Case Note: *Spicer v Greene King Brewing and Retailing Limited* [2026] EWCC 18

Introduction

1. The judgment in *Spicer v Greene King Brewing and Retailing Limited* [2026] EWCC 18 contains guidance for practitioners on the correct tests to apply when determining the deduction of Conditional Fee Agreement ("**CFA**") success fees and After the Event insurance ("**ATE**") premiums, in personal injury claims brought on behalf of children.

2. All paragraph references in this note are to those in the judgment unless otherwise stated.

Facts

3. The Claimant, a child then aged 4, had visited a pub owned by the Defendant. While playing in the pub garden, the child tripped on uneven paving slabs and suffered a nasty gash to his forehead. His wound fully healed within two months, and he was left with a faint scar below his hairline which was visible on close inspection.

4. The Claimant's mother acted as the Litigation Friend. The pub manager admitted liability for the accident straight away and offered the child's mother some vouchers to spend on a meal at the pub on a future occasion. The child's mother thought that vouchers were insufficient compensation for the injury and had emailed the Defendant who passed her email on to their Claims Handling Agents. They advised that they would deal with the claim but any award of damages would have to be approved by the Court as they were sought for a child. They asked her to instruct solicitors to get a medical report to forward to them so that they could settle the claim.

5. The solicitors advised the Claimant's mother to sign up to a CFA and to take out an ATE insurance policy. They instructed a medical expert through their wholly owned subsidiary medical reporting agency. District Judge Lumb described the claim as a "*very straightforward Occupiers Liability personal injury claim*" (§10) and that "[a]*ll the solicitors had to do was to advise on funding, obtain a medical report with copies of the notes and records, complete the online minor injury portal Claim Notification Form and then provide a copy of the medical report to the Defendant and negotiate settlement and a formal written advice on settlement for the benefit of the Court*" (§11).

6. A settlement of £10,000 was agreed between the parties and approved at the infant approval hearing. The fixed costs had been agreed prior to the hearing. The only further issue for the Court to consider was the request for a deduction of the success fee under the CFA and of the ATE premium set at 10% of the recovered damages plus insurance premium tax ("**IPT**").

7. A schedule of solicitor and own client costs claimed £13,316 worth of profit costs with recorded time of 73.1 hours incurred between 18 fee earners. The CFA and Risk Assessment assessed the percentage success fee at the maximum 100%. As 100% of £13,316 would be greater than 25% of the damages (ie £2,500), a success fee of £2,500 was sought to be deducted together with the ATE premium including IPT of £1,120. This meant total sought deductions of £3,620 (ie 36.2% of the damages). District Judge Lumb was "*sceptical that even on a solicitor and own client indemnity basis that £13,316 worth of costs could have been reasonably incurred and be reasonable in amount and the success fee percentage of 100% was*

obviously too high" (§16). The Court directed that the solicitors file a complete copy of their file of papers for inspection and assessment.

8. A finding was made that the Litigation Friend did not give fully informed consent to the charging model (§18), as explained further below at §22 below. The Court carried out a summary assessment on the indemnity basis of the reasonably incurred and reasonable in amount solicitor and own client costs.

9. The Court concluded that the case could and should have been run by the Grade D fee earner with supervision from a Grade B fee earner and the reasonably incurred time would have been 15 hours at Grade D and 2 hours at Grade B (§27). The base costs should have been no more than £3,000.

10. The deduction of the ATE premium was disallowed (§29) and the appropriate deduction of additional liabilities from the Claimant's damages was limited to a success fee of 11% (totalling £330 plus VAT) (§28).

Analysis

11. District Judge Lumb stated that "[i]*t would appear that from time to time, and perhaps with surprising regularity, both practitioners and members of the judiciary have not applied the correct tests in dealing with these issues*" (§2). The remainder of this note provides a summary of the practical points that should be borne in mind in personal injury claims brought on behalf of children when dealing with: (a) ATE premiums; and (b) success fees, as highlighted in the judgment.

<u>ATE premiums</u>

12. So far as ATE premiums are concerned, these are either to be allowed in full or disallowed unless judges have before them evidence from actuaries or insurance underwriters as to appropriate levels of premiums (§3). Such expert evidence is rarely, if ever, produced.

13. When determining whether or not to allow the deduction of an ATE premium from a child's damages, the Court will consider whether it was an expense which was <u>reasonably incurred</u>.

14. The Court asked what risk there was to insure against where the solicitors' own client profit costs are covered by the CFA. The Defendant's Claim Handling Agents had told the Litigation Friend that a Court hearing was necessary, so there was said to be no risk of failing to recover that. The Claims Handlings Agents had also explained that a medical report was required and that the Litigation Friend should instruct solicitors to obtain one, which she did. All disbursements were paid by the Defendant as part of the proposed settlement and the Court found that there was no real risk that they would not do so. The only possible risk of an adverse costs order was in the event of failing to beat a Part 36 offer but given that approval by the Court was always going to be required, that risk was "*practically non-existent and certainly didn't justify the expense of a premium to be calculated as 10% of the recovered damages + IPT of £1,100*" (§29).

15. Practitioners should consider the risks to the claimant that the ATE premium is seeking to reduce and what costs the opponent has told the claimant to incur and/or has agreed to pay in the context of the facts of each case. There will of course be claims where ATE

premiums are justifiable, but they may be difficult to justify in the more straightforward and lower risk cases with a CFA in place.

