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## PART 3 – THE COURT'S CASE MANAGEMENT POWERS

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## I CASE MANAGEMENT

### The court's general powers of management

#### 3.1

- (1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.
- (2) Except where these Rules provide otherwise, the court may –
- (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
  - (b) adjourn or bring forward a hearing;
  - (c) require that any proceedings in the High Court be heard by a Divisional Court of the High Court;
  - (d) require a party or a party's legal representative to attend the court;
  - (e) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
  - (f) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;
  - (g) stay<sup>(GL)</sup> the whole or part of any proceedings or judgment either generally or until a specified date or event;
  - (h) consolidate proceedings;
  - (i) try two or more claims on the same occasion;
  - (j) direct a separate trial of any issue;
  - (k) decide the order in which issues are to be tried;
  - (l) exclude an issue from consideration;
  - (m) dismiss or give judgment on a claim after a decision on a preliminary issue;
  - (n) order any party to file and exchange a costs budget;
  - (o) order the parties to engage in alternative dispute resolution; and
  - (p) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation with the aim of helping the parties settle the case.
- (3) When the court makes an order, it may –
- (a) make it subject to conditions, including a condition to pay a sum of money into court; and
  - (b) specify the consequence of failure to comply with the order or a condition.
- (3A) Where the court has made a direction in accordance with paragraph (2)(c) the

proceedings shall be heard by a Divisional Court of the High Court and not by a single judge.

(4) Where the court gives directions it will take into account whether or not a party has complied with the Practice Direction (Pre-Action Conduct) and any relevant pre-action protocol<sup>(GL)</sup>.

(5) The court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule, practice direction or a relevant pre-action protocol.

(6) When exercising its power under paragraph (5) the court must have regard to –

(a) the amount in dispute; and

(b) the costs which the parties have incurred or which they may incur.

(6A) Where a party pays money into court following an order under paragraph (3) or (5), the money shall be security for any sum payable by that party to any other party in the proceedings.

(7) A power of the court under these Rules to make an order includes a power to vary or revoke the order.

(8) The court may contact the parties from time to time in order to monitor compliance with directions. The parties must respond promptly to any such enquiries from the court.

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## Case management – unrepresented parties

### 3.1A

(1) This rule applies in any proceedings where at least one party is unrepresented.

(2) When the court is exercising any powers of case management, it must have regard to the fact that at least one party is unrepresented.

(3) Both the parties and the court must, when drafting case management directions in the multi-track, intermediate track and fast track, take as their starting point any relevant standard directions which can be found online at [www.justice.gov.uk/courts/procedure-rules/civil](http://www.justice.gov.uk/courts/procedure-rules/civil) and adapt them as appropriate to the circumstances of the case.

(4) The court must adopt such procedure at any hearing as it considers appropriate to further the overriding objective.

(5) At any hearing where the court is taking evidence this may include—

(a) ascertaining from an unrepresented party the matters about which the witness may be able to give evidence or on which the witness ought to be cross-examined; and

(b) putting, or causing to be put, to the witness such questions as may appear to the court to be proper.

## Court officer's power to refer to a judge

### 3.2 Where a step is to be taken by a court officer—

(a) the court officer may consult a judge before taking that step;

(b) the step may be taken by a judge instead of the court officer.

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## Court's power to make order of its own initiative

### 3.3

(1) Except where a rule or some other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(Part 23 sets out the procedure for making an application)

- (2) Where the court proposes to make an order of its own initiative –
- (a) it may give any person likely to be affected by the order an opportunity to make representations; and
- (b) where it does so it must specify the time by and the manner in which the representations must be made.
- (3) Where the court proposes –
- (a) to make an order of its own initiative; and
  - (b) to hold a hearing to decide whether to make the order, it must give each party likely to be affected by the order at least 3 days' notice of the hearing.
- (4) The court may make an order of its own initiative, without hearing the parties or giving them an opportunity to make representations.
- (5) Where the court has made an order under paragraph (4) –
- (a) a party affected by the order may apply to have it set aside<sup>(GL)</sup>, varied or stayed<sup>(GL)</sup>; and
  - (b) the order must contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) must be made –
- (a) within such period as may be specified by the court; or
  - (b) if the court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.
- (7) An application under paragraph (5)(a) shall be considered at an oral hearing unless the court decides and states in an order that the application is totally without merit.
- (8) If the court decides under paragraph (7) that the application is totally without merit, an application under paragraph (5)(a) may be made for reconsideration without an oral hearing."; and
- (9) If the court of its own initiative strikes out a statement of case or dismisses an application, (including an application for permission to appeal or for permission to apply for judicial review) and it considers that the claim or application is totally without merit –
- (a) the court's order must record that fact; and
  - (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

