

Incurred Costs

JASON ROWLEY

A solid orange horizontal bar at the bottom of the slide.

“What is the latest judicial thinking on incurred costs, particularly delays between budget preparation and listing of CCMC?”

What are incurred costs?

Jackson Preliminary Report

“The costs incurred by a party through engaging lawyers to act for it. These costs may include the cost of expert witnesses, barristers, photocopying and other disbursements.”

Bills

“Fees incurred on your behalf...”

What are budgets?

Costs budget of [Claimant / Defendant] dated []					page 1
In the:	to be completed				
Parties:	to be completed				
Claim number:	to be completed				
Work done / to be done	Incurred		Estimated		Total (£)
	Disbs (£)	Time costs (£)	Disbs (£)	Time costs (£)	
Pre-action costs	£0.00	£0.00			£0.00
Issue /statements of case	£0.00	£0.00	£0.00	£0.00	£0.00
CMC	£0.00	£0.00	£0.00	£0.00	£0.00
Disclosure	£0.00	£0.00	£0.00	£0.00	£0.00
Witness statements	£0.00	£0.00	£0.00	£0.00	£0.00
Expert reports	£0.00	£0.00	£0.00	£0.00	£0.00
PTR			£0.00	£0.00	£0.00
Trial preparation			£0.00	£0.00	£0.00
Trial			£0.00	£0.00	£0.00
ADR / Settlement discussions	£0.00	£0.00	£0.00	£0.00	£0.00
Contingent cost A: [explanation]			£0.00	£0.00	£0.00
Contingent cost B: [explanation]			£0.00	£0.00	£0.00
GRAND TOTAL (including both incurred costs and estimated costs)	£0.00	£0.00	£0.00	£0.00	£0.00
This estimate <u>excludes</u> VAT (if applicable), success fees and ATE insurance premiums (if applicable), costs of detailed assessment, costs of any appeals, costs of enforcing any judgment and [complete as appropriate]					
Approved budget					£ -
Budget drafting	1% of approved budget or £1,000				£ -
Budget process	2%				£ -
Statement of Truth	dated				
This budget is a fair and accurate statement of incurred and estimated costs which it would be reasonable and proportionate for my client to incur in this litigation.					
Signed					
Position					

When do budgets have to be prepared?

3.13

(1) Unless the court otherwise orders, all parties except litigants in person must file and exchange budgets—

(a) where the stated value of the claim on the claim form is less than £50,000, **with their directions questionnaires;**
or

(b) in any other case, **not later than 21 days** before the first case management conference.

...

(3) The court—

(a) may, on its own initiative or on application, order the parties to file and exchange costs budgets in a case where the parties are not otherwise required by this Section to do so;

When does your budget have to be considered by the other party?

3.13

...

(2) In the event that a party files and exchanges a budget under paragraph (1), all other parties, not being litigants in person, must file an agreed budget discussion report **no later than 7 days** before the first case management conference.

When will the CCMC be?

29.2

(1) When it allocates a case to the multi-track, the court will –

(a) give directions for the management of the case and set a timetable for the steps to be taken between the giving of directions and the trial; or may

(b) fix –

(i) a case management conference; or

(ii) a pre-trial review,

or both, and give such other directions relating to the management of the case as it sees fit.

What do you do
about your
incurred costs?



What do you do about your incurred costs?

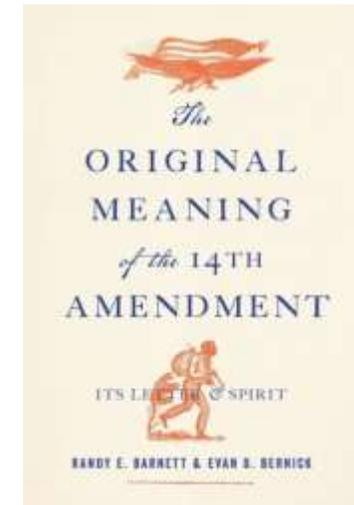
Option 1

Estimate the costs which will be incurred before the date of the CCMC and include them as incurred costs



Option 2

Prepare the budget as at the date it is filed and served and then produce an updated budget just before the hearing



What does the judge think?

“I’m just going to deal with the estimated costs....

...the incurred costs can be dealt with at a detailed assessment”

3.15(2)

... Where costs budgets have been filed and exchanged the court will make a costs management order... By a costs management order the court will—

- (a) record the extent to which the budgeted costs are agreed between the parties;
- (b) in respect of the budgeted costs which are not agreed, record the court’s approval after making appropriate revisions;
- (c) record the extent (if any) to which incurred costs are agreed.

What does the judge think?

“What is the latest judicial thinking on incurred costs, particularly delays between budget preparation and listing of CCMC?”



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What does the judge think?

What have you done so far?
What still needs to be done?

