| Neutral Citation No: [2026] NICty 1 | *Ref:* | **[2026]NICty 1** |
|---|---|---|
| | *ICOS No:* | **25/035001** |
| *Judgment: approved by the court for handing down (subject to editorial corrections)** | *Delivered:* | **26/03/2026** |

**IN THE COUNTY COURT OF NORTHERN IRELAND**
**BY THE DISTRICT JUDGE**
**(LONDONDERRY)**

---

**Between:**

**SOPHIE STOREY**

**Plaintiff**

**and**

**AXA XL INSURANCE COMPANY UK LIMITED**

**Defendant**

---

**Mr McNicholl (instructed by JMK Solicitors) for the Plaintiff**
**Mr Matthews (instructed by Johnsons Solicitors) for the Defendant**

---

**LOGUE DJ**

*Introduction*

[1] The cause of action in this matter arises from a road traffic accident which occurred on 29 December 2023 at Crescent Link Road, Londonderry. The plaintiff issued a civil bill on 18 April 2025 in which she claimed £30,000 in damages for personal injury, loss and damage. The civil bill was served on the defendant by special delivery post on 28 April 2025. The defendant lodged a Notice of Intention to Defend on 5 June 2025.

[2] The defendant then lodged the sum of £8,750.00. The relevant Notice of Lodgment dated 2 July 2025 included that standard wording:

> "In the event of the plaintiff accepting the amount so paid, the defendant undertakes to pay the plaintiff the amount of costs and other expenses reasonably incurred by him as may be agreed between the plaintiff and defendant, or, in default as may be settled by the District Judge, or by the Judge on appeal."

[3] On 29 July 2025, the lodgment amount was accepted by the plaintiff in settlement of their claim for damages, but the plaintiff and defendant failed to agree upon the amount in respect of costs and expenses. Accordingly, the plaintiff lodged the present application in which they seek the court to settle the amounts due.

[4] When the application first came before the court it was submitted that a preliminary issue fell to be determined as regards the operation of Order 21 Rule 2(1) of the County Court Rules.

[5] This Rule provides:

> "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."

[6] The plaintiff's primary position is that the plaintiff is entitled to recover 100% of their costs where the professional fee payable to their solicitors is marked at full scale for the settlement amount as set out in the County Court Rules (Northern Ireland) 1981, (as amended). As per para [5] of their skeleton argument:

> "5. The plaintiff's position is advanced on two grounds:
>
> (a) There is no discretion under Order 21 to reduce the amount of scale costs to be awarded to a plaintiff, in circumstances where a payment into court is accepted.
>
> (b) In the alternative, if a discretion does exist for the court to determine what costs were reasonably incurred by the plaintiff, the system of scale costs invariably means it will be reasonable for a plaintiff to have incurred the full level of fixed costs already set by the legislator. Consequently, the court should award 100% scale costs on that basis."

[7] On the direction of the court, the parties lodged written submissions. I am grateful to both counsel, Mr McNicholl BL for the plaintiff, and Mr Matthews BL for

the defendant for their helpful written submissions which they supplemented with extensive oral submissions at hearing on 11 February 2026.

[8] Mr McNicholl acknowledged the recent judgment by District Judge Duncan in *Paul Dicks v First Central Underwriting Limited* [2025] NI Cty 6 (hereinafter, '*Dicks*') dealt with the issue of discretion but submitted that this court is not being invited to conclude *Dicks* was wrongly decided as much of the rationale relied upon by the plaintiff in the present case was not opened or argued before District Judge Duncan and there are distinct issues of statutory interpretation now opened before the court which should lead the court to come to a different conclusion.

[9] Having considered the entirety of submissions made in the case it is difficult to disagree with Mr Matthews that the case advanced resembled a quasi-appeal.

***The statutory framework***

[10] The argument made on behalf of the plaintiff in the present case is that it was the phrase "costs and expenses reasonably incurred" which led the court in *Dicks* to conclude there was a discretion as to both costs and expenses affording the court a discretion to assess the reasonableness of <u>both</u> costs and expenses. Whilst it was accepted that the word 'and' is generally held to denote a conjunctive intention, it is contended by the plaintiff that the inclusion of the word 'and' between costs and expenses in the particular context of Order 21 does not necessarily suggest an intention to apply the qualifying provision ie, 'reasonably incurred' to both terms. Rather, when the provision is viewed in the overall context of the County Court Rules, the word 'and' according to the plaintiff, denotes an intention to empower the court with a discretion over expenses but not costs.