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### Power to strike out a statement of case

#### 3.4

- (1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.
- (2) The court may strike out<sup>(GL)</sup> a statement of case if it appears to the court –
- (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
  - (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;
  - (c) that there has been a failure to comply with a rule, practice direction or court order; or
  - (d )that, in the case of a claimant's statement of case—

(i) the claim is strategic litigation against public participation, being a SLAPP claim within the meaning of section 195 of the Economic Crime and Corporate Transparency Act 2023; and

(ii) the claimant has failed to show that it is more likely than not the claim would succeed at trial.

(Rules 20.2 and 20.3 provide that counterclaims and other additional claims are treated as claims and that references to a claimant include a party bringing an additional claim.)

(3) When the court strikes out a statement of case it may make any consequential order it considers appropriate.

(4) Where –

(a) the court has struck out a claimant's statement of case;

(b) the claimant has been ordered to pay costs to the defendant; and

(c) before the claimant pays those costs, the claimant starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out, the court may, on the application of the defendant, stay(GL) that other claim until the costs of the first claim have been paid.

(5) Paragraph (2) does not limit any other power of the court to strike out(GL) a statement of case.

(6) If the court strikes out a claimant's statement of case and it considers that the claim is totally without merit –

(a) the court's order must record that fact; and

(b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

(7) If a defendant applies to strike out all or part of the claim form or particulars of claim, that defendant need not file a defence before the hearing.

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### Judgment without trial after striking out

#### 3.5

(1) This rule applies where –

(a) the court makes an order which includes a term that the statement of case of a party shall be struck out if the party does not comply with the order; and

(b) the party against whom the order was made does not comply with it.

(2) A party may obtain judgment with costs by filing a request for judgment if –

(a) the order referred to in paragraph (1)(a) relates to the whole of a statement of case; and

(b) where the party wishing to obtain judgment is the claimant, the claim is for –

(i) a specified amount of money;

(ii) an amount of money to be decided by the court;

(iii) delivery of goods where the claim form gives the defendant the alternative of paying their value; or

(iv) any combination of these remedies.

(3) Where judgment is obtained under this rule in a case to which paragraph (2)(b)(iii) applies, it will be judgment requiring the defendant to deliver goods, or (if the defendant does not do so) pay the value of the goods as decided by the court (less any payments made).

(4) The request must state that the right to enter judgment has arisen because the court's order has not been complied with.

(5) A party must make an application in accordance with Part 23 if they wish to obtain judgment under this rule in a case to which paragraph (2) does not apply.

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### Judgment without trial after striking out a claim in the Civil National Business Centre

#### **3.5A**

(1) If a claimant files a request for judgment in the Civil National Business Centre in accordance with rule 3.5, in a claim which includes an amount of money to be decided by the court, the claim will be sent to the preferred hearing centre.

(2) If a claim is sent to a preferred hearing centre pursuant to paragraph (1), any further correspondence should be sent to, and any further requests should be made at, the hearing centre to which the claim was sent.

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### Setting aside judgment entered after striking out

#### **3.6**

(1) A party against whom the court has entered judgment under rule 3.5 may apply to the court to set the judgment aside.

(2) An application under paragraph (1) must be made not more than 14 days after the judgment has been served on the party making the application.

(3) If the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside<sup>(GL)</sup> the judgment.

(4) If the application to set aside<sup>(GL)</sup> is made for any other reason, rule 3.9 (relief from sanctions) shall apply.

#### **3.6A If—**

(a) a party against whom judgment has been entered under rule 3.5 applies to set the judgment aside;

(b) the claim is for a specified sum;

(c) the claim was started in the Civil National Business Centre; and

(d) the claim has not been sent to a County Court hearing centre,

the claim will be sent to—

(i) if the defendant is an individual, the defendant's home court; and

(ii) if the defendant is not an individual, the preferred hearing centre.

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### Sanctions for non-payment of certain fees by the claimant

#### **3.7**

(1) Except where rule 3.7A1 applies, this rule applies to fees payable by the claimant where—

(a) omitted;

(b) omitted;

(c) omitted;

(d) the court has made an order giving permission to proceed with a claim for judicial review; or

(e) the fee payable for a hearing specified by the Civil Proceedings Fees Order 2008<sup>1</sup> (Fees Order 2008) is not paid.

