

**APIL North East 25<sup>th</sup> April 2012**

# **Maximising Profit From Costs Now and in a Post Jackson Era**

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**Compass**  
Cost Consultants Ltd.  
Securing direct returns

Public and Media Perception .....



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unchecked brought us to where we are and where we are going next....



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The times they are a changing!

Statute Reform

Fixed Costs Expansion

Rule Changes

Costs Management

ABS's



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### Profitability Threats

- Inaccurate Costs Estimates
- Lost Time or Poorly Recorded Time
- Lax or Undefined Processes and Systems
- Waste !
- Future Competition
- Under Recovery of ATE
- Under Recovery of Success Fees



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### Costs Budgeting & Management

The extension of the Birmingham TCC & Mercantile Courts Costs Management Pilot Scheme to all multi-track cases is almost certain to form part of the implemented changes proposed by Jackson LJ.

Accurate submission of costs to date at costs management conferences will be essential, as the court will cap and finalise these figures as part of the process. Close attention will need to be paid to ongoing costs to ensure that if budgets look likely to be exceeded that application for a variance is submitted as early as possible

"Too Late, Too Bad!"



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### Costs Estimates / Costs Management

Getting your costs estimate as accurate as possible can mean the difference between recovery and a retrospective costs cap on Detailed Assessment

Leigh -v- Michelin Tyre PLC [2003] EWCA Civ 1766

Tribe -v- Southdown Gliding Club Ltd [2007] EWHC 90080 (costs)

Wooley -v- Haden Building Services Ltd [2008] EWHC 90111 (costs)



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### Time Recording

Failure to record time, inaccurate recording of time and over reliance on computerised time recording continue to be some of the most significant causes of lost profit within firms.

- Keep time recording training ongoing throughout the year and year on year
- Review and update computerised time recording systems regularly and especially following binding costs decisions.



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### Processes and Systems

The implementation and expansion of fixed costs will require evermore prescriptive internal systems if firms are to remain profitable from cases under fixed fee regimes.

This includes

- Overhaul and regular review of Case Management and diary systems
- Removing the human element from first line decision making
- Ending or outsourcing unprofitable peripheral elements of certain functions



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### Waste

- Recognising and identifying waste within a firm usually requires outside vision
- Deciding to end waste so often requires a change in attitude on the firms part
- Implementing change requires a change in culture and must be lead from the top and;
- To be successful change must be managed before, during and after the process



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### Threats to ATE Recovery

- Failure to explore BTE fully and consider cover against costs estimate.
- Insufficient explanation of the need for cover and not engaging the Client
- Late inception of policies leading to higher premiums
- Notifying Opponents of Premiums or Staged Premiums



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### BTE / ATE Cover

- Is the level of Indemnity going to be sufficient ?
- Type of case
- What are the overall cost likely to be including disbursements.
- What type of Retainer or CFA are you using ?
- ATE Premium Calculations
- Advice to the Client



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### Proposing Risk to ATE insurer

- Notify the ATE insurer of any shared BTE indemnity
- Copy the ATE Insurer in on your risk assessment\*
- Ask for Clarification on cover for Counsel's Fees\*

\* These can have a detrimental effect on recovery of success fees



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Advising / Engaging the Client



Horizontal lines for notes

Further to our and earlier advices, we have as instructed taken out a policy of insurance underwritten by ABC insurance to protect your risk of incurring a costs liability should your claim be unsuccessful or if at some stage in your claim you should fail to beat an offer to settle made by your opponent. A copy of the insurance documentation is enclosed (to follow)

You should be aware that even if your opponent admits liability there are still risks which could result in you having to pay their costs. The most likely of which is failing to beat an offer of settlement which they make and which you decide not to accept. There are also other interim circumstances which can arise in legal proceedings which may give rise to your being ordered to pay your opponents costs even if you later win your case. You may also not recover all of your disbursements and these can often be challenged after your claim has settled, this too can lead to a costs liability for you. This policy will cover all of those risks and so if any of these circumstances arise you will not have to pay them. The policy also insures the premium in the event that it is not recovered from your opponent

Where you have advised us that you may already have existing cover for this type of risk attached to your home insurance. We will continue to attempt to obtain indemnity from your insurer, but given the risks of your case and our over all estimate of costs it is unlikely that your existing cover will prove adequate. We therefore recommend leaving both policies in place to share the risk and if we cannot obtain cover from your existing insurer we recommend keeping the new policy in force as such cover can be prohibitively expensive if taken out at later stages in any legal proceedings

We recommend that you have this insurance in place to protect yourself from incurring any liability for your opponent's costs, but should you wish to cancel this policy you may do so by advising us in writing within the next 14 days.



Horizontal lines for notes

Providing Information About Funding

CFA's

You must, if you intend to seek an additional liability as costs, pursuant to section 9.3 of the Pre Action Protocol and Section 19 of the cost Practice Direction to CPR 44, provide information to your opponent about any funding arrangement you enter into.

The information must be provided within 7 days of entry into the funding arrangement, or where the funding arrangement predates the letter of claim, within the letter of claim.

The information to be provided is,



Horizontal lines for notes

**In relation to a CFA which permits for a success fee;**

The date of the agreement, and, if it is a retrospective CFA the effective date


The claim or claims to which it relates, including Part 20 claims if any.

**You DO NOT have to inform your Opponent of;**

The amount of the percentage success fee

The stages of any success fee increases

The reasons for settling the success fee



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**Information about ATE Insurance;**

The Name and Address of the Underwriter

The Policy Number and the Date of Issue


The Claims to which it relates including Part 20 Claims if any.

The level of cover (i.e. Limit of Indemnity and if it covers both sides costs or just Opponents costs and Own Disbursements)

If it is a staged premium, you must state the stages at which the premium increases will apply (i.e. issue of proceedings, listing, trial etc.)

**You DO NOT have to inform your Opponent of;**

The amount of the premium or the staged amounts



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**Remember;**

If you later take out additional ATE insurance or extend cover under the existing ATE or BTE cover YOU MUST advise your Opponent of the changes

If you enter into a CFA and later take out ATE cover you **DO NOT** need to enter a new CFA!

Where you are being indemnified by a BTE insurer, you should be on a CFA Ultra model The Law Society Model CFA is not suitable cases or where BTE is utilised

If you are not using a CFA with BTE you must account for your own costs as well as the Opponent's costs when considering the limit of Indemnity under the BTE.



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**Setting Success Fees**

Does the Risk Assessment accurately reflect the risks of the case?  
Ensure ATE proposals and Client Letters do not contradict risk assessments  
Consider the risks surrounding the Client as well as the Claim! (age and health)  
The Risk Posed by the Opponent!  
Does your CFA correspond with the perceived risks in the Risk Assessment?



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**QUESTIONS?**



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