Breakdown of
pre-action costs
(not SARPD Oil)

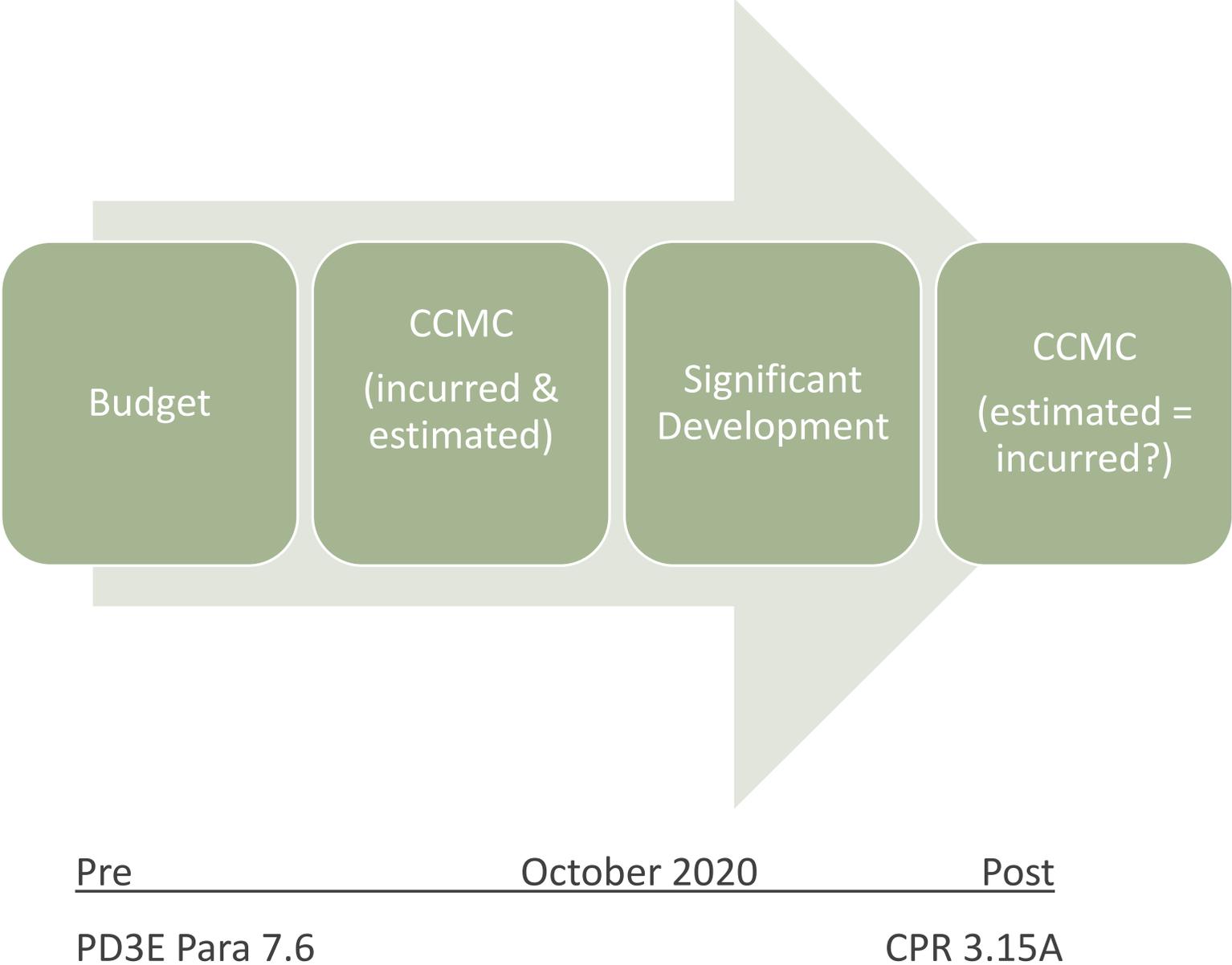
Assumptions underpinning
approved estimated costs

Why do costs
transferred not
balance out..?

What does the judge think?



What do you do when the budget needs to be varied?



What does the judge think about the revised budget?



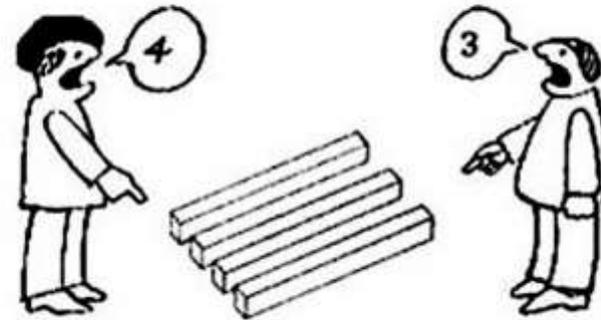
What does the judge on a detailed assessment think about arguments on incurred costs in the budget?

“Now that we can see how many hours are claimed for the incurred costs, the hourly rates claimed in the Precedent H are higher than those in the bill and must offend the indemnity principle.”



What does the judge on a detailed assessment think about arguments on incurred costs in the budget?

“The costs in the receiving party’s bill don’t mirror the incurred costs in the Precedent H / Costs Management Order”



What does the judge on a detailed assessment think about arguments on incurred costs in the budget?

“Although the costs in the receiving party’s bill total the incurred costs in the Precedent H / Costs Management Order, they are not all set out in the same phases”



What does the judge on a detailed assessment think about arguments on incurred costs in the budget?

“The judge at the CCMC said that the incurred costs were a “phase fiasco”



What does the judge on assessment think about your efforts to obtain a CMO?





And now for something completely different

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