

O-166-13

IN THE MATTER OF APPLICATION NO 2576390  
IN THE NAME OF  
MEDICAL ASSURANCE BUREAU (MIDLANDS) LTD

AND

OPPOSITION THERETO UNDER NO 102456  
BY MORTGAGE ADVICE BUREAU (HOLDINGS) LTD

SUPPLEMENTARY DECISION

## Supplementary Decision

1. On 20<sup>th</sup> February 2013, I issued an interim decision in the above proceedings. I found that the opposition against the application had failed on all grounds on which it had been brought.

2. In relation to an award of costs, I stated:

“50. Medical has successfully defended its application and is entitled to an award of costs in its favour. The Registrar usually operates on a published scale of costs, however, since Medical has not been professionally represented during the proceedings, an award made from the published scale might be larger than its actual expenditure. In BL O/160/08 *South Beck*, Mr Richard Arnold QC, sitting as the appointed person, stated:

“32. Secondly, counsel for the opponent submitted that, if CPR r.48.6 was applicable, the hearing officer had misapplied it. In support of this submission he pointed out that CPR r.48.6(4) provides:

The amount of costs to be allowed to the litigant in person for any item of work claimed shall be

- (a) where the litigant can prove financial loss, the amount that he can prove he has lost for time reasonably spent on doing the work; or
- (b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in the practice direction.

The Part 48 Practice Direction provides at paragraph 52.4 that the amount which may be allowed to a litigant in person under rule 46.8(4) is £9.25 per hour. Counsel submitted that the hearing officer appeared to have awarded the applicant two-thirds of the scale figure which he would have awarded a represented party, and that this could not be justified since the opponent had not proved any financial loss and was very unlikely to have spent over 160 hours on the matter.....

36. In my judgment the approach which should be adopted when the Registrar is asked to make an award of costs in favour of a litigant in person is as follows. The hearing officer should direct the litigant in person pursuant to r.57 of the 2000 Rules to file a brief schedule or statement setting out (i) any disbursements which the litigant claimed he has incurred, (ii) any other financial losses claimed by the litigant and (iii) a statement of the time spent by the litigant in dealing with the proceedings. The hearing officer should then make an assessment of the costs to be awarded applying by analogy the principles applicable under r.48.6, but with a fairly broad brush. The objective should be to ensure that litigants in person are neither disadvantaged nor overcompensated by comparison with professionally represented litigants.”

Under the current practice direction, the amount allowed to a litigant in person is £18 per hour.”

51. Consequently, Medical should produce an estimate of its costs, including the number of hours spent on these proceedings, broken down by category of activity, e.g. reviewing the notice of opposition, completing its counterstatement, reviewing Mortgage’s evidence and preparing its own. **This estimate should be filed within 21 days of the date of this decision and should be copied to Mortgage who will have 14 days from receipt of the estimate to provide its written submissions on them.** I will then issue a supplementary decision covering the costs of these proceedings.”

3. By way of letters dated 8 March and 18 March 2013, Medical provided an estimate of its costs as directed. It estimated it had spent a minimum of 17 hours reviewing the various documents sent to it, completing a counterstatement, reviewing the evidence filed by Mortgage and preparing and filing its own evidence. In addition, whilst it did not engage the services of legal representatives but represented itself in these proceedings, it indicated that it had engaged a firm of “compliance advisers” to assist it in defending its application. It filed an invoice in relation to these latter services which amounted to £731.25 in relation to some 7.5 hours work. Some of that work appears to be duplicative of Medical’s own work (e.g. reviewing the notice of opposition and preparing a counterstatement).

4. During the proceedings, Medical sought leave to file evidence outside the period which had been allowed to it. I convened a Case Management Conference (“CMC”) to determine the request and subsequently gave directions admitting the evidence into the proceedings. Whilst I admitted the evidence, noting that it put into evidential form that which had been foreshadowed in the counterstatement, I do not consider it is appropriate for Medical to be awarded costs in respect of the CMC. This is because the CMC would not have been necessary had Medical acted with greater diligence and filed the material within the period originally allowed to it, given that the information would clearly have been available to it at that time. Indeed, it seems appropriate to me that it is Mortgage that is entitled to recompense in respect of its attendance at the CMC.

5. Medical submits that a total of 24.5 hours has been spent defending its application. Given that some of these hours are duplicative (the work being carried out by Medical itself and by its compliance advisers), I consider this should be reduced to 22 hours. This should be further reduced to exclude the time claimed in respect of the CMC (2 hours in total) which leaves a total of 20 hours.

6. As I set out in my earlier decision and repeat above, under the current practice direction the amount allowed to a litigant in person is £18 per hour. That being the case, Medical would be entitled to £360, however, I intend to reduce this figure by £60 to reflect the amount to which I consider Mortgage is entitled in respect of the short CMC which took place by telephone and for which minimal preparation would have been required.

7. I therefore order Mortgage Advice Bureau (Holdings) Ltd to pay Medical Assurance Bureau (Midlands) Ltd the sum of £300 as a contribution towards its reasonable costs in defending the application. This sum should be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful. The period for appeal against the interim decision runs concurrently with the appeal period for this supplementary decision.

**Dated this 25th day of April 2013**

**Ann Corbett  
For the Registrar  
The Comptroller-General**