

With reference to the fees of counsel and experts, how do you arrive at the lowest amount which you can reasonably incur to conduct and present your case proficiently?

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We are all costs experts now

▶ Distant memories

- Something worried about or got someone else to deal with at the end of the case
- Got money on account, did the work, sent the bill, got paid

White Paper snappy title award

- ▶ *Kazakhstan Kagazy plc v Zhunus* [2015] EWHC 404 (Comm) Leggatt J
- ▶ *“In a case such as this where very large amounts of money are at stake, it may be entirely reasonable from the point of view of a party incurring costs to spare no expense that might possibly help to influence the result of the proceedings.”*

White Paper snappy title award

- ▶ The touchstone is not the amount of costs which it was in a party's best interests to incur but **the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently**, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party's own account and not recoverable from the other party ...”

Right here right now

- ▶ Costs budgets
- ▶ Incurred costs
- ▶ Costs management

Existing costs and budgets

- ▶ *Sarpd Oil International Ltd v Addax Energy SA* [2016] EWCA Civ 120, at paras 31-53, suggests that the CCMC is the time and place for contesting the reasonableness and proportionality of costs already by then incurred, rather than only the estimates for costs still to be incurred.

And the future?

- ▶ Fixed costs ?
- ▶ Grid of costs – Lord Justice Jackson January 2016
- ▶ *Transforming our justice system* ‘vision statement’
- ▶ Ministry of Justice “*We are keen to extend the fixed recoverable costs regime to as many civil cases as possible. The senior judiciary will be developing proposals on which we will then consult.*”

Fixed costs – clinical negligence

- ▶ The wait goes on
- ▶ Fixed recoverable costs will not be introduced in October as originally planned

Counsel's fees – misleading advert alert

- ▶ Counsel's fees are always reasonable and represent excellent value for money

Counsel's fees

- ▶ Planning the case and strategy
- ▶ Involve counsel at an early stage (not a plug!)
- ▶ Who will be doing what?
 - Pleadings
 - Disclosure
 - Witness statements
 - Correspondence/emails

Justifying counsel's fees

- ▶ *Group Seven v Nasir* – Morgan J (but query whether this was appropriate on a costs budgeting hearing)
- ▶ Silk? Junior? Both? All of the time?
- ▶ How many days preparation?
- ▶ Element for booking time out of diary
- ▶ Market rate does not mean it's proportionate

Expert's fees

- ▶ Instructions
- ▶ “*The effect of this change [introduction of costs budgeting] is that Experts will have to be very careful in discussing with their instructing solicitors before accepting an appointment exactly what they are to do*”
- ▶ Appropriate level
- ▶ Need for expert? Single? Joint? Hot tubbing?

Expert's fees – Coulson J – *Elvanite v AMEC*

- ▶ How important is expert evidence ?
- ▶ Get it right first time (cue Billy Joel)
- ▶ How careful have they been with estimate?
- ▶ Don't assume points be abandoned
- ▶ Prepare in accordance with existing orders
- ▶ Is attendance throughout trial necessary?

Experts' hourly rates

- ▶ Academy of Experts out of date fee survey (2016 survey being conducted)

2013 Survey Results

The headline charging rates for Civil Cases. All figures shown are in £.

Hourly (£)	Accountancy	Property & Construction	Engineering	Financial Services	Healthcare	All Professions
Average	258	147	155	244	196	183
Max	699	300	300	440	500	699
Min	147	60	80	160	50	48

Hot tubbing (concurrent expert evidence)

- ▶ *“Although views differ on the question of costs saving, most English judges and practitioners agree that CEE leads to a saving of time at trial. Since trial time is the most expensive component of litigation, this is a valuable saving. Solicitors who are striving to bring the actual costs of litigation closer to the approved budget should give serious consideration to proposing the use of CEE.”* Lord Justice Jackson speech June 2016

Hot tubbing – Civil Justice Council report

- ▶ Survey of those who had had cases where there had been hot tubbing at trial was very positive but the goal of saving costs – was “*the one area where the majority of the legal respondents to the survey seemed to be of one mind*”, – it was not really achieving that. The working group suggested more work might be needed to work out why.

Hot tubbing – Civil Justice Council report

- ▶ Judiciary - 33% of respondents thought that hot tubbing meant a costs-saving to the parties; the percentage was even lower for the legal practitioner respondents (28%). Slightly more experts believed that hot tubbing saved costs (45%)

Legal Aid Agency Guidelines

- ▶ Accept unlikely to be directly relevant but consider following:
 - Exclude experts' cancellation fees unless less than 72 hours;
 - Exclude experts' administration costs;
 - Cap the remuneration rates for travel time;
 - Cap the mileage rates

Post Costs Case Management Conference

- ▶ What's the budget for counsel and experts?
- ▶ How does that compare?
- ▶ Time to re-negotiate?
- ▶ Time to re-assign tasks?

Updating

- ▶ Whether it is counsel's fees, expert's fees or your own in a costs budgeted case in particular it is essential to regularly:
 - Check whether still within budget
 - If not assess the reasons why
 - If necessary apply to vary the budget as soon as possible

All clear?

.....thank you!

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