

Update

Lawyers put in the stocks over lengthy skeleton arguments

Skeleton arguments are commonly filed by parties in civil proceedings and have to be filed in appeal proceedings (and the CPR provides detailed provisions about the nature and content of skeleton arguments for an appeal). They will usually be drafted by counsel and are intended to set out the parties' arguments for the benefit of the court. A great deal of time and expense is usually spent on them in the run-up to a trial.

1 [2013] EWCA Civ 490

Further information

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A recent Court of Appeal case, *Standard Bank PLC v Via Mat International Ltd*¹, (in which Clyde & Co acted for the respondent) has fired a warning shot that the costs of preparation could be disallowed if skeleton arguments are not kept as concise as possible. The appellant's skeleton and supplementary skeleton arguments ran to 93 pages. Both Moore-Bick LJ and Aikens LJ, in a postscript to the case, expressed concern about the length of skeleton arguments in general.

They emphasised that the purpose behind a skeleton argument is to inform the court of the essential elements of the parties' submissions, so allowing the court to clearly understand the issues and arguments which it will have to consider. As Aikens LJ put it, the aim is to "clarify and simplify the issues or to shorten proceedings".

It was stressed that skeleton arguments should not be used "to serve as vehicles for extended advocacy" and, in general, "a short, concise skeleton is both more helpful to the court and more likely to be persuasive than a longer document".

Reference was also made to prior caselaw in which the courts have cautioned against the use of overly-long skeleton arguments. These cases stretch as far back as the 16th century, where, in one instance (referred to by

Aikens LJ) the Lord Keeper ordered the son of a litigant to be put in the stocks for having produced a pleading of "six score sheets of paper".

Fortunately in this case, the Court of Appeal did not resort to such extreme measures. However, Moore-Bick LJ did repeat his view that the best way to alleviate the increasing burden on the court which overly-long skeleton arguments impose would be for courts to be far more willing in the future to disallow all or part of the costs of such skeleton arguments. Aikens LJ too advised that a failure to heed the need for brevity in pleadings may well lead to strict adverse costs orders in future.

Comment

As the comments of Moore-Bick LJ and Aikens LJ make clear, the courts' disapproval of overly-long skeleton arguments is not new. However, post the Jackson reforms, and given the increasing emphasis of the courts on the need to conduct litigation proportionately and to manage the courts' resources appropriately, the warning provided in this case should be heeded by practitioners and clients alike. If care is not taken to ensure that pleadings (and other court documents) are kept as short as possible, parties are likely to face important costs consequences.