[11] The court was referred to *Evans v Fleri* [2019] 4 WLUK 370. I pause to note that this is an appeal decision of Judge Harman sitting in the Cardiff County Court.

[12] The case concerned the interpretation of provisions contained within the Housing (Wales) Act 2014 and whether there was a conflict between Section 7 and Section 44 of the said Act. Para [20], which Mr McNicholl placed reliance upon, reads:

> "Moreover, it has also been held by the Court of Appeal, that as a matter of statutory interpretation, the word 'and' may be used disjunctively as well as conjunctively (see *Re H (A Minor)(foreign custody order: enforcement)* [1994] Fam.105)."

[13] Before I consider the judgment in *Re H (a minor*) referred to, I note that in *Evans v Fleri*, the judge at first instance granted permission to appeal on the basis that there was a "clear conflict" between the two relevant sections in the said Act. Section 7 prescribed the requirement for landlords to be licensed to carry out

property management activities and Section 44 the restrictions on terminating tenancies. Both concerned issues of licensing. The core issue was whether the use of the word 'or' in Section 44 was disjunctive or conjunctive. The court considered the intended protections to be afforded to tenants alongside the sanctions against unlicensed landlords serving notices of termination before concluding that in the circumstances, 'or' was conjunctive as to find otherwise was incompatible with the remainder of the Act.

[14] *Re H (A Minor)* is a decision of the Court of Appeal in England and Wales in which the court examined the operation of Article 10(1) of the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children alongside those in the Child Abduction and Custody Act 1985. In very brief summary, Article 10(1) of the Convention provided that recognition and enforcement may be refused on certain grounds. The Court of Appeal held that the words 'recognition and enforcement" should be interpreted disjunctively as this was in accordance with a general analysis of the law relating to the interpretation and enforcement of foreign judgments. See para H page 112:

> "A foreign judgment has no direct operation in England. It cannot, thus be immediately enforced by execution. This follows from the circumstance that the operation of legal systems is, in general, territorially circumscribed. Nevertheless, a foreign judgment may be recognised or enforced in England. It is plain that, while a court must recognise every foreign judgment which it enforces, it need not enforce every foreign judgment which it recognises."

[15] I am not persuaded that either of the cases cited support the plaintiff's argument that the word 'and' in reference to costs and expenses in Order 21 Rule 2(1) should be construed disjunctively. The cases relied on to support departure from the ordinary meaning of a word relate to specific instances where there was either a clear conflict with another statutory provision or where the consequence of applying the natural meaning of a word would create an anomaly.

[16] To accept that the word 'and' should be construed disjunctively, would, in my view, create an artificial distinction and strays from the natural and ordinary meaning of the word and would artificially narrow the discretion provided by departing from the natural meaning and conjunctive intention conveyed by the word 'and.'

[17] I do not find that the use of the word 'and' is ambiguous as was submitted by Mr McNicholl. I am not persuaded that comparison with the wording in Order 54 Rule 3(3) advances the plaintiff's position.

[18] Under Order 54 Rule 3(3) upon the making of a lodgment the Department of Justice must provide a written undertaking to pay to the appellant any costs or expenses reasonably incurred by him between the date on which the Secretary of State served on him his determination and the date of lodgment. Mr McNicholl focused on the use of the word 'or' and submitted that the legislator intentionally used different language and therefore intended the language to produce a different effect. He failed to address the language used in Order 54 Rule 3(9) which provides:

> "(9) Where the costs and expenses referred to in paragraph (3)(c) are not agreed between the Secretary of State and the appellant, they shall be settled by the district judge subject to an appeal to [(2) the judge], notice of which appeal shall be served on the Secretary of State and the district judge not more than 2 days after the costs are so settled."

[19] Order 55 Rule 1 of the County Court Rules 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."

