

THE IMPLICATIONS OF HIRACHAND V HIRACHAND

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The Decision

1. Costs are decided at the end (after any award)
2. Success fees cannot be claimed as needs
3. The whole of the CPR (including P36) applies to 1975 Act claims



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Context

Estate = £554,000

Award = £138,918

Costs (summarily assessed) = £80,000

Success Fee = £16,750 (of £48,175 sought)

Total = **£235,668** (around ½ the estate)

Costs = 70% of the award itself



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History

Of awarding costs as part of the Award:

- *Lilleyman v Lilleyman* [2013] Ch 225, then [2012] EWHC 1056.
- *Jassal v Shah* [2021] EWHC 3552, then [2024] EWHC 2214



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History

Of Success Fees

- Unlawful (pre s58 Courts and Legal Services Act 1990, but mainly before 1998)
- Lawful and recoverable (post s58 Courts and Legal Services Act 1990, but mainly after 1998)
- Lawful but irrecoverable (post 'Jackson', LASP 2012, inserting s58A)



Discussion

- Can the court consider 'costs' as part of the Award?
- MCA Analogy (see esp Court of Appeal decision)
- The effect of s58A(6) – what is a 'costs order'?



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Following on

Damage Based Agreements:

are unlawful where the outcome is not a sum “recovered in respect of the claim or damages”

Query application to 1975 Act claims

Reeves v Frain [2025] EWHC 185 (SCCO)



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Implications

To Consider (and discuss!):

- Low Value and Low Merit Claims
- The use of P36 offers – Claimant and Defendant
- When and how to mediate
- The perilous nature of trials