CFA success fees

16. When calculating the appropriate CFA success fee, the Court will consider the appropriate level of profit costs charged by the solicitors and whether these have been reasonably incurred and whether they are reasonable in amount. That figure is then multiplied by the appropriate percentage success fee based on the risk of losing the case (§4). When assessing the appropriate percentage, the Court has to consider any risk assessment undertaken by the solicitors and whether that was reasonable given the state of knowledge about the case at the time the assessment was carried out. The figure is then compared with 25% of the recovered damages for pain and suffering and loss of amenity and any past special damage loss. If it exceeds 25% of the damages, the success fee is then capped at that figure. If the calculated figure is less than 25% of the damages to be awarded, then that lower figure represents the success fee. It is strongly recommended that practitioners carry out a risk assessment when calculating the success fee and that clients see the assessment, are advised on it and that they approve the success fee with that in mind. If a risk assessment is not carried out, practitioners should be able to demonstrate how they calculated the success fee and how the client's approval was obtained. Per *Herbert v H H Law Ltd* [2019] EWCA Civ 527, if a risk assessment was not undertaken, the solicitor needs to obtain informed consent from the client to satisfy CPR 46.9(3) (per §38 of that judgment). Such informed consent was informed approval given following a full and fair explanation to the client (per §37 of that judgment).

17. The Court found that a success fee of 100% could not be justified in this case given the minimal risks involved in the case being unsuccessful (§28). Allowing for the minimal risks involved and taking into account the deferment of not being able to charge until the conclusion of the case, a more realistic assessment of the prospects of success was found to be 90% which applying the ready reckoner equated to a success fee of 11%. The Court concluded that the appropriate success fee would be 11% of £3,300 (ie the base costs that were decided at §27 and referred to at §9 above), which totals £330 plus VAT (§28).

18. The Court noted that where practitioners often appear to have fallen into error is to assume that the success fee will always amount to 25% of the relevant damages. If that was the correct approach, it would risk being a contingency fee which is unlawful and irrecoverable (§5). The cap of 25% should not be regarded as the default success fee and it may well be difficult to justify in low-risk claims.

19. Another common error by practitioners that was noted is where details of the solicitor and own client base costs are not produced (§5). This prevents the Court from being able to calculate an appropriate success fee and would lead to no success fee being deducted from the damages. To avoid this, sufficient details of the profit costs should be provided to the Court to justify the reasonableness of those costs.

20. The judgment also refers to a reported common error made by judges when assessing the appropriate success fee, namely expressing the appropriate success fee as a percentage of the damages, rather than assessing the risk of losing the case (§6). It is important for

practitioners to ensure that the success fee in the CFA is recorded as a percentage uplift of the amount that would be payable if there was no CFA, as opposed to a percentage of the damages.

21. District Judge Lumb refers to a "*disturbing trend amongst some solicitors to sign clients up to hourly rates which are significantly higher than the guideline hourly rates provided by the SCCO and claim to have recorded time far in excess of what could be objectively considered to be reasonably incurred and reasonable in amount*" (§7). This results in the base profit costs being significantly higher than reasonable and "*inevitably draws suspicion that this practise is deliberately designed to ensure that no matter what percentage success fee the court may assess as being reasonable (often significantly less than the permissible maximum of 100%) the 25% cap on deduction from the damages will always be reached*". This judgment is a useful reminder of the need to ensure that fees are reasonably incurred and reasonable in amount to the claim that is being pursued. Further, hourly rates should reflect the complexity of the case.

22. Reference is made to a witness statement included in the bundle for the original approval hearing of the Litigation Friend "*which was clearly a template statement prepared by the solicitors and not in her own words and therefore to be viewed with some degree of caution as its contents were obviously designed to be self-serving for the solicitors about the choice of funding model and ATE insurance*" (§18). It is further noted that it was clear to District Judge Lumb that the Litigation Friend "*didn't really understand what was in the statement or its meaning and effect and that she had been conditioned to expect that 25% of* [the child's] *damages would be deducted for the success fee as the norm*" (§18). This is a helpful reminder of the need to comply with the requirements of CPR 21 in proceedings involving children and protected parties, and to ensure that clients receive information in a way that they can understand and that they are in a position to make informed decisions about the services they need. Specific reference is made to the Warning Notice published by the Solicitors Regulation Authority on 28 January 2026 regarding "no-win, no-fee" and other fee arrangements in high-volume consumer claims, available here, at §§22-24 and 31-32. Costs and fee arrangements can be complex and confusing for many clients. Practitioners should ensure that information on the success fee is provided in a clear and comprehensive way before a client signs the terms of agreement, and such documentation is available to be relied upon in Court if needed. If oral advice is given, practitioners should keep a written record of this to demonstrate that informed consent was given. Success fees must also be justifiable, fair and reasonable.

Conclusion

23. The postscript to the judgment notes that "[s]*olicitors who are acting in this way* [ie where costs are artificially inflated to ensure that the 25% cap was always reached] *through their business models have been warned that the Courts will remain vigilant and the next step may well be investigation by the SRA given the Warning Notice of January 2026*" (§32). This judgment serves as a useful reminder of ensuring that practitioners are acting in their clients' best interests.

Kitty Kirton

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