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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**21/10/2025**

IN THE COUNTY COURT FOR NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE, BELFAST

BY THE DISTRICT JUDGE

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BETWEEN:

PAUL DICKS

Plaintiff

and

FIRST CENTRAL UNDERWRITING LIMITED
(TRADING AS 1ST CENTRAL UNDERWRITING)

Defendant

_____

Michael Ward (instructed by JMK Solicitors) for the Plaintiff
Andrew Palmer (instructed by Horwich Farrelly Limited Solicitors) for the Defendant

_____

DISTRICT JUDGE DUNCAN

Introduction

[1] This is an application ("the application") issued on behalf of the plaintiff under Order 21 Rule 2(1) of the County Court Rules (Northern Ireland) 1981 (as amended) ("the Rules") which I heard on 6 October 2025. In the application the plaintiff seeks settlement of his costs due from the defendant following the acceptance by the plaintiff of a lodgment made by the defendant in this action.

[2] Order 21 Rule 2(1) provides as follows:

> "2.-(1) A defendant in any action may, subject to this Rule, upon giving notice to the plaintiff in Form 97 lodge in court in accordance with paragraph (2) such sum of money as he thinks sufficient to satisfy the plaintiff's claim, together with an undertaking in writing to pay to the plaintiff such sum in respect of costs and expenses reasonably incurred by the plaintiff up to the date of lodgment as may be agreed upon between the parties, or in default of agreement as may on the application of either

party in form 99 and, if necessary, after both parties have been heard, be settled by the district judge."

[3] The background and relevant chronology are not in dispute. A civil bill was issued by the plaintiff on 12 April 2025 in which he sought £30,000 damages for personal injuries loss and damage which he had sustained as a result of the alleged negligent driving of the defendant's insured on 10 July 2024 at Old Church Road, Newtownabbey. The defendant's solicitors entered a notice of intention to defend on 28 April 2025 and served a notice for further and better particulars on the same day. The plaintiff's solicitors served their replies to the defendant's notice on 4 June 2025 together with the plaintiff's notice requiring particulars of defence. The defendant's solicitors served their replies to the plaintiff's notice on 10 June 2025. On 25 June 2025, the defendant's solicitors made a lodgment in court of £11,880.00 in satisfaction of the plaintiff's claim and on 10 July the plaintiff's solicitors served a notice of acceptance of the lodgment. At that stage a certificate of readiness had not been lodged.

[4] On 10 July 2025, the plaintiff's solicitors raised their bill of costs and on the same date the defendant's solicitors emailed the plaintiff's solicitors disputing two aspects of the bill of costs, namely;

(a) the solicitors' professional fee which was marked on the full defended county court scale; and

(b) the fee for drafting the notice requiring particulars of defence.

[5] No agreement having been reached between the parties on either of these items, this application was lodged with the court on 31 July 2025.

[6] On the direction of the court, the parties lodged written submissions, and I am grateful to both counsel, Mr Ward for the plaintiff, and Mr Palmer for the defendant, for their helpful written submissions which they supplemented with oral submissions during the course of the hearing.

[7] Dealing first with the plaintiff's solicitors' professional fees, both counsel referred the court to the judgment of District Judge Wells in *Cathcart v McClay* [1999] 3 BNIL 78. That case also involved a civil bill action claiming damages for personal injuries arising out of a road traffic accident. Following the service of replies to the defendant's notice for further particulars, to which were exhibited to the medical reports forming the plaintiff's medical evidence, the plaintiff served a certificate of readiness. Thereafter, the defendant made a lodgment which the plaintiff subsequently accepted. A number of issues arose out of the bill of costs which the plaintiff's solicitors tendered but of relevance to the instant case was the issue of the solicitors' fees. As in this case, the plaintiff's solicitors claimed the full county court scale fee for a defended action. After conducting a survey of the work done, District Judge Wells concluded :

> "As neither solicitor has indicated any particular difficulty in this claim, I hold that the proper fee ought to be ¾ of the defended scale."

[8] The plaintiff's bundle of authorities includes a letter dated 7 January 2003 written by the learned District Judge to a firm of solicitors who are not involved in the instant case. The letter sets out the judge's recollection of the context in which the decision in *Cathcart* was given. He recalled that both sides of the Belfast Solicitors Association litigation team wanted clarification of the position on costs when a lodgment had been accepted. The decision in *Cathcart* that in cases where there was "no particular difficulty" the payment of ¾ defended scale costs was the appropriate award for costs, appears to have provided the clarity sought. There is no record of the decision having been appealed nor has either counsel been able to furnish an example where a court has awarded more than ¾ scale costs on an application under Order 21 rule 2(1) in the twenty-five years that have elapsed since the decision in *Cathcart* was delivered. Recently, however, the court was informed a district judge made an award of full scale costs, but the detailed facts of that case were not opened to the court in the present application.

[9] Mr Palmer's submission on this issue is, perhaps predictably, succinct. He submits that in the instant case no particular difficulty arises, no counsel had been instructed, no certificate of readiness had been served and that the plaintiff's entitlement in these circumstances is to ¾ of defended scale costs.

