

**APIL JOINT BRAIN INJURY / SPINAL CORD INJURY
SPECIAL
INTEREST GROUP**

Costs Budgeting Training

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**Costs Budgeting
The Wave of Change - Lets Ride it!**



Agenda

- History
- Nothing New
- The Law
- The Pilots
- When
- What
- How
- Proportionally
- Why
- Monitoring
- Get Ready
- Top Tips



History

- Rupert Jackson
- Estimates
- Cost Capping
- Two Pilot Schemes
- 1st April 2013



Nothing New

- Solicitors Practice Rules 1990, Rule 15
- Solicitors Code of Conduct 2007, Rule 2
- Solicitors Regulation Authority Code of Conduct-
 - Outcomes (1.12) and (1.13)
 - Indicative Behaviours (1.5), (1.13), (1.14), (1.15) and (1.19)



Nothing New

- This should not be a new skill for litigators.
- ***Jefferson v National Freight Carriers [2001] EWCA Civ 2082, [2001] 2 Costs LR 313*** reminds us that litigators need to have a clear case plan from the outset.
- This involves an assessment of the likely value and complexity of the claim and a plan for the *'necessary work, the appropriate level of person to carry out the work, the overall time that would be necessary and the appropriate spend on various stages in bringing the action to trial and the likely overall costs'*.



The Law

- CPR 3.12-3.18, PD3E and PD 6
- Applies to:
 - All multi-track cases
 - Commenced on / after 1 April 2013
 - In County Court, Chancery Division or QBD
 - (except Admiralty and Commercial Courts)



The Pilots

- Kings College Cambridge Report
 - February 2012
 - 4 months
 - 43 Solicitors and Judges
- What did we learn:
 - Budgets took 4 hours
 - Judges spent 1.5hrs
 - CMCs took 1 hour



The Pilots

- | | |
|--|---|
| <ul style="list-style-type: none">• The Solicitors<ul style="list-style-type: none">– Found form confusing– Additional overhead– Admitted to avoiding– Early attention to costs– Client better informed– Helped case plan | <ul style="list-style-type: none">• The Judges<ul style="list-style-type: none">– Liked the form– Greater proportionality– Improved case management– Training required |
|--|---|



When...

- Budget and Case Plan from the start
- Team of 3 needed
- HH Simon Brown - "Need for senior lawyer to project manage with client from the outset and get in a costs lawyer to help prepare the budget"
- Each party shall file and exchange its costs budget
- Budgets filed within 28 days of the service of any Defence



When...

- The parties should **discuss** their costs budgets and try to agree!
- Don't forget to use the other side's budget
- *If not, then the Court will decide whether or not to make a Costs Management Order*
- *Costs Management Hearing*
- *Usually by papers or phone*
- *Complex in person*



When...

- *No later than seven days after the conclusion of any hearing*
(1) notify its client in writing of any Costs Management Orders made at such hearing; and
(2) provide its client with copies of any new or revised budgets which the Court has approved (PD 51G 7)
- *A party whose costs budget is no longer accurate must file and serve a **budget revision** (PD 51G 6)*
- *If a party feels that another party is behaving "oppressively" and is spending money "disproportionately on costs", an application to the Court can be made (PD 51G 4.5)*



What...

- Complete Precedent H
- One size doesn't fit all
- Exercise in project management
- Precedent H is divided into sections or "phases" and these are all shown on the first page of the Precedent
- Statement of truth
- £1,000 or 1% of approved budget
- 2% budgeting process
- Summary page if costs below £25,000



What...

- | | |
|----------------------|---------------------|
| • Pre-action costs | • Expert reports |
| • Issue / pleadings | • PTR |
| • CMC | • Trial preparation |
| • Disclosure | • Trial |
| • Witness Statements | • Settlement |



What...

