**Bundling it on the Small Claims Track**

On 22 April 2020, Dale Timson appeared on behalf of a defendant insurer in a small claim track trial of a credit hire claim. Given the current Coronavirus pandemic, the hearing was to be conducted by remote means. Initially it was scheduled to be by telephone hearing, but on the morning of the hearing it was changed to a video conference on Zoom.

Two days prior to the hearing, Dale enquired with his instructing solicitors as to whether an e-bundle had been prepared for the hearing. In turn, those instructing Dale requested the same from the Claimant’s solicitors. The response came that the Claimant’s solicitors were not preparing a bundle because “the court had not ordered it”.

Suffice to say, this flew in the face of the guidance by the senior judiciary. The most recent of which is ‘Civil Justice in England And Wales: Protocol Regarding Remote Hearings’ dated 26 March 2020.

The trial judge was wholly unimpressed with the position of the Claimant’s solicitors as a large amount of time had to be spent at the outset of the hearing emailing documents. When it came to costs, despite judgment being entered for the Claimant, Dale persuaded the judge not to award the Claimant any of its fixed costs, on the basis that the Claimant’s solicitors had refused to put together a bundle.

As those who deal with litigation on the small claims track will know, there is no requirement to produce a hearing bundle, unless the court specifically orders it. However, that general rule must be read in line with the guidance for remote hearings.

The court also retains a discretion as to whether to award fixed costs as is apparent from the word ‘may; and not ‘must’ in CPR 27.14. Such discretion can be exercised without the need to satisfy the high hurdle of unreasonableness as set out in CPR 27.14(2)(g).

Therefore, when preparing for a remote hearing, solicitors bringing claims on the small claim track should take note of the guidance on remote hearings. An e-bundle will almost always be necessary to assist the court and the parties. Failure to do so can evidently result in adverse costs orders being made.

Dale has now appeared in a number of remote hearings (both by telephone and video link). Dale is happy to provide both formal and informal advice on the process and procedure and welcomes any questions in respect of remote hearings in civil proceedings.

**22 April 2020**

**Dale Timson**

**Barrister**

**5 Pump Court**