



Cost Management Orders (Solicitors' perspective)

by Nicholas Gould, Partner and Christina Lockwood, Consultant

Introduction

This paper considers:

- 1 How the costs pilot is being received and some statistics;
- 2 The role of the judge;
- 3 Form HB – factors to take into account when completing them, and when responding to them; and
- 4 The client's view of the process.

The Costs Management Pilot

The Costs Management Pilot (the “**Pilot**”) started in the Technology and Construction Courts (“**TCC**”) and Mercantile Courts on 1 October 2011 and is scheduled to run until 30 September 2012. The Pilot is being monitored by means of questionnaires and follow-up phone calls in order to evaluate how effective costs management is in terms of controlling costs and keeping clients informed about the overall costs position (not just their own budgeted costs), and what additional workload this imposes on judges and court staff.

Sir Rupert Jackson's vision for the reform of litigation cost is to become a reality in April 2013. The Pilot should bring to light practical problems and provide the opportunity for improvements before full implementation.¹

The Pilot is governed by Practice Direction 51G (“**PD 51G**”). This provides that for those claims that fall within the Pilot, each party will have to file and exchange a costs budget in the form set out in Precedent HB (“**Form HB**”) at the same time as filing the case management information sheet.

The costs budget requires reasonable allowances to be made for:

- 1 intended activities: e.g. disclosure, preparation of witness statements, etc.;
- 2 identifiable contingencies: e.g. specific applications or resisting applications; and
- 3 disbursements: in particular court fees, counsel's fees, any mediator or expert fees.

The court will have regard to any costs budget filed at any case management conference or pre-trial review and will decide whether or not it is appropriate to make a costs management order (“**CMO**”). If the court decides to make a CMO, it will, after making any appropriate revisions, record its approval of a party's budget and may order attendance at a subsequent costs management hearing (by telephone, if appropriate) in order to monitor expenditure.

¹ See Neuberger L, MR (2012) *Proportionate Costs: The Fifteenth Lecture in the Implementation Programme*, Law Society, 29 May.

Henry v NGN,² handed down on 16 May 2012, is the first reported decision on costs management under the Defamation Costs Management Pilot that has been in force since 1 October 2009 ("the **Defamation Pilot**"), which is governed by Practice Direction 51D ("**PD 51D**"). In a ruling on a preliminary issue for detailed assessment, the Senior Costs Judge Master Hurst held that the claimant was not entitled to claim any more costs than in her court-approved budget. The costs at issue were almost £300,000 and Master Hurst gave permission to appeal even before it had been sought.³

Master Hurst referred to the mandatory nature of PD 51D and decided that due to the claimant's failure to comply with the provisions of PD 51D and inform the defendant and the court of the extra costs, there was no good reason to depart from the approved budget:

*"Whilst, as I have said, I have no doubt that the Claimant could make out a very good case on detailed assessment for the costs being claimed, the fact is the Claimant has largely ignored the provisions of the Practice Direction and I therefore reluctantly come to the conclusion that there is no good reason to depart from the budget."*⁴

Responses to date; some statistics

A full assessment of how the Pilot has been received will not be possible until after the Pilot has concluded on 30 September 2012. However, a Costs Management Pilot Interim Report was published on 3 February 2012 and some of the data from that Report are set out below.⁵

Transparency about costs

Feedback gathered from the solicitors' and judges' questionnaires and interviews, and from miscellaneous sources including press coverage to date, indicates that transparency about costs is a most relevant factor. Remarkably, even lawyers who disapprove of the Pilot, and particularly of Form HB, appreciate how important it is that clients know the potential liability they must face.⁶

More certainty as to the other side's costs and as to the likely overall costs seems widely to be regarded as a substantial benefit, particularly if this is achieved early in the process. Several solicitors commented that completing Form HB is a useful exercise because it makes everyone realise what needs to be done to build the case, and what the costs of this process are likely to be. In this context it was also pointed out that this educates the parties about the costs of not settling at an early stage, which might assist settlement.

Two solicitors expressed the view that the costs management procedure will make things easier if the issue of costs arises after settlement.

How cost-effective is costs management?

A central question is whether the cost of preparing the cost estimate is in itself proportionate to the exercise. In the Final Report Sir Rupert Jackson asks: "What steps should be taken to ensure that the process is cost effective, i.e. that the litigation costs saved exceed the costs of the process?"⁷

² *Sylvia Henry v News Group Newspapers Ltd* [2012] EWHC 90218 (Costs) (16 May 2012) (www.practicallaw.com/1-519-5935). Ms Henry was a member of Haringey's social work team assigned to the tragic case of Baby P. A settlement in favour of the claimant was reached shortly before trial. Master Hurst accepted that the defendant's tactics had inevitably increased the claimant's costs.