- Each "phase" in the litigation is the starting point for constructing a budget
- | | | |
|------|-------|------------|
| Task | Phase | Litigation |
|------|-------|------------|
- Proportionate
 - Progression not activity
 - Assumptions and Contingencies are key
 - Additional liabilities
 - whilst they remain recoverable, are NOT included in a budget
 - Budgets relate to base costs only and do not include Court fees



How - Assumptions

- The front page of Precedent H
 - that the Defendant will defend the claim
 - that the parties will obtain separate expert evidence
 - that four witness statements will be needed



Assumptions

- Remember:-
 - state the obvious
- Prepare a separate document with full information about your assumptions
- Be Prepared. Explain and justify to the Court assumptions which are not directly comparable between the parties
- If no assumptions, the Costs Judge may simply presume that you haven't done your job properly



How - Contingencies

- Contingencies are different from assumptions and again there is provision on Form H for details about contingencies and their anticipated costs to be added
- Examples are:-
 - an application for security for costs
 - an application for specific disclosure
 - split trials



Contingencies

- Necessary to account for **cement**
- Build into your figures some **margin of error**, maybe 10% or 15%
- Don't complete DAH yourself

 Costing
Putting Profit back
into Solicitors' Costs



How - Construction

- What *work will be needed*
eg. meetings, preparation, hearings?
- *How long* will that work take?
- What *level of fee earner* should undertake the task or tasks which have to be undertaken?
- Will *Counsel* be involved? To do what and at *what cost*?
- Will *other experts* be involved? To do what and at *what cost*?
- What other *disbursements* might be incurred?
- Is there a potential for *outsourcing* work to make it more profitable and efficient?

 Costing
Putting Profit back
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CMC

- No more than an hour
- A light touch
- Review the Skyscrapers
- Can't assess Incurred costs
- But can comment
- Attendees , Solicitor, Counsel, Costs lawyer?
- Who wins?

 Costing
Putting Profit back
into Solicitors' Costs



Proportionality- Current

- CPR 1.1 (2) c
- CPR 44.4 (2)
- CPR 44.5
- PD 11.1
- PD 11.2



Proportionality- Current

- Lowndes v Home Office 2002 EWCA Civ 365
- Lord Woolfe said;

“Costs are proportionate if necessarily incurred”



Proportionality- New

The New Test....

From 1 April 2013

44.4 (5)

- (a) The sums in issue in the proceedings;
- (b) The value of any non-monetary relief in issue in the proceedings
- (c) The complexity of the litigation
- (d) Any additional work generated by the conduct of the paying party; and
- (e) Any wider factors involved in the proceedings, such as reputation or public importance

Reverses the Lownds test



Why?...

- You Have To!!!
- When assessing costs on the standard basis, the Court –
(1) will have regard to the receiving party's last approved budget; and
(2) will not depart from such approved budget unless satisfied that there is good reason to do so (PD 51 G 8)
- New tougher stance on relief from sanctions
- The ultimate sanction for not engaging in the budget process is the recovery of Court fee only



Why?...

- Embrace Costs Budgeting – Its Good News
- Case Planning / Budgeting hand in hand
- Gain Competitive Advantage
- Improved profit costs
- Cash flow (Safety Net Security Limited v Leonard Coppage and Freedom Security Solutions Ltd)
- Agreeing DBAs or Success Fee
- Use Budgeting to resource cases correctly
- Identify un-profitable work



Monitoring

- Monitoring is as important as the budget
- Budgets assessed per phase
- Similar to legal aid
- Time recording
- Systems and procedures
- Traffic lights
- Unmonitored budgets **The Modern Cancer** for law firms



Be Prepared

- Designate a budgeting champion
- Collect the required data
- Budget diary New Law Journal
- Lectures of Jackson Implementation
- Capture standard assumptions
- Capture standard contingencies
- Consider secondary training
- Agree protocol with Costs Lawyer
- New client care documentation



Ten top tips for completing Precedent H

1. Appoint your budgeting champion
2. Collect the required data
3. Begin with your "dream team"
4. Involve your costs professional
5. Can you identify any "sky scraper" costs?
6. Remember, it's good to talk
7. Consider your opposition's costs budgeting information
8. Make sure yours and your team's time recording is accurate
9. Systemise your processes
10. Be prepared and don't panic!



Thank you for your time
Any Questions?


