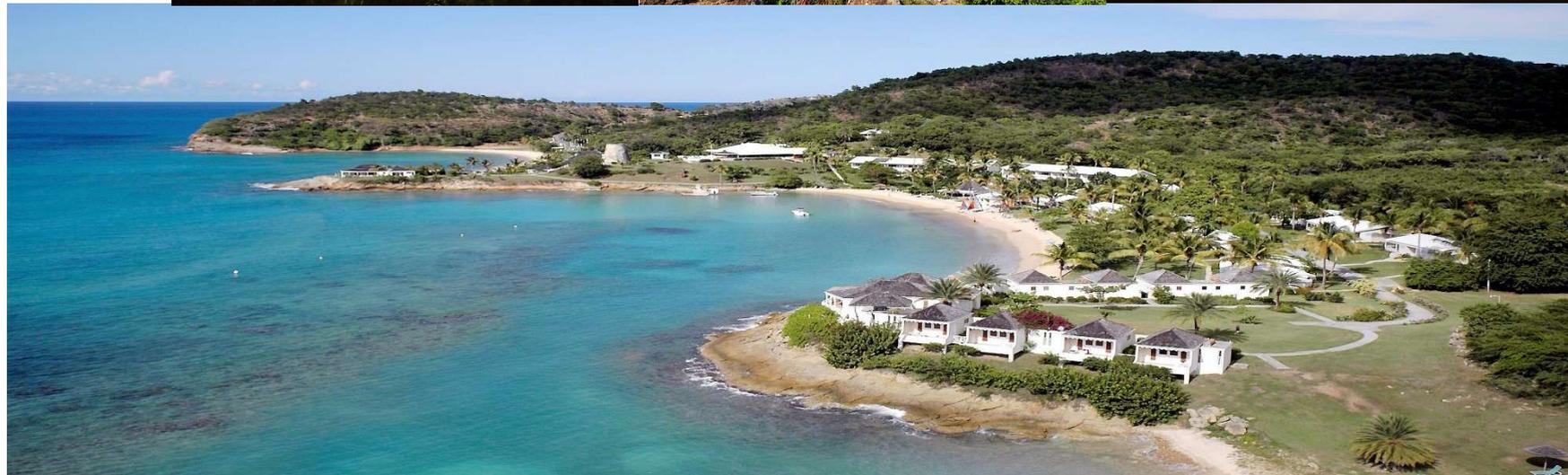
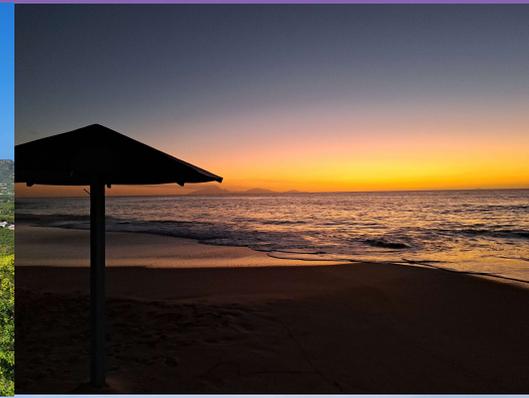
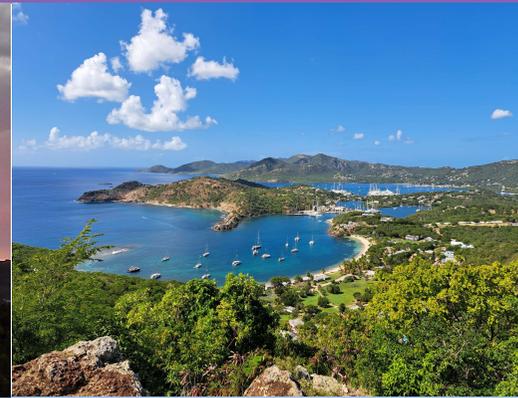
PD47 para 19 - Where an offer to settle is made, whether under Part 36 or otherwise, it should specify whether or not it is intended to be inclusive of the cost of preparation of the bill and VAT...

TRX v Southampton FC [2022] EWHC 3392 (KB)



Finally...

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