³ See also www.legalfutures.co.uk/features/actual-budget-catastrophe, by Andy Ellis, the costs lawyer who acted for the defendant NGN.

⁴ *Sylvia Henry v News Group Newspapers Ltd* [2012] EWHC 90218 (Costs) (16 May 2012), paragraph 69 of the Approved Judgment.

⁵ Gould, N, King, C, Lockwood, C and Hutchison, T (2012) *Costs Management Pilot Interim Report*, King's College London, 3 February. A full copy of the Interim Report is available on <http://www.judiciary.gov.uk/publications-and-reports/review-of-civil-litigation-costs/judicial-pilots/cost-management-pilot-int-report> and also on http://www.fenwickelliott.co.uk/files/cost_management_pilot_interim_report_february_2012.pdf?sid=441

⁶ See Jackson, LJ (2009) *Review of Civil Litigation Costs: Final Report*, December (the "Final Report"), paragraph 2.2. The *Final Report* built on his *Preliminary Report* as well as an earlier costs pilot which ran in the Birmingham TCC and Mercantile Court from 1 June 2009 until 31 May 2010 (the "Birmingham Pilot"). The guidelines for the Birmingham Pilot included that: "It is intended that a party's budget will be no more detailed than that which the solicitor provides to his client for the purposes of paragraph 2.03 of the Solicitors' Code of Conduct 2007. Accordingly, no costs should be involved on either side in the preparation of such estimate."

⁷ Jackson, LJ, *Final Report*, chapter 40, paragraph 1.5 vi.

Significant concerns are expressed by solicitors that the Pilot increases costs due to the time taken to comply with it. This is despite the fact that for most respondents completing Form HB only took between two and four hours, with just one solicitor taking over five hours. This result is similar to the results of the Birmingham Pilot, which came to the conclusion that the exercise of completing the budget form, if done efficiently, takes about 2.5 hours.

However, feedback from costs draftsmen and other sources has indicated that, in London at least, the process can take considerably longer, although this is not borne out by the questionnaires received to date. It would be interesting to see the views of solicitors representing parties in higher-value cases, particularly in the London TCC, as the Pilot's responses to date regard relatively low-value claims.

One solicitor was worried that costs management might be rolled out into all areas of litigation, which would be a "big ask". Completing such a detailed budget form could be justified in cases involving several hundred thousands of pounds. However, if the dispute value were only about £20,000 it would not be fair on the parties to ask them to do the same.

Risk of underestimating costs

The risk of underestimating costs has been mentioned in the legal press and in feedback gathered under the Pilot. One lawyer, who referred to his litigation career of over three decades, said that he has never *overestimated* costs, whereas *underestimating* costs can happen very easily. If costs are underestimated, this has to be explained to the client; and an application to the court to approve the increased costs in itself incurs further costs.

Two-pronged process of costs and issues

One solicitor referred to a judge trying to restrict the budget by treating the case in question as a straightforward one, which according to the claimant's solicitor it was not. The claimant was a mortgage lender in a professional negligence case against a law firm. The defendant raised many issues in a "scattergun" approach and was not willing adequately to address and narrow the issues in dispute – and thus forced the claimant to address *all* the issues so that in trial such issues would not be regarded as accepted. Therefore just addressing the costs was not enough – dealing with the issues was just as important.

Could there be a risk of reducing a costs budget simply by reference to the amount in dispute, in other words proportionality, rather than by reference to the issues and the work in fact required? The solicitor in the above-mentioned case seemed to note a tendency to simplify a case in order to reduce the level of costs, without considering the complexity of the issues.

Form HB does not provide for the issues of the case to be set out in the costs budget. It was suggested that including the issues of the case in Form HB could be a way of reminding anyone looking at the costs budget of the complexity of the case.

Implications for mediation

The case described by one solicitor was settled by mediation soon after completing Form HB. The solicitor explained that at the time of the mediation the parties had a much better understanding of the likely costs involved in litigation, which was due to the Pilot and completing Form HB. A clear understanding of the potential costs of litigation at the time of mediation seems to have contributed to the success of the mediation.

What does the client want?

