



Costs Budgeting

Getting your ducks in a row

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An outline



- The initial budgeting process – how to use it to achieve the desired outcome.
- Variations to budgets – how to do it – or not?



Budgeting at the CCMC

- What are you aiming for?
 - The directions you want – experts, split trials etc?
 - A budget that ensures you can comply with those directions and progress the case;
 - To avoid criticism in respect of incurred costs;
 - Clarity as to what is allowed for and what isn't;
 - Flexibility to be able to deal with what might happen in the case.



Budgeting at the CCMC

- How can they be achieved;
 - Knowing the rules – a basic premise. What can – and what can't – be approved. When to file the budget. What it must contain etc;
 - Complying with them – filing on time, using the right forms etc, phasing work properly, completing Prec. R etc;
 - Being able to explain and justify the directions sought – costs and case management go hand in hand – CPR 3.12(2);
 - Being able to explain the costs that go with those directions and the assumptions – having breakdowns etc available.



Budgeting at the CCMC

- *“Knowing your ‘Ass..’ from your...”*
 - Assumptions are crucial – along with your proposed directions, they are your ‘case’ as to how the claim will be run and why you want costs;
 - Assumptions are things that are more likely than not to happen and which fit within the main categories;
 - The common ones are already ‘pre-loaded’ and don’t need repetition – but may need justification;
 - Contingencies are things that are more likely than not to happen, but don’t fit in the main categories (see Yeo);
 - Anticipated applications (specific disclosure etc);
 - Preliminary issue trials



Budgeting at the CCMC

- Assumptions are crucial;
 - Not only are they your ‘case’ for the directions and costs, but they are the foundation for the approved budget;
 - At the end of the case, the assumptions which are accepted are the criteria against which your budget will be judged for CPR 3.18;
 - On any variation application, the accepted assumptions are the criteria against which ‘significant developments’ will be judged;
 - What ‘might’ happen should not be in there – but it can be just as important to have a record of what was not assumed as what was – note also CPR 3.17(4).



Budgeting at the CCMC

- *“Adapt or die”*;
 - Your assumptions – and your costs – may not be agreed or approved;
 - Be prepared for adjustments. If there is a major point of difference between you and D, have a recalculated Precedent H and set of assumptions to hand;
 - Don’t assume your assumptions will be accepted – for example, don’t assume a split trial will be agreed or ordered or that you need only produce a budget up to the liability trial – unless the Court has already agreed (CPR 3.13(4));
 - Tailor your approach to your judicial audience.



Budgeting at the CCMC

- Picking your team and your approach – horses for courses;
 - Is your battleground really costs – or does the budget follow the directions;
 - The importance of getting it right first time – appeals are very difficult absent a technical error (and even then...);
 - Even barristers can add up sometimes – is a calculator more important than a second advocate?
 - Know your tribunal – some appreciate costs lawyers' involvement...
 - Costs are important – and if budgeting is to work in reducing the need for assessment, it needs to be got right.



Budget Variations – the Enigma





Budget Variations

- The starting point – knowing the procedure and the test to be applied;
- Procedural key points – CPR 3.15A;
 - Precedent T – mandatory – don't freelance;
 - Operates as a time machine – incurred costs since original approval remain estimated costs for these purposes;
 - Agreement with the opponent **MUST** be sought first;
 - Agreement is not conclusive – the Court's approval is still required;
 - Promptness – both in seeking agreement and approval – is crucial.



Budget Variations

- Procedural key points continued – CPR 3.15A;
 - Amending for significant developments is mandatory, even if this means the budget going downwards;
 - This is important if you want to keep your CPR 3.18 protection;
 - When ‘applying’, you don’t need to apply – the process is intended to be simpler;
 - Don’t lodge anything other than Precedent T unless asked to – CPR 3 PD 3E para 3(a);
 - The costs of the process will be minimal, unless there are exceptional circumstances – see the 2% cap in CPR 3.15(5)(a);



Budget Variations

- Applying the test;
 - ‘Significant developments’ which ‘warrant’ the revision;
 - *Al-Najar & Ors v Cumberland Hotel* [2018] EWHC 3532 (QB);
 - . A question of fact by reference to scale and complexity;
 - . If it should reasonably have been anticipated at time of original budget – probably not a significant development;
 - . Does not need to be outside the ordinary course of litigation;
 - . Bar not too high (?) because otherwise original budget will be overloaded.



Budget Variations

- Are mistakes significant developments? No - *Elvanite v Amec* [2013] EWHC 1643 (TCC), *Murray & Stokes v Neil Dowlman* [2013] 3 Costs LR 460;
- The importance of the original assumptions – and proper recording of what was (and was not) assumed;
 - Whether something is an unanticipated development – and whether it is significant – is likely to be tested against the assumptions the Court applied at the original approval;
 - If it is not clear what was assumed, the variation may be lost.
- Some extra costs don't need to surmount this hurdle – see both CPR 3.17(4) (interims) and PD3E para 13 ('oppressive').

Thank You



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