

Proportionality

Sarah Lambert QC

Proportionality

Stevens v Watts (per Lownds v Home Office)

“In modern litigation, with the emphasis on proportionality, there is a requirement for parties to make an assessment at the outset of the likely value of the claim and its importance and complexity, and then to plan in advance the necessary work, the appropriate level of person to carry out the work, the overall time which would be necessary and appropriate spend on the various stages in bringing the action to trial and the likely overall cost. While it was not unusual for costs to exceed the amount in issue, it was, in the context of modest litigation such as the present case, one reason for seeking to curb the amount of work done, and the cost by reference to the need for proportionality.”

Proportionality

Costs Practice Direction 11.1 & 11.2

- ▶ *“The relationship between the total of the costs incurred and the financial value of the claim may not be a reliable guide.*
- ▶ *A fixed percentage cannot be applied in all cases to the value of the claim in order to ascertain whether or not the costs are proportionate.*
- ▶ *In any proceedings there will be costs which will inevitably be incurred and which are necessary for the successful conduct of the case.*
- ▶ *Thus in a modest claim the proportion of costs...may even equal or possibly exceed the amount in dispute.”*

Proportionality

Kazakhstan Kagazy v Zhunus [2015] EWHC 404 (Comm)

“The touchstone is not the amount of costs which it was in a party’s best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances.”

Proportionality

CPR 44.3(5)

Costs incurred are proportionate if they bear a reasonable relationship to-

- (a) the sums in issue in the proceedings;*
- (b) the value of any non-monetary relief in issue in the proceedings;*
- (c) the complexity of the litigation;*
- (d) any additional work generated by the conduct of the paying party; and*
- (e) any wider factors involved in the proceedings, such as reputation or public importance.*

Proportionality

Jackson Review Final Report

“5.5...Proportionality of costs is not simply a matter of comparing the sum in issue with the amount of costs incurred, important though that comparison is. It is also necessary to evaluate any non-monetary remedies sought and any rights which are in issue,

in order to compare the overall value of what is at stake in the action with the costs of resolution.”

Proportionality

Jackson Review Final Report

*“5.6 The comparison exercise set out in the previous paragraph produces a **strong indication** of whether the costs of a party are proportionate.*

*Before coming to a **final conclusion**, however, it is also necessary to look at the complexity of the litigation.... It is also relevant to consider conduct and any wider factors, such as reputational issues or public importance.”*

BNM v Mirror Group Newspapers

May v Wavell Group & Bizarri

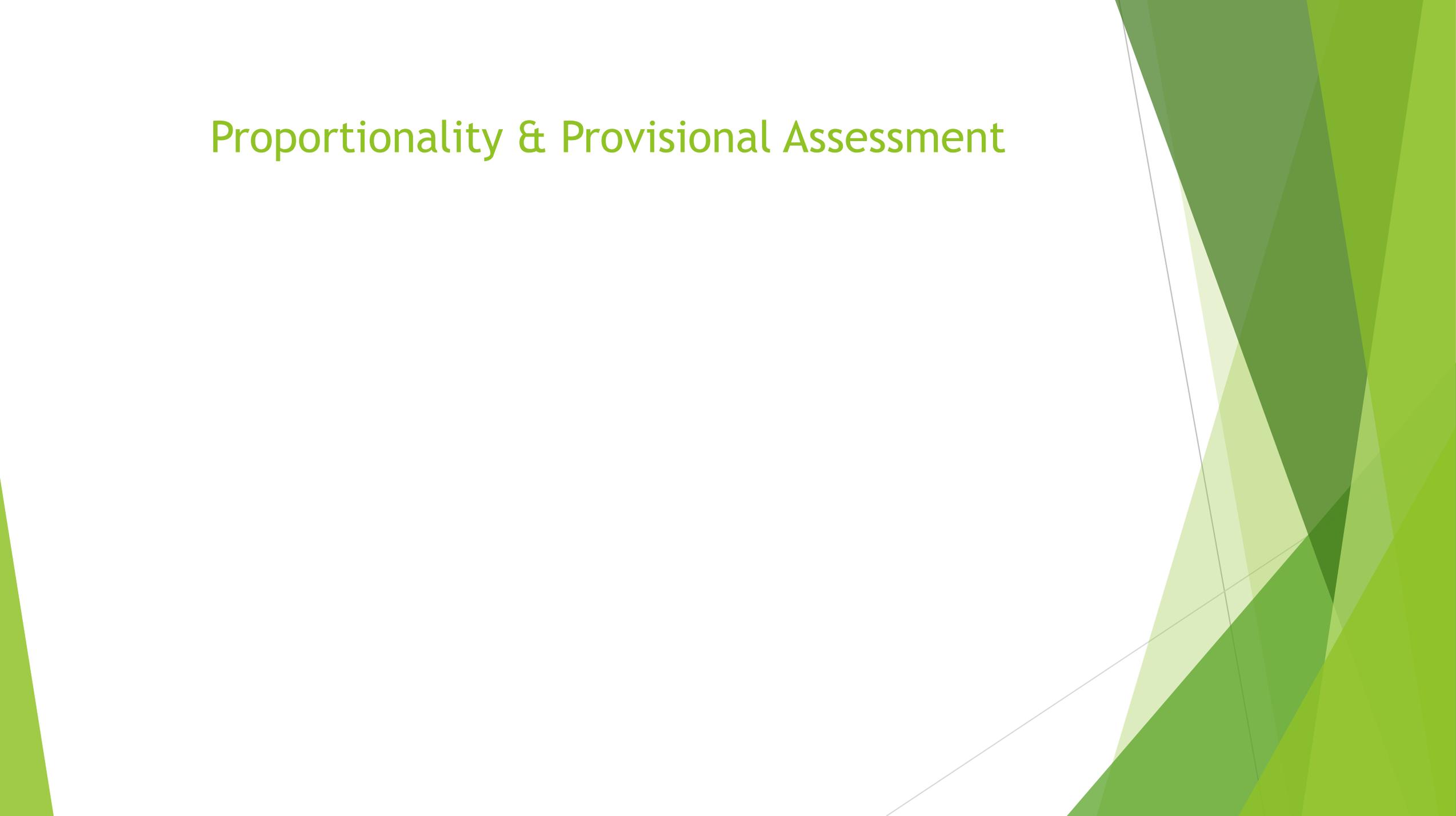
Proportionality & Additional Liabilities

BNM v MGN [2017] EWCA Civ 1767

Proportionality & Summary Assessment

K v K [2016] EWHC 2002 (Fam)

Proportionality & Provisional Assessment

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Proportionality & Detailed Assessment

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Detailed Assessments

- ▶ *Topping and tailing*
 - ▶ *Lownds test and Jackson test*
- ▶ *44.3(2)*
 - ▶ *Reasonableness and then proportionality*
 - ▶ *Proportionality trumps reasonableness*
- ▶ *Phoney wars in detailed assessments*

Proportionality & The Future

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