[10] Mr Ward takes issue with that, his primary submission being that the District Judge, in the circumstances of the instant case, has no discretion to award professional fees other than the appropriate scale fee. He relies on Order 55 Rules 2(1) and 7(1) and (2) which provide:

> "**2.**—(1) Subject to Rule 7(2), in all actions, suits and matters and other proceedings there shall be payable—
>
> (a) to counsel and solicitors, costs according to the scales set out in Appendix 2 and subject to the provisions hereinafter in this Order specified;
>
> (b) to or in respect of witnesses, fees and expenses subject to the provisions hereinafter in rule 6 specified."
>
> **7.**—(1) In any suit or proceedings for which no scale of costs is prescribed, the amount of costs shall be in the discretion of the judge or district judge as the case may be.

> (2) Where, in any suit or proceedings for which a scale of costs is prescribed, the judge or district judge as the case may be is satisfied that any party has unreasonably and for the primary purpose of increasing his costs included in his claim an amount in respect of any undisputed loss or damage, the judge or district judge as the case may be may reduce the amount of costs payable to that party by such amount as he shall think fit."

Rule 7(2) does not apply to the circumstances of this case.

[11] The fact that scales are provided in Appendix 2 of the Rules for cases such as the instant case, Mr Ward argues, is important because this case cannot be regarded as a case falling within Order 55 Rule 7(1) namely a case " for which no scale of costs is prescribed." The logical outworking of Mr Ward's submission is that *Cathcart* was wrongly decided. Although this conclusion is not explicit in his written submissions it is clearly implicit and was orally conceded by Mr Ward during the hearing of the application.

[12] Mr Ward also places reliance on the decision of Kinney J in *Fermanagh and Omagh District Council v O'Neill and others* [2024] NICty 2. In that case, heard in the County Court, the learned judge had dismissed an application made by the plaintiff for a declaration of a public right of way under the provisions of the Access to the Countryside (NI) Order 1983. The defendants contended that the court had a discretion to award substantial costs which were well in excess of the relevant scale fees for applications of that nature. They relied principally on paras 1 and 6 of Part VIII of Appendix 2 of the Rules which provided:

> "1. Subject to the judge or district judge's discretion, the following Rules shall be applicable to the costs of equity and title suits and proceedings under Articles 13 and 14 of the Order.
>
> 6. Where, having regard to the work actually performed, the amounts provided under the relevant scale are in the opinion of the judge or district judge inadequate, he may for any particular case make a special order allowing such costs and expenses as he may think just."

[13] The learned judge held that he had no discretion to assess costs outside the scale costs provided for in Part VIII of Appendix 2. Mr Ward referred the court to the following passage in the judgment:

> "[30] To read the statutory provisions as asserted by the defendants creates a conflict between rule 2 of Order 55

> and paragraphs 1 and 6 of Part VIII of Appendix 2. I am satisfied this is not the correct approach. Any discretion available to the judge is defined within Appendix 2, and that discretion is then bound within the terms of Appendix 2. The discretion on costs stays within the parameters of the scales. If the discretion were to move outside those parameters, then it would conflict with the principle of the scale costs regime and the "swings and roundabouts" principle inherent in the County Court statutory scheme.
>
> [31] I am satisfied that there is no inherent jurisdiction to assess costs or to direct taxation in the County Court. Any necessary jurisdiction is found within the terms of the rules and there is no need to imply any further discretion."

[14] Mr Ward further submitted that if it was intended that a plaintiff, upon acceptance of a lodgment, was only entitled to recover a proportion of the County Court scale costs, then this would have been explicitly provided for in the Rules in the same way that the Rules provide for 50% of the defended scale in cases of undefended assessment of damages [Order 55 Rule 14(3)] and specify the proportion of scale fees that a plaintiff (a) can recover and (b) must pay to the defendant's solicitor, in cases where he is unsuccessful in beating a lodgment [Order 21 Rule 4].

[15] On an analysis of the Rules, I have come to the conclusion that Mr Ward's submission cannot be sustained.

[16] Order 55 Rule 1 provides:

> "A decree granted by a county court shall, except as otherwise provided by any statute or rule, carry such costs as are provided by this Order."

[17] Order 55 is, thus, subject to other provisions of the Rules. Clearly, it is subject to Order 21 which creates a discrete regime for dealing with costs where a lodgment has been made. Mr Ward recognises that position when he references, in his submissions, the regime created by Order 21 Rule 4 for apportioning liability for costs when a plaintiff does not beat a lodgment. I am satisfied that Order 21 Rule 2(1) is another such example. The provision that a defendant making a lodgment must provide an undertaking to pay the plaintiff "such sum in respect of costs and expenses reasonably incurred by the plaintiff up to the date of lodgment" clearly, in my judgment, contemplates that the reasonably incurred costs may well be a sum less than full scale costs. The reference to the costs incurred up to the date of lodgment implies that the reasonable costs may vary depending on the stage proceedings have reached when the lodgment is made. Thus, when the parties fail

to agree on what the reasonable costs are and application is made to the district judge to settle the costs the district judge has, in my judgment, discretion to assess those costs bound only by the criterion of reasonableness and by the parameters of the defended scale. I consider that District Judge Wells was correct in regarding Order 21 Rule 2(1) as conferring a discretion as to costs. Furthermore, I regard this conclusion as being entirely in accord with the guidance provided by Kinney J in the *Fermanagh and Omagh District Council* case. The discretion created by Order 21 Rule 2(1) cannot encompass an award of costs that exceeds the parameters of the relevant scale in Appendix 2.