[20] Thus, it is explicitly recognised that Order 55 is qualified and as stated in para [17] of *Dicks,* is subject to any provisions in any statute or rule. Order 54 relates to criminal damage appeals which are a distinct form of proceedings. As was succinctly put by Mr Matthews, Order 54 deals with an entirely different statutory scheme governed by different Rules.

[21] In summary, I am satisfied that Order 21 Rule 2(1) creates a distinct regime for dealing with costs where a lodgment has been made in a civil bill action and that the discretion afforded extends to costs and expenses.

***Discretion and assessment of costs***

[22] Mr McNicholl submitted that there is no discretion under Order 21 to reduce the amount of scale costs where a lodgment is accepted and even if such a discretion existed the court should award 100% scale costs on the basis that it will have been reasonable for a plaintiff to have incurred the full level of fixed costs already set by the legislator. It was contended that a reduction of 25% or any percentage would be arbitrary and contrary to the exercise of a true discretion.

[23] It was further submitted that it was "inherently reasonable" for the plaintiff to have incurred liability for the full amount of scale costs set out in the rules regardless of the time at which a lodgment was made as the plaintiff has no way of knowing when a lodgment will be made by the defendant and therefore cannot be "expected

to moderate their behaviour in incurring a certain level of costs in contemplation of the unknown." (paras 51 and 52 plaintiff's skeleton argument)

[24] With respect, I find this argument wholly unpersuasive. Order 21 Rule 2(1) expressly provides that the District Judge shall in default of agreement by the parties, upon application and after both parties have been heard, settle such sum in respect of costs and expenses reasonably incurred by the plaintiff up to the date of lodgment.

[25] Order 21 Rule 2 (2) provides that a Lodgment in court under para (1) may, subject to para (4), be made:

> "(a) in a remitted action within eight days of the date of the order of remittal;
>
> (b) in any other action—
>
> (i) within twenty-eight days of service of the plaintiff's medical evidence served in accordance with Rule 39 of Order 24;
>
> (ii) where medical evidence is served in accordance with Rules 40, 41, 47 or 48 of Order 24, within fourteen days of service of such evidence and in any case before the first day of hearing; [added SR (NI) 2017/19 in 13 Feb 2017] or
>
> (iii) in any other case, within twenty-eight days of service of the notice of intention to defend.
>
> (4) The judge or district judge (as the case may be) in ordering sufficient particulars to be furnished may give leave for the making of any lodgment under this Rule, notwithstanding that the period specified in paragraph (2) has expired, and where such leave is given a lodgment may be made within 14 days of receipt of the further particulars furnished in compliance with the order of the judge or district judge (as the case may be)."

[26] Thus, it can be seen that a lodgment may occur at various times from relatively early in proceedings until close to the final hearing. I agree with District Judge Duncan that reference to costs incurred up to the date of lodgment implies that the reasonable costs may vary depending on the stage the proceedings have reached when the lodgment is made and the discretion to assess those costs is bound

only by the criterion of reasonableness and by the parameters of the defended scale (para [17] *Dicks*).

[27] If full-scale costs were inevitable it would have been open to the legislators to state so or indeed to otherwise stipulate what particular percentage applied at various stages. No such provisions have been included.

[28] The plaintiff is misconstruing the assessment of 75% scale costs made in *Dicks* as an arbitrary reduction. There is nothing in the decision in *Dicks* which suggests that the court should be bound to arrive at that particular percentage of the scale. The reasoning behind the assessment of costs in *Dicks* was set out in para [19] of that judgment wherein it clearly states 75% scale costs was considered by the learned judge to be *"entirely reasonable"* in the circumstances such as the case then before him. That does not preclude the award of a different percentage of scale costs to be made depending on the nature and circumstances of a particular case, such as the timing of the lodgment.

[29] Mr McNicholl contended that a plaintiff is expected to moderate their behaviour in incurring a certain level of costs in contemplation of the unknown. In oral submissions he expanded on this, arguing that the role of the court was to determine was it reasonable for a plaintiff to have incurred a liability for the full amount of scale costs regardless of the time at which a lodgment was made. He stated that it is not what the solicitor did or did not do by that point, but what costs the plaintiff has incurred.