Two solicitors explained that their firms specialise in providing legal services to the insurance and reinsurance markets; and that they mostly act for the defendant. They further explained that insurance clients are usually happy to receive a total figure of the estimated costs and are not interested in much detail. Therefore completing the budget form constitutes extra work that otherwise would not have to be done. It adds to the costs of litigation.

One of the solicitors specialising in insurance said that in 99 per cent of the cases the other party (i.e. the claimant) is willing to disclose their incurred and estimated future costs when asked. This will of course not be done in the detail of Form HB, but given as a total figure. However, this can be obtained in a five-minute telephone call or in writing, whereas completing Form HB took her more than five hours every time, which was very difficult to explain to the respective clients.

Contingencies

Solicitors mentioned that a better explanation of the contingencies in Form HB would be useful. For example, the form does not contain an extra day of trial as one of the possible contingencies.

Two judges pointed out how important it is to flag up the contingencies in Form HB. In terms of costs it makes a substantial difference whether you have a one-week trial or a two-week trial. Flagging up contingencies also shows flexibility.

Litigant in person

For the avoidance of doubt, the costs management procedure is not appropriate or intended for litigants in person. The new cost rules that come into force in April 2013 will expressly exempt litigants in person, as they already do in defamation costs management.⁸

Cost management vs. cost capping

A judge at the Birmingham Mercantile Court pointed out that the costs management procedure is about costs *management* and not costs *capping*; and emphasised that he does not want to cut costs *per se*, although costs should ideally be proportionate to the claim. Equal footing also comes into the equation and might be the reason to approve two budgets, which can seem disproportionately high for the respective claim.

New skills and training

Concerns have been raised by solicitors and judges that few solicitors, and possibly fewer judges and barristers, are equipped adequately to manage "litigation projects".

The issues of "lack of experience" and "lack of familiarity" and "lack of the necessary skills" were raised by both solicitors and judges.

Some (solicitors and judges) regard it as a substantial problem that barristers in the past had very little involvement with cost issues; and that most judges were barristers before being appointed as judge.

One judge who has spent the last 16 years "on the bench" said that he had no practical experience with most of the contentious costs issues. He said that he personally feels under-equipped for detailed costs management under the Pilot scheme; and that there are several issues that ought to be clarified.

A question raised by this judge was: "How much detail am I supposed to go into as a judge?" He understands that the Pilot is not meant as a preliminary assessment of costs, but feels that it remains unclear as to what level of particularity judges are supposed to descend to.

This judge further said that it remains unclear to him whether he is meant to focus on (a) the individual stages; or (b) the overall costs figure.

The judge concluded by saying that "the whole object of the Pilot is for us to exercise some kind of control over costs". Usually (not always) the parties are roughly on an equal footing, i.e. are budgeting on a similar level. He finds it very difficult for a judge to intervene unless something is strikingly out of line. In other words, it is difficult for judges to take the initiative if both budgets are on a similar level.

Judicial training in costs management has already started,⁹ and further judicial education in advance of the implementation of the new cost rules in April 2013 is being planned by a team set up under the Judicial College. What form of training solicitors, barristers and their clerks should receive in order to perform the tasks of costs management remains to be decided.

The role of the judge

The courts' current costs management powers

The Civil Procedure Rules (the "CPR") make no reference to the term "Cost Management". However, that is not to say that the CPR do not attempt to control costs.

In summary, the existing powers of the court that enable it, directly or indirectly, to manage costs are:

- 1 Take the amount of an estimate into account when making case management orders (CPR 1.1);

⁹ See Ramsey, J (2012) *Costs Management Implementation Lecture*, 29 May, paragraph 14.

- 2 Require a party to file and serve an estimate of costs as per Form H (section 6 of the Costs Practice Direction ("**CPD**") 43-48 and CPR 3.1(3)(II));
- 3 Require costs estimates (section 6.4(b), CPD);
- 4 Retrospectively limit a receiving party to the amount in an estimate of costs if costs ultimately exceed that estimate by 20 per cent or more and no satisfactory explanation is provided (section 6.5A and 6.6, CPD);
- 5 Attach conditions (including as to costs) to case management decisions (CPR 3.1(2) (m) and CPR 3.1(3)(a)); and
- 6 Limit the amount of recoverable costs for a given step in the proceedings (costs capping) (CPR 44.18).

