



Is a strict definition of “proportionality” something that we really need ?

Section 2.8 of the Proposals for Reform of Civil Funding addresses the subject of proportionality of costs.

“Proportionality “ is a concept that has many definitions. It can be widely and narrowly interpreted but whichever way it is interpreted, it serves no purpose whatsoever.

Many things in life cost a disproportionate sum of money but often such a cost is unavoidable.

Costs can reach disproportionately high levels not because of the receiving parties conduct but rather because of the paying parties conduct. Therefore, why should the latter automatically receive a windfall because costs appear “dis-proportionate” ? Clearly it shouldn’t but this is often what happens when Courts weigh up what is and what is not “proportionate” (rather than taking account of the fact that the paying parties conduct is often the cause for costs escalation).

The latest proposals for reform suggests that “proportionality” should be given a stricter definition. No it should not. It should be abandoned as a lost cause.

If efforts are being made to bring into effect a new system of funding, it should not be hampered by a misguided obligation to ensure that the concept of “Proportionality” is involved.

Costs can be assessed by Costs Judges perfectly adequately without an academic concept being imposed upon them. They are fully aware of what costs should and should not be allowed. Costs Judges should be permitted to undertake an unfettered costs assessment without being constrained by an obligation to apply theoretical principles.

I am not suggesting that costs should be permitted to rise to ridiculous levels – I am merely suggesting that “Proportionality” as a concept has demonstrably failed and we should now replace it with the principle that costs which were “avoidable” should be disallowed. This would be a fairer way of assessing the amount that should be paid and controllable by Costs Judges. If it transpires that the amount payable exceeds damages, so be it.

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