



Keidan Harrison LLP  
44 Southampton Buildings  
London  
WC2A 1AP

Our Ref: 16061/SMITH/90664/JW  
Your Ref: LC/00017-Smith  
Direct Dial: 0161 804 6132  
E-mail: [jw@costexperts.co.uk](mailto:jw@costexperts.co.uk)

By Email Only

25 September 2020

Dear Sirs

### **SMITH v. KIRKEGAARD**

We write further to the above matter following preparation of the Replies to Points of Dispute.

The Replies must be served on or before 4pm on 2 October 2020.

### **Replies**

We enclose a copy of the draft Replies for your consideration. Please feel free to include any further comments you may have.

We have not yet requested Counsel's input in relation to the Replies as we first wanted to check that you are content for us to do so. If you are, please let us know and we will send a copy of the draft Replies over to Counsel for his comments.

We have made minimal concessions within the Replies; these concessions equate to 1.6% of the total costs claimed (£379.80 inclusive of VAT). The concessions relate to items that we believe are most vulnerable, subsequently we felt that from a tactical perspective it was appropriate to concede these before any other items.

### **Quantum**

We have reviewed quantum following receipt of the Points of Dispute. The Claimant has not challenged some items that we anticipated they would and as such this has increased our quantum assessment slightly. Subsequently you will note that our average day at Court figure has increased from £11,788.12 to £13,382.32 plus interest and costs of assessment.

## **Commercial Litigation Team**

Third Floor  
Halifax House  
93-101 Bridge St  
Manchester  
M3 2GX

**DX** 14460 Manchester 2  
**T** 0161 830 8474  
**F** 0161 834 2095  
**in** [mrn-solicitor](https://www.mrn-solicitor.co.uk)  
**🐦** [@MRNSolicitors](https://twitter.com/MRNSolicitors)

Offices based in  
**London & Leeds**

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[www.costexperts.co.uk](http://www.costexperts.co.uk)

The Bill of Costs was served in the sum of £22,906.12, the Claimant has made two offers to date of £8,315.20 and £11,500. Clearly, we are significantly apart, and it is hoped that the Replies to Points of Dispute will provide clarification to the Claimant and encourage them to provide a significantly increased offer.

### **Offers/Next Steps**

In terms of making an offer, the Replies bring the Bill of Costs down to £22,526.32 after the concessions made, however, we have previously made an offer of £18,500 plus interest and costs of assessment. We would not therefore recommend making an offer with the Replies reflecting the concessions made (as would sometimes be our advice). Instead, given we made the last offer and the Claimant has not yet responded to the same we would advise simply serving the Replies and inviting their response to our offer.

Once we have received a response to this and the Replies, we can take stock of the position. If it is that the Claimant is still significantly apart from where our valuation is then we will pass the matter to our advocate to review ahead of setting the matter down. At that point there would be a decision to be made by yourselves. For the moment, our firm advice is that we press on in the hope that we can reach an amicable agreement and without the need for Provisional Assessment.

In anticipation of the possible next steps of setting the matter down, we would recommend that consideration is given to the Client's position with regards to eligibility for a Court fee refund. We advise that consideration is given to the position and the Client is asked to complete the EX160 within 3 months of the Court fee being lodged. We do not recommend that the form is completed before the request for Provisional Assessment is filed as the same will be rejected by the Court. The Client's form must show that they were eligible for the refund from the date that the Court fee was paid. However, the Client's ability to obtain a refund expires 3 months from the date of payment of the Court fee. There is no definitive guidance from the Court's that Clients are eligible for refunds of Court fees in costs proceedings, however, we have recently been successful in recovering the same and so we advise that consideration is given to the position.

We look forward to hearing from you with any comments you may have following receipt of the Replies.

Yours faithfully

*MRN Solicitors*

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**Please note our offices will be closed for a Jewish holiday on Monday 28th September.**