CPR 1.1 provides:

1.1 The overriding objective

- (1) *These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.*
- (2) *Dealing with a case justly includes, so far as is practicable –*
 - a. *Ensuring that parties are on an equal footing;*
 - b. Saving expense;**
 - c. Dealing with the case in ways which are proportionate –**
 - i. *to the amount of money involved;*
 - ii. *to the importance of the case;*
 - iii. *to the complexity of the issues; and*
 - iv. *to the financial position of each party;*
 - d. *Ensuring that it is dealt with expeditiously and fairly; and*
 - e. *Allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."*

Lord Justice Jackson contended that CPR 1.1(2) (b) and (c) essentially underpin the court's case management powers, and therefore "it is axiomatic that the court has the jurisdiction to actively cost manage".¹⁰

In view of the courts' existing comprehensive powers to manage costs,¹¹ one might ask why the Pilot is necessary. It appears that while the courts have potentially wide cost management powers, they are not used as effectively or actively as they could be.

Whilst on the face of it Section 6 of the CPD provides the judiciary with an adequate mechanism for managing costs, cost estimates have on the whole been largely unsuccessful at managing costs; Jeremy Morgan QC has stated that in his experience "even the mandatory requirements have very often been ignored ... Similarly the discretionary power to call for estimates at any stage has not been greatly used".¹²

This sentiment is echoed by Lord Justice Jackson, who in his Preliminary Report acknowledges that "scant attention is paid" to the CPD during the course of case

¹⁰ Jackson LJ (2009) *Review of Civil Litigation Costs: Preliminary Report* (the "Preliminary Report"), 8 May, paragraph 2.1.

¹¹ See also Jackson LJ, *Preliminary Report*, paragraph 2.1: "Within the CPR judges are given an armoury of powers which collectively enable cases to be managed not only by reference to the steps that may be taken in the given proceedings, but also by reference to the level of costs to be incurred."

¹² Morgan, J, QC (2010), *Cost Management – The Policy Background and the Law*, 23 November.

management hearings, and as a result there is an inherent need to strengthen the cost management powers, if the court is to take control of spiralling litigation costs.¹³

The new costs rules

Proportionality is the most important principle of the new costs rules; and proportionality will be implemented before the issue of the claim form, throughout the life of proceedings, and at the end of proceedings when costs come to be assessed.¹⁴

In his lecture on proportionate costs, Lord Neuberger referred to the point made by Lord Devlin in 1970:

"It is a fallacy to think that time and money are no object where the operation of the civil justice system is concerned. Parties and their lawyers must keep firmly in mind that they ought to expend no more than a proportionate amount of money in the pursuit of justice. If they wish to spend more, they must appreciate that such sums will not be recoverable from their opponent. That is proportionality, proportionate costs, as between the parties."¹⁵

Lord Woolf and Lord Jackson both accept that the aim of achieving substantive justice must be counterbalanced by the need for economy, efficiency and proportionality.¹⁶

Costs Management Orders ("CMOs")

The most common reason given in the judges' questionnaires for making a CMO was "proportionality", by which was meant proportionality of the costs to the value of the claims in question. The other most common reasons given were "as an aide to case management" and "to control future cost increases". "Equal footing" and "equality of arms" were further reasons for making a CMO.

Where a CMO is made, it has an impact on the assessment of costs. When assessing costs on a standard basis, the court will have regard to the receiving party's last approved or agreed budget for each phase of the proceedings and "will not depart from such approved or agreed budget unless satisfied that there is good reason to do so".¹⁷

When judges apply the new proportionality test to the budget, they will consider whether the total sums on each side are proportionate. The court will also consider the cost impact of its directions. The primary focus will be on the total costs and the overall costs for each stage of the proceedings. However, the court is not embarking on a detailed assessment in advance.¹⁸

Judicial continuity

A Birmingham TCC judge believes that the key to the Pilot being so successful is judicial continuity. He stated that the costs management procedure works well in the TCC and Mercantile Courts because the same judge deals with a case from start to finish. To date, this is not so in other courts. This judge has concerns whether the scheme would work without judicial continuity, and sees many problems arising if the costs management procedure were to be extended to other courts without there also being judicial continuity in the process.

13 Jackson LJ, *Preliminary Report*, paragraph 2.16

14 See Neuberger L, MR (2012) *Proportionate Costs: The Fifteenth Lecture in the Implementation Programme*, Law Society, 29 May.

15 *Ibid.*, paragraph 8.