[30] Such a position fails to recognise that the discretion is to assess such sums as were reasonably incurred up to the date of lodgment. To suggest that in all cases 100% of scale costs should be awarded would be to remove the responsibility of the judge to settle the amount for costs. It is also worth noting that the decision as to whether to accept a lodgment rests entirely with the plaintiff and in their consideration of whether to accept an amount lodged they must obviously consider any cost implications arising and be advised upon same.

[31] The final point advanced on behalf of the plaintiff is set out in paras [59] and [60] of Mr McNicholl's skeleton. I was asked to consider a ruling on costs, *In the Matter of an Application by JR333 for Leave to Apply for Judicial Review* [2025] NIKB 57 which included various paras from *Re YPK & Ors Application* [2018] 1, a decision of McCloskey J, which in turn included consideration of the Boxall principles.

[32] The Boxall principles, established in *R (Boxall) v Waltham Forest LBC* (2000), guide cost orders in judicial reviews that settle before a final hearing. It was submitted that the third Boxall principle supported the plaintiff's position:

> "The overriding objective is to do justice between the parties without incurring unnecessary court time and consequently additional costs"

[33] The following section of para [18] in the judgment of McCloskey J which refers to the decision in *M v London Borough of Croydon* [2012] EWCA Civ 595 was also directly quoted in the plaintiff's skeleton:

> "(i) Where a claimant has been wholly successful whether following a contested hearing or via settlement … it is hard to see why the claimant should not recover all his costs, unless there is some good reason to the contrary"

[34] I am not persuaded that the cases cited advance the argument made on behalf of the plaintiff. It is significant that the cases relied on concern judicial review proceedings. The paragraphs directly quoted in the plaintiff's skeleton are found in a section of the judgment in *Re YPK* under the sub-heading, "Costs in judicial review: general principles." Judicial review cases are of a different character to civil bill actions and, in my view, the costs regime applicable to those cases is not a suitable comparator.

[35] In any event I do not consider Order 21 offends against the overriding objective. Indeed, the settlement of a case without resort to a court hearing, by acceptance of a lodgment, avoids incurring unnecessary court time. In addition, the aforementioned para 18(i) refers to a situation where a claimant has been "wholly successful" following a contested hearing or via settlement. Acceptance of a lodgment whilst a form of settlement is not necessarily indicative of "wholly successful." I find it of note that in paras 18(ii) and (iii) reference is made to situations where there is partial success or a compromise which does not 'actually reflect the [claimant's] claims' and suggests a default position of no order as to costs. See below:

> "(ii) In a case where the claimant succeeds in part only following a contested hearing or via settlement, the court will normally evaluate the factors of "… how reasonable the claimant was in pursuing the unsuccessful claim, how important it was compared with the successful claim and how much the costs were increased as a result of the claimant pursuing the unsuccessful claim." The court's evaluation of such questions will be greatly facilitated where the case has proceeded to the stage of substantive judicial adjudication. But the judicial task will be altogether more difficult in cases where the claimant's partial success arises through the mechanism of consensual resolution. In the latter type of case … there is often much to be said for concluding that there is no order for costs"

> (iii) In cases where a compromise which does not "actually reflect the claimant's claims" is struck, the court … is often unable to gauge whether there is a successful party in any respect … Therefore there is an even more powerful argument that the default position should be no order for costs. However in some cases it may well be sensible to look at the underlying claims and enquire whether it was tolerably clear who would have won if the matter had not settled."

[36] The County Court is a creature of statute governed entirely by the County Court Order and the County Court Rules. I remain of the view as set out above that Order 21 provides a distinct regime under the County Court Rules for settlement of costs upon the acceptance of a lodgment and for the reasons given above, find that in circumstances where parties fail to agree costs and application is made to the court to settle the costs, the district judge has discretion to settle costs and expenses reasonably incurred but such costs not to exceed the defended scale.

[37] Finally, it was submitted that if I found for the defendant on these preliminary issues as regards discretion and costs, that it would open up the floodgates for assessments each and every time that costs and expenses were not agreed in cases where lodgments are accepted. Ultimately, the County Court Rules have long provided this mechanism for settling of costs and expenses in default of agreement. It is for individual parties to decide whether they agree on the sum for costs and expenses or proceed with an application to have them settled by the district judge.

[38] I will now hear from counsel on the substantive application for assessment of costs and expenses in this case.