



**Costs conference, Jackson, LASPO: Shaping the Rules into  
Solution-Focused Advice for Costs Lawyers and Litigators (White  
Paper Conference)**

Presented by: Steven Green – 26 April 2016

# Variations to Costs Budgets

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How can you persuade the Court to agree an amendment

What can you do when you have over run a CMO but not sought to review prospectively

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**Don't over run your  
approved Budget !**



It is important (crucial) to monitor your costs budget



Don't just file it away and hope for the best at the end



Case Management system or manual check?



Don't forget that you must monitor each phase of the litigation not the overall global figure



When assessing costs the Court will have regard to the receiving party's last approved or agreed budget for each phase of the proceedings

# Variations

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Will applications where the additional work has already been undertaken succeed?

Remember:  
3E CPD 7.4 “the Court may not approve costs incurred before the date of any budget”

Applications can be made during the trial but at a late stage the trial judge is likely to do no more than signpost to the Costs Judge (see Board of Trustees of National Museums and Galleries on Merseyside v AEW Architects (2013) EWHC 3025

# Variations

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Approved budgets

“Approved budgets are not costs caps, the Court will expect parties to regularly review them” (p139)

Vary the costs

Look to vary the costs budget as soon as it becomes apparent that their present budget has been or will be exceeded

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**CPD 3E 7.6 “Each party shall revise its budget in respect of future costs upwards or downwards”**



“If significant developments in the litigation warrant such revisions”



What could significant developments be?



New evidence needed?



More disclosure?



Parties resiling from admissions?



The Court is surely unlikely to make small revisions

# where...

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(a) a party has always intended to make the expenditure but didn't declare it in the previous budget

e.g. surveillance evidence

(b) where there has been a mistake in the original budget

Elvanite Full Circle Ltd v Amec Earth and Environmental (UK) Ltd

“if approved costs budgets can be revised at a later date because of mistakes or self induced inadequacies in the original, the whole purpose and effect of the new costs management regime may be thwarted”

**Claimants budget £317K**

**Defendants £264K**

**One month before trial Defendant  
filed new budget £531K**

# Mr Justice Coulson...

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**Had to make an application**

**Cant wait to see what happens**

**Unclear whether prejudice is a relevant factor**

**If the case had only 'lurked off track' not good reason**

## Amended budgets

“In default of agreement, the amended budgets shall be submitted to Court with a note of (a) the changes made and the reasons for those changes (b) the objections of any other party”

## Re-file amended budget

Don't forget to re-file the amended budget if revisions are approved

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Amended budgets

“Such amended budgets shall be submitted to the other parties for agreement”

Variations

Should see if opponent will agree variations

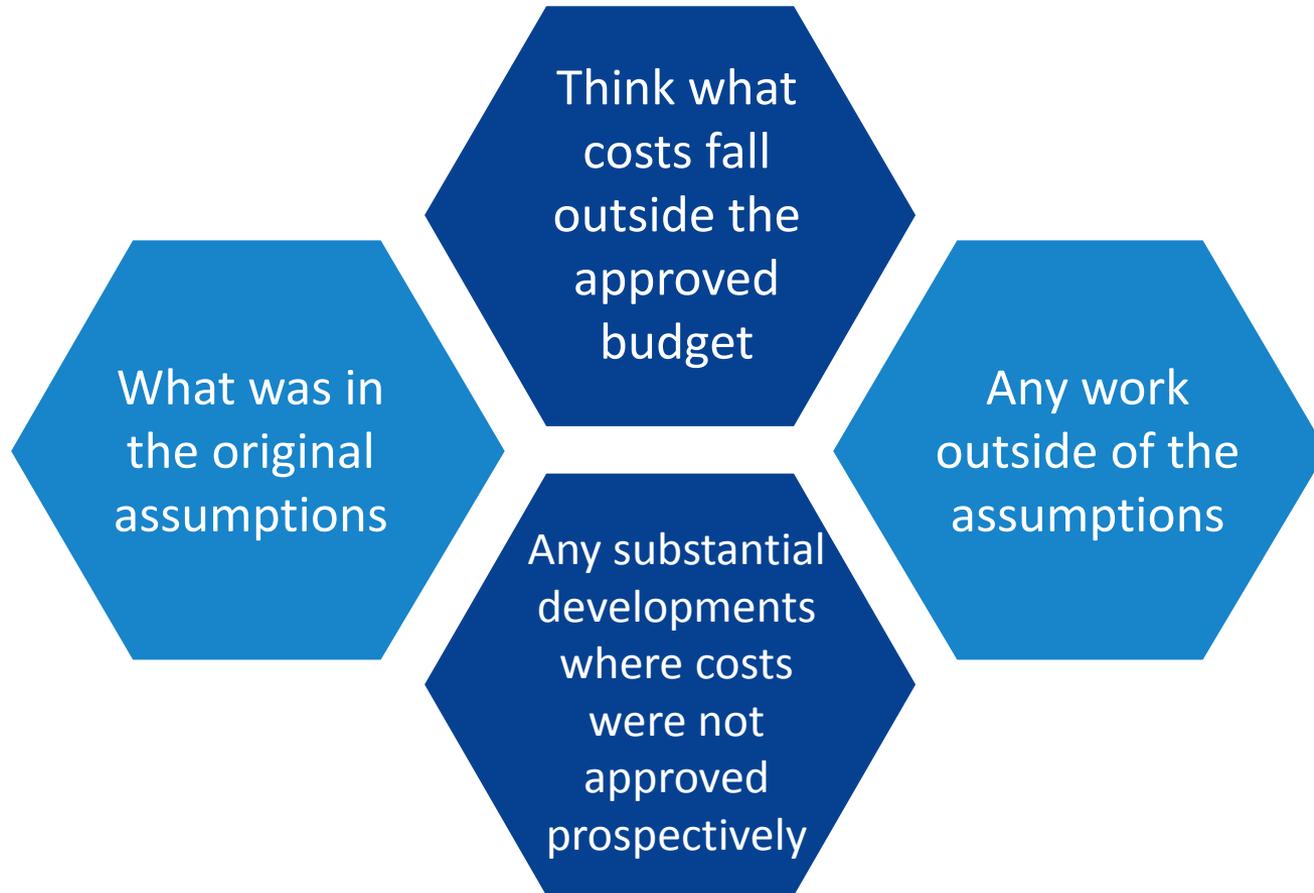
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What can you do when  
you have over run a CMO  
but not sought to review  
prospectively?

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Preparing  
your Bill of  
Costs

What goes  
in each  
phase



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Assessing costs  
on the standard  
basis where a  
CMO has been  
made

CPR 3.18 (b)  
The Court will not  
depart from an  
approved budget  
unless there is good  
reason to do so

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 What good reason could there be?

 **Receiving Party**

 The Court could not approve prospectively because the work had to be done quickly

 The work had already been undertaken and was reasonably incurred

 Indemnity costs

 Opponent resiling from liability

# Paying Party

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Incurring costs could not be approved

Hourly rates were not assessed and are too high

All the work in the phase has not been undertaken

The case value changed

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# Conclusion

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I look forward to  
answering any questions