16 See for instance Jackson, LJ (2009), *Final Report*, chapter 40, paragraph 5.

17 CPR 3.18

18 Ramsey, J (2012) *Costs Management Implementation Lecture*, 29 May, paragraphs 16, 17 and 21.

Docketing is being piloted in the Leeds County Court and District Registry.¹⁹

Precedent HB and the new Precedent H

Form H, Form HA, Form HB and new Form H

Precedent H was the form that parties were required to use to lodge estimates of costs at the time when Lord Justice Jackson prepared his Final Report. Many litigants ignored this requirement.²⁰

Precedent HA is the precedent that parties are required to use if they are subject to the Defamation Pilot which will continue until September 2012.

Precedent HB ("**Form HB**") is the precedent that parties are required to use if they are subject to the Costs Management Pilot (the "**Pilot**") which started in the TCC and Mercantile Courts in October 2011 and will also continue until September 2012.

The new Precedent H ("**Form H**") is an amended version of Form HB and was launched at the Law Society Conference on 29 May 2012.

The answers provided in the Pilot's questionnaires indicate that many solicitors find completing the budget in accordance with Form HB difficult and time-consuming, but expect that this will get easier with practice.

The following criticisms of Form HB were made:

- 1 Columns and spaces in the budget form should expand as required.
- 2 Form HB should be a fully functioning Excel form that automatically makes all the calculations.
- 3 Not possible to insert figures in all the cells.
- 4 Form HB is too detailed and too time-consuming to complete; this is also due to the required "stage-by-stage" estimates. This increases costs to the client.
- 5 "From the court's point of view, it may be too much information."
- 6 Predicting costs accurately at the early stages of litigation is very difficult.
- 7 Later adjustments to costs estimates incur further costs.
- 8 Form HB is not compatible with law firms' time-recording systems.
- 9 There should be guidance notes on how to complete Form HB.
- 10 Costs estimates should be based on a range of figures, rather than a specific figure. The required level of detail and accuracy is too high.
- 11 To factor in contingencies in the estimate is difficult. A better explanation of the contingencies in Form HB would help.

¹⁹ Brown, HHJ (2012) "Costs Management & Docketed Judges: Are you ready for the big bang next year?", *NLJ*, March. As a docketed judge, His Honour Judge Simon Brown has been costs managing all cases in the Birmingham Mercantile Court since 1 June 2009.

²⁰ Jackson, LJ (2009) *Final Report*, chapter 40, paragraph 1.3.

- 12** A breakdown of experts' fees might be helpful in cases where multiple experts are involved.

Law firms reported their frustration about having to prepare their own Excel spreadsheets, and that it would be a substantial improvement if Form HB were set up in such a manner that it always downloads as a usable spreadsheet. Some respondents complained that they had to calculate figures manually, or otherwise type the whole form into an Excel document, because Form HB was Word-based rather than in a workable Excel format.

Who should complete Form HB?

No one questioned the importance of getting the costs budget right. It is often mentioned how difficult it is to draft the costs budget, particularly in complex cases, and that it takes time, skill and litigation experience.

This might suggest that the person best placed to carry out the estimate would be an experienced litigator, rather than a junior lawyer or trainee. The frequent involvement of senior solicitors in this exercise also explains why the costs of preparing the budget may be high. One solicitor (with over eight years' PQE and litigation experience) in fact pointed out that a senior solicitor ought to prepare the costs budget; and that in particular e-disclosure is often underappreciated by less experienced litigators.

Feedback from costs draftsmen in London indicates that they are frequently being used in addition to fee earners to produce the costs budget.

Difficulty of predicting costs accurately at the early stages of litigation

Form HB was also criticised for being too long and too detailed, in particular that the required apportionments of costs, and also the apportionments between fee earners, are too detailed.

Several solicitors emphasised how difficult it is to predict costs accurately at the early stages of litigation, particularly in view of the level of detail required by Form HB, and that the work required in bringing a case to trial can change as the case progresses. Predicting costs accurately is even harder if the trial date is many months away.

In this context it was said that a "range of figures", rather than a specific figure, in respect of the categories of work would make lawyers feel less worried about their predictions when setting out the costs estimate. The "width" of the range would indicate the certainty or lack of certainty about the figures.

Another issue raised by several solicitors is that costs largely depend on how difficult the other side is and that completing Form HB involved a lot of guesswork. Solicitors who are not full-time litigators found it particularly hard to estimate costs at an early stage.

Consequences of later adjustments to costs estimates

Solicitors and judges have raised the issue of possible consequences of later adjustments to Form HB and have demanded greater clarity. Several respondents raised the following question: "How would a court treat the case of having to change costs later?"

PD 51G, paragraph 8: Effect on subsequent assessment of costs:

"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."

