

CCMC Hearings

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Why bother?

‘My objective is to require greater attention to be focused on costs throughout the process of resolving disputes by everyone involved: judges, litigants and lawyers.’

Final Report – Lord Woolf

“Perfect justice” in one sense involves a tribunal examining every conceivable aspect of a dispute...No stone, however small, should remain unturned...But a system which sought...“perfect justice” in every sense would actually defeat justice. The cost and time involved would make it impossible to decide all but the most vastly funded cases. The cost of nearly every case would be greater than what it is about. Life is too short to investigate everything in that way. So a compromise is made: one makes do with a lesser procedure even though it may result in the justice being rougher. Putting it another way, better justice is achieved by risking a little bit of injustice.’ Jacob LJ

The Starting Point

CPR1.1(1) – *‘These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost’*

Proportionate costs?

- a) Sums in issue
- b) Value of any non-monetary relief
- c) Complexity of litigation
- d) Additional work generated by the conduct of the paying party
- e) Any wider factors, such as reputation or public importance.

CPR 44.3(5)

Also to have regard to CPR 44.4(3) as to reasonableness.

Application of cost budgeting

CPR3.12 and PD3E.A1-5

All Part 7 proceedings, except

Claims commenced on/after 22.04.14 in excess of £10m

Claims commenced on/after 06.04.16 for a person under 18.

Where proceedings subject to fixed or scale costs

The court otherwise orders. See PD for cases considered particularly appropriate

CPR3.12(1A) – *‘...will apply to any other proceedings (including applications) where the court so orders’*

CIP Properties [2014] EWHC 3546 – unfettered discretion

Simpkin [2016] EWHC 1619 – enormous disparity of resources

Sharp & Ors [2017] EWHC 141 - £350m claim

CPR 3.15(2) – *‘The court may at any time make a ‘CMO’. Where costs budgets have been filed and exchanged the court **will** make a CMO unless it is satisfied that the litigation can be conducted justly and at proportionate cost ...without such an order being made. By a CMO the court will-*

- (a) record the extent to which the budgeted costs are agreed between the parties;*
- (b) in respect of 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’*

Discretion to not make a CMO –

- a) Where not required; or
- b) Where agreed costs are excessive.

CPR PD44.3 – 20% difference remains relevant.

Has the court made a CMO?

The purpose?

CPR 3.12(2) – *‘The purpose of costs management is that the court should manage both the steps to be taken and the costs to be incurred by the parties to any proceedings so as to further the overriding objective’*

Duty on parties to assist the court in further the *‘overriding objective’*
CPR 1.3

Completing Directions Questionnaire FULLY!

Completing Precedent H accurately with correct assumptions

Completing, exchanging and agreeing Precedent R discussion report

Identifying assumptions upon which Precedent H has been prepared.

Setting the budget?

What are the issues particularly by reference to CPR 44.4(3) (Pillars of wisdom) and CPR 44.3(5) (Proportionality)

Having regard to the above, take an overall view as to a proportionate figure in total, including incurred costs

Set directions and budget individual phases taking into account the incurred costs when considering reasonableness and proportionality see PD3E.7.4

Consider whether total costs are within the range of proportionate costs,

If so....budget set; if not, look to 'tweak' directions, budgets or both.

Risk of confusion between necessary and proportionate work?

And any comments?

PD3E 7.3 – *‘...the court will not undertake a detailed assessment in advance, but rather will consider whether the budgeted costs fall within the range of reasonable and proportionate costs.*

PD3E 7.4 – *‘The court may, however, record its comments on those costs and will take those costs into account when considering the reasonableness and proportionality of all subsequent costs.’*

Yeo v Times Newspapers [2015] EWHC 209 at 61

Sir Cliff Richard OBE v The BBC & Chief Constable of South Yorkshire Police [2017] EWHC 1666

Be Warned

‘...some parties seem to treat cost budgeting as a form of game, in which they can seek to exploit the cost budgeting rules in the hope of obtaining a tactical advantage over the other side. In extreme cases, this can lead one side to offer very low figures in their Precedent R, in the hope that the court may be tempted to calculate its own amount, somewhere between the wildly different sets of figures put forward by the parties. Unhappily, this is, in my view, an example of that approach’

‘In my view, Churchill’s Precedent R is of no utility. It is completely unrealistic. It is designed to put as low a figure as possible on every stage of the process, without justification, in the hope that the court’s subsequent assessment will also be low. In my view, therefore, it is an abuse of the cost budgeting process.’

Findcharm Ltd v Churchill Group Ltd [2017] EWHC 1109

The 'End' Problems?

Has the court made a CMO or not?

What were the assumptions when setting the budget?

What, if any comments were made at budgeting, and what is their relevance?

What is the impact of 'incurred' costs?

What, if any is the impact of hourly rates used in the budget?

What is the impact of a change of grade of fee earner?

What is the impact of any savings? Have these been reflected in the bill? Need they be?

Is there a 'good reason' to depart from the budgeted cost figure?