(Rule 54.12 provides for the service of the order giving permission to proceed with a claim for judicial review)

(2) The court will serve a notice on the claimant requiring payment of the fee specified in the Fees Order 2008 if, at the time the fee is due, the claimant has not paid it or made an application for full or part remission.

(3) The notice will specify the date by which the claimant must pay the fee.

(4) If the claimant does not –

(a) pay the fee; or

(b) make an application for full or part remission of the fee,  
by the date specified in the notice –

(i) the claim will automatically be struck out without further order of the court; and

(ii) the claimant will be liable for the costs which the defendant has incurred unless the court orders otherwise.

(Rule 44.9 provides for the basis of assessment where a right to costs arises under this rule and contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007<sup>2</sup>)

(5) Where an application for –

(a) full or part remission of a fee is refused, the court will serve notice on the claimant requiring payment of the full fee by the date specified in the notice; or

(b) part remission of a fee is granted, the court will serve notice on the claimant requiring payment of the balance of the fee by the date specified in the notice.”; and

(6) If the claimant does not pay the fee by the date specified in the notice –

(a) the claim will automatically be struck out without further order of the court; and

(b) the claimant will be liable for the costs which the defendant has incurred unless the court orders otherwise.

(7) If –

(a) a claimant applies to have the claim reinstated; and

(b) the court grants relief,  
the relief will be conditional on the claimant either paying the fee or filing evidence of full or part remission of the fee within the period specified in paragraph (8).

(8) The period referred to in paragraph (7) is –

(a) if the order granting relief is made at a hearing at which the claimant is present or represented, 2 days from the date of the order;

(b) in any other case, 7 days from the date of service of the order on the claimant.

### Sanctions for non-payment of the trial fee by the claimant

#### **3.7A1**

(1) In this rule and in rule 3.7AA—

(a) "Fees Order 2008" means the Civil Proceedings Fees Order 2008;

(b) "fee notice" means a notice of—

- (i) the amount of a trial fee;
  - (ii) the trial fee payment date; and
  - (iii) the consequences of non-payment of the trial fee;
- (c) "trial date" means the date of the trial in relation to which the trial fee is payable, and if the trial in relation to which the trial fee is payable is scheduled to commence during the course of a specified period, "trial date" means the date of the Monday of the first week of that specified period;
- (d) "trial fee" means fee 2.1 set out in the Table in Schedule 1 to the Fees Order 2008<sup>3</sup> and payable for the trial of a case on the multi-track, intermediate track, fast track or small claims track;
- (e) "trial fee payment date" means the date by which the trial fee must be paid, calculated in accordance with the Fees Order 2008;
- (f) "revised trial fee payment date" means, if an application for fee remission is denied in whole or part, the revised date by which the fee or part of it is to be paid, calculated in accordance with the Fees Order 2008.

(2) This rule applies in relation to trial fees where that fee is to be paid by the claimant and the court notifies the parties in writing of the trial date.

(3) When the court notifies the parties in writing of the trial date, the court must also send a fee notice to the claimant.

(4) The fee notice may be contained in the same document as the notice of trial date, or may be a separate document.

(5) Where an application for full or part remission of a trial fee is refused, when the court sends written notice to the claimant of the refusal, the court must also notify the claimant in writing—

(a) that the claimant is required to pay the full trial fee by the revised trial fee payment date; and

(b) of the consequences of non-payment of the trial fee.

(6) Where part remission of a fee is granted, when the court sends written notice to the claimant of the part remission, the court must also notify the claimant in writing—

(a) that the claimant is required to pay the balance of the trial fee by the revised trial fee payment date; and

(b) of the consequences of non-payment of the balance of the trial fee.

(7) If—

(a) the claimant has had notice in accordance with this rule to pay the trial fee;

(b) the claimant has not applied to have the trial fee remitted in whole or part; and

(c) the trial fee has not been paid on or before the trial fee payment date,

the claim will automatically be struck out without further order of the court, and unless the court orders otherwise, the claimant will be liable for the defendant's costs in accordance with rule 44.9(1).

(8) If—

(a) the claimant has had notice in accordance with this rule to pay the trial fee;

(b) the claimant has applied to have the trial fee remitted in whole or part;

(c) remission is refused or only part remission of the trial fee is granted;

(d) following the decision on remission, the claimant has had notice in accordance with this rule

to pay the full trial fee or balance of it; and

(e) the full trial fee or balance of it (as appropriate) has not been paid on or before the revised trial fee payment date,

the claim will automatically be struck out without further order of the court, and, unless the court orders otherwise, the claimant will be liable for the defendant's costs in accordance with rule 44.9(1).