Further clarification seems to be required for the courts' reasons to approve or disapprove departures from the previous budget; and how the principle that it "will not depart from the approved budget unless there is good reason to do so" operates. Does this mean approval with a caveat? To what extent should the last approved budget be binding on the final assessment of costs?

Incompatibility of Form HB with time-recording systems

Solicitors have reported that their firm's time-recording system does not record time in a compatible manner with Form HB and that too much time was spent on allocating and calculating figures manually. Therefore many solicitors (often with the help of costs draftsmen) changed Form HB into an Excel spreadsheet.

The new Form H and the new rules

The new and improved Form H has been launched at the Law Society Conference on 29 May 2012. Form H is now in Excel format and addresses many of the criticisms of its predecessor, Form HB. For example, the cells of the "fully functioning" Excel Form H now expand as required and all the calculations are done automatically. You will find a pdf version of the spreadsheet at **Appendix 1**.

The new rules (CPR 3.12 to 3.18 and the new Practice Direction 3E) have been approved by the Civil Procedure Rule Committee and will come into force in April 2013. They will apply generally to all multi-track cases in the county court and the High Court, unless the court orders otherwise.²¹

Under the new rules all parties (except litigants in person) must file and exchange cost budgets in Form H within 28 days after service of the defence.²² In default, the budget will only comprise applicable court fees.²³

It is worth pointing out the new paragraph 6.2 in Section 6 of the Costs Practice Direction:

"6.2 If there is a difference of 20% or more between the costs claimed by a receiving party on detailed assessment and the costs shown in a budget filed by that party, the receiving party must provide a statement of the reasons for the difference with his bill of costs."

²¹ CPR 3.12(1). The new costs management rules will not apply to the Commercial Court, unless the court orders that they should apply in a particular case.

²² CPR 3.13.

²³ CPR 3.14.

The new Practice Direction 3E clearly splits the pre-action costs (i.e. actual costs incurred prior to the first CMC) from any future estimated costs:

"5. As part of the costs management process the court may not approve costs incurred before the date of any budget. The court may, however, record its comments on those costs and should take those costs into account when considering the reasonableness and proportionality of all subsequent costs."²⁴

The client's view

Under the present regime, neither party has any effective control over the costs that the other side is running up in the course of the litigation. Feedback from solicitors confirms that many of their clients welcome the new transparency about costs. Feedback from judges suggests that in the past parties often did not realise what their potential liability might be until the end of the process.²⁵

The parties' approval of the budget

One of the topics debated by judges and practitioners is the parties' verification of the budget, since it is the parties (or at least one of them) and not the solicitors who pay for the litigation. Recommendations were made that parties should formally approve their respective costs budgets before exchange or filing with the court, perhaps by including such formal requirement in Form HB.

Conclusion

Feedback received under the Pilot generally indicates that costs management is a new discipline that requires skill and practice, but which can be learnt.

The costs management procedure effectively shifts the focus of costs control from retrospective, as it currently is, to prospective, with the court focusing upfront on how much should be spent (or at least recovered) in the litigation.

More certainty as to the other side's costs and as to the likely overall costs at the beginning of the litigation seems widely to be regarded as a positive factor of costs management.

With regard to the unavoidable costs of the costs management process itself, it is perhaps too early to be certain that the overall effect of costs management will be to bring down the total costs of the litigation. However, costs management under the new regime is likely to introduce a new discipline of incurring litigation costs.

What can be said about the client's perspective? Solicitors are obliged to provide cost information and estimates of cost for litigation. Most commercial clients have for many years requested cost over time estimates so they can consider the cost benefit risk and cash-flow requirements of funding litigation. It is too early to say how clients really feel about the new regime. Some, probably a very limited few, will find to their surprise that their cost recovery is limited by a CMO. However, many will no doubt welcome the importance now placed on the cost recovery implications and the increased information which provides for a better assessment of the settlement options during the proceedings.

²⁴ PD 3E, paragraph 5.

²⁵ See also Brown, HHJ (2012) "Costs Management & Docketed Judges: Are you ready for the big bang next year?", *NLJ*, March: "More worryingly, it appeared that clients who attended had not been told what their own lawyers were proposing to spend on their behalf, let alone what bill might be landed upon them, if unsuccessful, by an uncontrolled budget on the other side."

