

Costs Budgeting

Costs budgeting is a process designed so that all parties have transparency and, to some extent, certainty on costs in litigation.

WHAT IS IT?

It is in effect a document that outlines all anticipated costs for each stage of the dispute. It helps provide an overview of where legal spend will be incurred, when and on what.

WHEN DOES IT APPLY?

Since April 2013 and save for a few exceptions (such as if a claim is for £10m or more), costs budgeting applies in all cases over £25,000 in value and those which are not straightforward, such as where there is a substantial dispute of facts. The parties cannot agree to dispense with costs management without the court's approval as it is mandatory unless exempt.

The purpose of costs management is to ensure all parties have visibility of costs in the proceedings and it allows the court to manage the process in order to further the overriding objective of dealing with cases justly and at a proportionate cost. Litigants in person are not required to file cost budgets (the "Budget").

CONSEQUENCES OF NOT FILING A COST BUDGET

It is vital that a Budget is filed. If a Budget is not filed when required, the court could restrict the fees the party can recover to only court fees. This means that all other costs over and above court fees that are incurred such as solicitor and barrister fees, will not be recoverable unless the court orders otherwise.

KEYSTONES OF COST BUDGETING

Costs management has the following keystones which are followed in each case:

1. The parties prepare and exchange litigation budgets and if necessary, as the case proceeds, amend the Budget.
2. The court states the extent to which those Budgets are approved.
3. The court manages the case so that it proceeds within the approved Budgets.
4. At the end of the litigation the recoverable costs of the winning party are assessed in accordance with the approved Budget.

HOW DOES COST BUDGETING WORK?

The following steps are a broad overview of how cost budgeting works in practice:

1. Budgets must be filed at court either with the directions questionnaire or not later than 21 days before the first case management conference. The Budget is in a prescribed form called a “**Precedent H**”. It sets out details of costs incurred and costs to be incurred by reference to each stage in the proceedings up to and including trial.
2. The parties must consider each other’s Budgets to see if they can be agreed. The parties must then file an agreed Budget discussion report (a prescribed form called “**Precedent R**”), which must set out those costs which are agreed, those that are not agreed and a summary of grounds for dispute. This must be done by no later than 7 days before the first case management conference.
3. At the costs and case management conference (“**CCMC**”) (which is often the first case management conference) the parties will make submissions to the court and a Budget will be approved by the court - potentially in the form of a costs management order (a “**CMO**”).
4. After the budgeted costs have been approved or agreed, each party will re-file the Budget in the form approved or agreed and this will be annexed to the order recording its agreement.
5. Once a case is concluded and the costs are being assessed by the court, if a CMO:
 - (a) has been made, the court will have regard to the party’s last approved or agreed Budget and will not depart from the Budget unless satisfied that there is a good reason to do so; and
 - (b) has not been made, then parties with costs claims of 20% or more above their Budgets will need to provide an explanation to the court.

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