[18] What award would, in this case, reflect the costs reasonably incurred by the plaintiff at the time of the lodgment? Mr Ward submits that, should the court find that it has a discretion under Order 21 rule 2(1), then, in the particular facts of this case, that discretion should be exercised to award full scale costs. He submits that since ¾ scale costs are generally recovered from an insurer in pre-proceedings settlements over £5,000, the exercise of the discretion when the plaintiff has been put to the additional inconvenience of having to issue proceedings and has expended time and resources in litigating the case, should never result in the award of the same fraction of costs as would have been recovered in a pre-proceedings settlement.

[19] With respect, I consider this argument to be misconceived. There may be significant commercial considerations which motivate insurers to make a generous offer to the plaintiff's solicitors in respect of costs before the issue of proceedings. There are the administrative savings to be gained in concluding a claim more promptly than otherwise. There are the considerable savings of avoiding the necessity of instructing solicitors and ultimately counsel. There are the savings, in some cases, of not engaging expert witnesses or bearing the expenses of the attendance at trial of witnesses of fact. Such considerations lie outside the purview of the Rules. However, the issue of proceedings, bringing the claim within the costs regime of the Rules, resets the costs calculations for the parties. If judgment is obtained in default and damages are assessed by the judge then the Rules provide for solicitor's costs based on 50% of the defended scale to be awarded, subject to the discretion of the judge to increase that award [Order 55 Rule 14(5)]. Similarly, where a lodgment is made and the plaintiff, at the subsequent hearing, fails to beat the lodgment then not only are the plaintiff's costs restricted to 75% of the defended scale but are further penalised by being made liable for 25% of the defendant's costs and all of the defendant's counsel's fee [Order 21 Rule 4]. In circumstances such as the present case where, at the time of the lodgment, the certificate of readiness had not been filed, and counsel had not been briefed then I consider that the award of 75% of defended scale costs to be entirely reasonable. I, therefore, settle the costs of the plaintiff's solicitors in this case in the sum of 75% of defended scale costs.

[20] That leaves the issue of the fee claimed by the plaintiff's solicitor for drafting the notice for further and better particulars of defence. Paragraph 3A of Part 1 of Appendix 2 of the Rules provides:

> "Where the judge or district judge is satisfied that the issues in the case were of particular complexity he may certify that the solicitor or counsel, as the case may be, is entitled to an additional sum of £44 for drafting a notice for particulars."

[21] Mr Palmer submits that since this was a case settled prior to the lodgment of the certificate of readiness, before counsel was briefed, and where the notice consisted of two general questions lacking any specificity, it is not a case in which a fee should be awarded.

[22] Mr Ward counters that litigation within the county court has become increasingly complex and that a notice seeking particulars of defence is not only desirable but necessary in this type of case to enable a plaintiff to properly prepare his case and identify what proofs are required for trial. He submits that such a notice has become an essential pleading in county court litigation.

[23] I agree with Mr Ward's characterisation of litigation in the county court which echoes the observations of Kinney J in the *Fermanagh and Omagh Distrct Council* case. I too consider that this notice is a necessary pleading in county court litigation and that prudent solicitors should always seek details of the proposed defence that the plaintiff has to meet on the trial of the action. However, that is not the test set by the Rules for entitlement to the drafting fee. It is not whether the notice is desirable or even necessary but rather whether the case was one of particular complexity. Credit hire cases now comprise a very large proportion of the county court lists for both District Judges and County Court Judges. I am aware that, certainly in the District Judges Court, and I believe also in the County Court where District Judges sit very frequently as deputies, applications to certify the fee for drafting the notice in such cases are almost invariably granted. I consider that entirely appropriate. Credit hire cases although common are no less complex for that. Issues regarding the necessity of hiring a vehicle, the rates of hire, the labour rates for repair, the rates for storage, the necessity of storage and the duration of hire and storage are frequent features of such cases and it is essential to clarify which of the myriad of potential issues arise in a particular case. This, however, is not a credit hire case. It is a personal injury case and one in which liability was admitted. It was a case which was settled without the benefit of counsel. Nothing in the written submissions nor in the oral arguments of counsel has highlighted any particular complexity in this case. The qualifying criterion in the Rules must be given its ordinary meaning and in the absence of the identification of an issue of particular difficulty I cannot certify the fee for drafting this notice. Essential though the notice may have been it falls within the corpus of work carried out by a plaintiff's solicitor in a civil bill action which is remunerated by the general defended scale fee or, as in the circumstances of this case, the proportion of the scale fee awarded by the court.

[24] In conclusion, therefore, I settle the plaintiff's solicitor's fee in this case in the sum of £2031.75 together with value added tax of £406.35.

[25] I will hear counsel on the issue of the costs of the application.