(Rule 44.9 provides for the basis of assessment where a right to costs arises under this rule and contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007<sup>4</sup>.)

(9) If—

(a) a claimant applies to have the claim reinstated; and

(b) the court grants relief,

the relief must be conditional on the claimant either paying the trial fee or filing evidence of full or part remission of that fee within the period specified in paragraph (10).

(10) The period referred to in paragraph (9) is—

(a) if the order granting relief is made at a hearing at which the claimant is present or represented, 2 days from the date of the order;

(b) in any other case, 7 days from the date of service of the order on the claimant.

(11) If a fee is not paid for a claim where there is also a counterclaim, the counterclaim will still stand.

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## Sanctions for non-payment of certain fees by the defendant

### **3.7A**

(1) Except where rule 3.7AA applies, this rule applies to fees payable by the defendant where

—

(a) a defendant files a counterclaim without —

(i) payment of the fee specified by the Civil Proceedings Fees Order 2008<sup>5</sup> (Fees Order 2008); or

(ii) making an application for full or part remission of the fee; or

(b) the proceedings continue on the counterclaim alone and —

(i) omitted;

(ii) omitted;

(iii) omitted;

(iv) the fee payable for a hearing specified by the Fees Order 2008 is not paid.

(2) The court will serve a notice on the defendant requiring payment of the fee specified in the Fees Order 2008 if, at the time the fee is due, the defendant has not paid it or made an application for full or part remission.

(3) The notice will specify the date by which the defendant must pay the fee.

(4) If the defendant does not —

(a) pay the fee; or

(b) make an application for full or part remission of the fee,

by the date specified in the notice, the counterclaim will automatically be struck out without further order of the court.

(5) Where an application for –

(a) full or part remission of a fee is refused, the court will serve notice on the defendant requiring payment of the full fee by the date specified in the notice; or

(b) part remission of a fee is granted, the court will serve notice on the defendant requiring payment of the balance of the fee by the date specified in the notice.

(6) If the defendant does not pay the fee by the date specified in the notice, the counterclaim will automatically be struck out without further order of the court.

(7) If –

(a) the defendant applies to have the counterclaim reinstated; and

(b) the court grants relief,

the relief will be conditional on the defendant either paying the fee or filing evidence of full or part remission of the fee within the period specified in paragraph (8).

(8) The period referred to in paragraph (7) is –

(a) if the order granting relief is made at a hearing at which the defendant is present or represented, 2 days from the date of the order;

(b) in any other case, 7 days from the date of service of the order on the defendant.

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**Sanctions for non-payment of the trial fee by the defendant, where proceedings continue on the counterclaim alone**

**3.7AA**

(1) This rule applies in relation to trial fees where that fee is to be paid by the defendant and the court notifies the defendant in writing of the trial date.

(Definitions contained in rule 3.7A1(1) apply to this rule also.)

(2) When the court notifies the parties in writing of the trial date, the court must also send a fee notice to the defendant.

(3) The fee notice may be contained in the same document as the notice of trial date, or may be a separate document.

(4) Where an application for full or part remission of a trial fee is refused, when the court sends written notice to the defendant of the refusal, the court must also notify the defendant in writing —

(a) that the defendant is required to pay the full trial fee by the revised trial fee payment date; and

(b) of the consequences of non-payment of the trial fee.

(5) Where part remission of a fee is granted, when the court sends written notice to the defendant of the part remission, the court must also notify the defendant in writing —

(a) that the defendant is required to pay the balance of the trial fee by the revised trial fee payment date; and

(b) of the consequences of non-payment of the balance.

(6) If —

(a) the defendant has had notice in accordance with this rule to pay the trial fee;

(b) the defendant has not applied to have the trial fee remitted in whole or part; and

(c) the trial fee has not been paid on or before the trial fee payment date,  
the counterclaim will automatically be struck out without further order of the court.

(7) If—

- (a) the defendant has had notice in accordance with this rule to pay the trial fee;
- (b) the defendant has applied to have the trial fee remitted in whole or part;
- (c) remission is refused or only part remission of the trial fee is granted;
- (d) following the decision on remission, the defendant has had notice in accordance with this rule to pay the full trial fee or balance of it; and
- (e) the full trial fee or balance of it (as appropriate) has not been paid on or before the revised trial fee payment date,

the counterclaim will automatically be struck out without further order of the court.

(8) If—

- (a) a defendant applies to have the counterclaim reinstated; and
- (b) the court grants relief,

the relief will be conditional on the defendant either paying the trial fee or filing evidence of full or part remission of the fee within the period specified in paragraph (9).

