Case No: L01LS976

IN THE COUNTY COURT AT LEEDS

Leeds Combined Court Centre
The Courthouse
1 Oxford Row
Leeds
LS1 3BG

BEFORE:

DISTRICT JUDGE HILL

BETWEEN:

EMMA CARTER **CLAIMANT**

- and -

LEEDS CITY COUNCIL **DEFENDANT**

Legal Representation
Mr Ethan Riley on behalf of the Claimant
Mr Fiaz Siddique on behalf of the Defendant

Other Parties Present and their status
None known

Judgment

Judgment date: 17 June 2025
Transcribed from 13:03:13 until 13:07:47
from 13:12:52 until 13:14:11

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District Judge Hill:

1. This is a small claim in relation to housing disrepair.

2. The parties have come to terms with regard to damages.

3. They have also come to terms with regard to outstanding work, in that it is agreed that there is none.

4. The only issue for me to determine is costs, and specifically the Claimant seeks an order for pre-allocation costs up to the time that works were effected, as though the claim had run on the fast track.

5. There is no dispute before me but the total cost of repair was £1,228 odd, and that those repairs were effected on 19 December 2024, which is three days before service of the claim.

6. I have benefitted from well presented argument from both counsel, which I summarise briefly.

7. The Defendant says the deletion of CPR 46.11 removes my jurisdiction to make an order in relation to costs up to that date, 19 December 2024. The Defendant points me to Cook on Costs, which reads, at 22.28:

> **"More importantly, it seems that the rule amendments mean that a Claimant in the situation in *Lee v Birmingham Council [2008] EWCA Civ 891* will need to obtain a cost order pre allocation, as after that, the discretion under 46.11(2) is no longer available."**

8. The Claimant says *Lee v Birmingham* remains good law. The Claimant took me through *Lee v Birmingham* and argued that the reasoning which underpinned the determination was not based upon CPR 44.11 (I think it may have had a different number at the time, but was the same rule) but that the reasoning underpinning the determination was the protocol, its operation and the policy behind it.

9. Counsel points out that at paragraph 35 the case goes on that conclusion, that is to say the conclusion they have already reached, is also consistent with the policy of the rules as it can be seen in operation in CPR 44.11

10. He says:
> "Well, that shows you that 44.11 isn't the base of the determination."

11. He says:

> "The protocol remains the same or substantially intact, and the reasoning is still good reasoning."

12. He says I have got a discretion under CPR 44.2, and he says the situation is analogical to the making of an admission, taking the value of the claim below the small claim limit.

13. It seems to me that *Birmingham* is good law and binding upon me. The policy and protocol considerations that underpin the decision remain valid.

14. The commentary in Cook is just that. The authors in Cook may have inferred from the deletion of CPR 46.11 that a substantive change was intended. I am not aware that there is any public explanation of the reasoning of the Rule Committee which justifies such a determination.

15. Further, if one considers CPR 46.11(2), which is helpfully set out in the old edition of the White Book, there are really two parts to CPR 46.11(2), the rule and the exception. I will read the rule:

> "Once a claim is allocated to a particular track, those special rules shall apply to the period before, as well as after allocation, except where the Court or a practice direction provides otherwise."

16. When CPR 46.11 was deleted, both the rule and the exception were removed.

17. Fairly obviously, the exception was only necessary because of the rule.

18. I have not been taken to any rule limiting pre-allocation cost or rule which govern the track, thus to my mind the Court's discretion is, and remains, at large.

19. Accordingly, the Defendant will have their costs up to 19 December of last year, which I will now assess.

20. I have been given a schedule.

21. That schedule is not the correct schedule because it extends to costs to date. I am going to ask counsel for the Claimant to give me his best estimate of what the actual costs were, were the schedule to be prepared on the correct basis, and then I will hear from the Defendant.

(proceedings continue)

22. I have determined that the Claimant are entitled to the costs up to just before Christmas, 19 December, when repairs were effected.

23. Unhelpfully to the Claimant's counsel, his solicitor only produced a schedule of costs which is to date. That is in a sum of £13,693 odd. Quite clearly, substantial elements of those costs must post date the cut off date I have determined.

24. Claimant's counsel says about £9,500 would be a proper figure for what those costs ought to be up to that date.

25. The Defendant comes in at the rather lower figure of £4,750.

26. It seems to me that £9,500 would be rather high for what I would have expected to have read had a proper schedule been produced, and to be fair to the Defendant, that is not what he is saying. He is saying that I should assess at £4,750, not that the costs in the schedule should be £4,750.

27. I have got to do the best I can. I have got to take into account proportionality, the fact that damages are limited to £600 and repairs were in the approximate sum of £1,200 actually, the specific figure I have already mentioned.

28. I am going to award costs in the sum of £6,500.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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