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Appendix 1

Costs budget of [Claimant / Defendant] dated []

PRECEDENT H

| Work done / to be done | Assumptions [to be completed as appropriate] | | Incurred | | Estimated | | Total (£) |
|--|--|----------------|-------------------|----------------|-------------------|----------------|--------------|
| | Disbursements (£) | Time costs (£) | Disbursements (£) | Time costs (£) | Disbursements (£) | Time costs (£) | |
| Pre-action costs | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| Issue / pleadings | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| CMC | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| Disclosure | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| Witness statements | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| Expert reports | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| PTR | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| Trial preparation | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| Trial | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| ADR / Settlement discussions | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| Contingent cost A: [explanation] | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| Contingent cost B: [explanation] | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| Contingent cost C: [explanation] | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |
| GRAND TOTAL (including both incurred costs and estimated costs) | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 | £0.00 |

This estimate excludes VAT (if applicable), court fees, success fees and ATE insurance premiums (if applicable), costs of detailed assessment, costs of any appeals, costs of enforcing any judgment and [complete as appropriate]

[Statement of truth]

Signed

Position

Date

In the: [to be completed]
Parties: [to be completed]
Claim number: [to be completed]

| Item | RATE (per hour) | PRE-ACTION COSTS | | | | ISSUE / PLEADINGS | | | | CMC | | | | |
|--|--|------------------|-----------------|-------|-------|-------------------|-----------------|-------|-------|----------------|-----------------|-------|-------|-------|
| | | Incurred costs | Estimated costs | | TOTAL | Incurred costs | Estimated costs | | TOTAL | Incurred costs | Estimated costs | | TOTAL | |
| | | | £ | Hours | | | £ | Hours | | | £ | Hours | | £ |
| Fee earners' time costs | | | | | | | | | | | | | | |
| 1 | [insert relevant] | | | £0.00 | | | | £0.00 | | | | | | £0.00 |
| 2 | [fee earner] | | | £0.00 | | | | £0.00 | | | | | | £0.00 |
| 3 | [description] | | | £0.00 | | | | £0.00 | | | | | | £0.00 |
| 4 | [Ideally add extra lines] | | | £0.00 | | | | £0.00 | | | | | | £0.00 |
| 5 | Total Profit Costs (1 to 4) | £0.00 | 0 | £0.00 | £0.00 | 0 | £0.00 | £0.00 | £0.00 | 0 | £0.00 | £0.00 | £0.00 | £0.00 |
| Expert's costs | | | | | | | | | | | | | | |
| 6 | Fees | | | £0.00 | | | | £0.00 | | | | | | £0.00 |
| 7 | Disbursements | | | | | | | | | | | | | |
| Counsel's fees [indicate seniority] | | | | | | | | | | | | | | |
| 8 | Leading counsel | | | £0.00 | | | | £0.00 | | | | | | £0.00 |
| 9 | Junior counsel | | | £0.00 | | | | £0.00 | | | | | | £0.00 |
| 10 | Court fees | | | | | | | | | | | | | |
| 11 | Other Disbursements | | | | | | | | | | | | | |
| 12 | Explanation of disbursements [details to be completed] | | | | | | | | | | | | | |
| 13 | Total Disbursements (6 to 11) | | | £0.00 | | | | £0.00 | | | | | | £0.00 |
| 14 | Total (5 + 13) | | 0 | £0.00 | £0.00 | 0 | £0.00 | £0.00 | £0.00 | 0 | £0.00 | £0.00 | £0.00 | £0.00 |

In the: [to be completed]
 Parties: [to be completed]
 Claim number: [to be completed]

| | RATE (per hour) | DISCLOSURE | | | | WITNESS STATEMENTS | | | | EXPERT REPORTS | | | |
|----|--|-----------------|-----------------|-------|-------|--------------------|-----------------|-------|-------|-----------------|-----------------|-------|-------|
| | | Incurring costs | Estimated costs | | TOTAL | Incurring costs | Estimated costs | | TOTAL | Incurring costs | Estimated costs | | TOTAL |
| | | £ | Hours | £ | | £ | Hours | £ | | £ | Hours | £ | |
| | Fee earners' time costs | | | | | | | | | | | | |
| 1 | [insert relevant] | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 2 | [fee earner] | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 3 | [description] | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 4 | [Ideally add extra lines] | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 5 | Total Profit Costs (1 to 4) | £0.00 | 0 | £0.00 | £0.00 | 0 | £0.00 | £0.00 | £0.00 | 0 | £0.00 | £0.00 | £0.00 |
| 6 | Expert's costs | | | | | | | | | | | | |
| | Fees | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 7 | Disbursements | | | | | | | | | | | | |
| | Counsel's fees [indicate seniority] | | | | | | | | | | | | |
| 8 | Leading counsel | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 9 | Junior counsel | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 10 | Court fees | | | | | | | | | | | | |
| 11 | Other Disbursements | | | | | | | | | | | | |
| 12 | Explanation of disbursements [details to be completed] | | | | | | | | | | | | |
| 13 | Total Disbursements (6 to 11) | | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 14 | Total (5 + 13) | 0 | | | £0.00 | 0 | | | £0.00 | 0 | | | £0.00 |

In the: [to be completed]
 Parties: [to be completed]
 Claim number: [to be completed]

| | RATE (per hour) | PTR | | | | TRIAL PREPARATION | | | | TRIAL | | | |
|--|--|-----------------|-----------------|--------------|--------------|-------------------|-----------------|--------------|--------------|-----------------|-----------------|--------------|--------------|
| | | Incurring costs | Estimated costs | | TOTAL | Incurring costs | Estimated costs | | TOTAL | Incurring costs | Estimated costs | | TOTAL |
| | | £ | Hours | £ | | £ | Hours | £ | | £ | Hours | £ | |
| Fee earners' time costs | | | | | | | | | | | | | |
| 1 | [insert relevant] | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 2 | [fee earner] | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 3 | [description] | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 4 | [Ideally add extra lines] | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 5 | Total Profit Costs (1 to 4) | £0.00 | 0 | £0.00 | £0.00 | 0 | £0.00 | £0.00 | £0.00 | 0 | £0.00 | £0.00 | £0.00 |
| Expert's costs | | | | | | | | | | | | | |
| 6 | Fees | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 7 | Disbursements | | | | | | | | | | | | |
| Counsel's fees [indicate seniority] | | | | | | | | | | | | | |
| 8 | Leading counsel | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 9 | Junior counsel | £0.00 | | | £0.00 | | | | £0.00 | | | | £0.00 |
| 10 | Court fees | | | | | | | | | | | | |
| 11 | Other Disbursements | | | | | | | | | | | | |
| 12 | Explanation of disbursements [details to be completed] | | | | | | | | | | | | |
| Total Disbursements | | | | | | | | | | | | | |
| 13 | (6 to 11) | | | | £0.00 | | | | | | | | £0.00 |
| 14 | Total (5 + 13) | | 0 | | £0.00 | 0 | | | £0.00 | 0 | | | £0.00 |

In the: [to be completed]
 Parties: [to be completed]

Claim number: [to be completed]

| | RATE (per hour) | SETTLEMENT / ADR | | | CONTINGENT COST A: [EXPLAIN] | | | CONTINGENT COST B: [EXPLAIN] | | |
|----|--|------------------|-----------------|-------|------------------------------|-----------------|-------|------------------------------|-----------------|-------|
| | | Incurring costs | Estimated costs | TOTAL | Incurring costs | Estimated costs | TOTAL | Incurring costs | Estimated costs | TOTAL |
| | | £ | Hours | £ | £ | Hours | £ | £ | Hours | £ |
| | Fee earners' time costs | | | | | | | | | |
| 1 | Grade A | £0.00 | | £0.00 | | | £0.00 | | | £0.00 |
| 2 | Grade B | £0.00 | | £0.00 | | | £0.00 | | | £0.00 |
| 3 | Grade C | £0.00 | | £0.00 | | | £0.00 | | | £0.00 |
| 4 | Grade D | £0.00 | | £0.00 | | | £0.00 | | | £0.00 |
| 5 | Total Profit Costs (1 to 4) | £0.00 | 0 | £0.00 | £0.00 | 0 | £0.00 | £0.00 | 0 | £0.00 |
| | Expert's costs | | | | | | | | | |
| 6 | Fees | £0.00 | | £0.00 | | | £0.00 | | | £0.00 |
| 7 | Disbursements | | | | | | | | | |
| | Counsel's fees [indicate seniority] | | | | | | | | | |
| 8 | Leading counsel | £0.00 | | £0.00 | | | £0.00 | | | £0.00 |
| 9 | Junior counsel | £0.00 | | £0.00 | | | £0.00 | | | £0.00 |
| 10 | Court fees | | | | | | | | | |
| 11 | Other Disbursements | | | | | | | | | |
| 12 | Explanation of disbursements [details to be completed] | | | | | | | | | |
| 13 | Total Disbursements (6 to 11) | | | £0.00 | | | £0.00 | | | £0.00 |
| 14 | Total (5 + 13) | 0 | | £0.00 | 0 | | £0.00 | 0 | | £0.00 |