(9) The period referred to in paragraph (8) is—

- (a) if the order granting relief is made at a hearing at which the defendant is present or represented, 2 days from the date of the order;
- (b) in any other case, 7 days from the date of service of the order on the defendant.

### Sanctions for dishonouring cheque

#### **3.7B**

(1) This rule applies where any fee is paid by cheque and that cheque is subsequently dishonoured.

(2) The court will serve a notice on the paying party requiring payment of the fee which will specify the date by which the fee must be paid.

(3) If the fee is not paid by the date specified in the notice –

- (a) where the fee is payable by the claimant, the claim will automatically be struck out without further order of the court;
- (b) where the fee is payable by the defendant, the defence will automatically be struck out without further order of the court,

and the paying party shall be liable for the costs which any other party has incurred unless the court orders otherwise.

(Rule 44.9 provides for the basis of assessment where a right to costs arises under this rule)

(4) If –

- (a) the paying party applies to have the claim or defence reinstated; and
- (b) the court grants relief,

the relief shall be conditional on that party paying the fee within the period specified in paragraph (5).

(5) The period referred to in paragraph (4) is –

- (a) if the order granting relief is made at a hearing at which the paying party is present or represented, 2 days from the date of the order;
- (b) in any other case, 7 days from the date of service of the order on the paying party.

(6) For the purposes of this rule, 'claimant' includes a claimant in a counterclaim or other additional claim and 'claim form' includes a counterclaim or other additional claim.

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## Sanctions have effect unless defaulting party obtains relief

### **3.8**

(1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction.

(Rule 3.9 sets out the circumstances which the court will consider on an application to grant relief from a sanction)

(2) Where the sanction is the payment of costs, the party in default may only obtain relief by appealing against the order for costs.

(3) Where a rule, practice direction or court order –

- (a) requires a party to do something within a specified time, and
- (b) specifies the consequence of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties except as provided in paragraph (4).

(4) In the circumstances referred to in paragraph (3) and unless the court orders otherwise, the time for doing the act in question may be extended by prior written agreement of the parties for up to a maximum of 28 days, provided always that any such extension does not put at risk any hearing date.

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## Relief from sanctions

### **3.9**

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –

- (a) for litigation to be conducted efficiently and at proportionate cost; and
- (b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence.

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## General power of the court to rectify matters where there has been an error of procedure

**3.10** Where there has been an error of procedure such as a failure to comply with a rule or practice direction –

- (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
- (b) the court may make an order to remedy the error.

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## Orders restraining civil proceedings

### **3.11**

(1) A "civil proceedings order" and an "all proceedings order" under section 42(1A) of the Senior Courts Act 1981 shall include provision for applying to begin, continue or make any application in any civil proceedings.

(2) A practice direction may set out –

(a) the circumstances in which the court has the power to make a civil restraint order against a party to proceedings;

(b) the procedure where a party applies for a civil restraint order against another party; and

(c) the consequences of the court making a civil restraint order.

## II COSTS MANAGEMENT

### Application of this Section and the purpose of costs management

#### 3.12

(1) This Section and Practice Direction 3D apply to all Part 7 multi-track cases, except—

(a) where the claim is commenced on or after 22nd April 2014 and the amount of money claimed as stated on the claim form is £10 million or more; or

(b) where the claim is commenced on or after 22nd April 2014 and is for a monetary claim which is not quantified or not fully quantified or is for a non-monetary claim and in any such case the claim form contains a statement that the claim is valued at £10 million or more; or

(c) where in proceedings commenced on or after 6th April 2016 a claim is made by or on behalf of a person under the age of 18 (a child) (and on a child reaching majority this exception will continue to apply unless the court otherwise orders); or

(d) where the proceeding are the subject of fixed costs or scale costs; or

(e) the court otherwise orders.

(1A) This Section and Practice Direction 3D will apply to any other proceedings (including applications) where the court so orders.

(2) The purpose of costs management is that the court should manage both the steps to be taken and the costs to be incurred by the parties to any proceedings (or variation costs as provided in rule 3.15A) so as to further the overriding objective.

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### Filing and exchanging budgets and budget discussion reports

#### 3.13

(1) Unless the court otherwise orders, all parties except litigants in person must file and exchange budgets—

(a) where the stated value of the claim on the claim form is less than £50,000, with their directions questionnaires; or

(b) in any other case, not later than 21 days before the first case management conference.

(2) In the event that a party files and exchanges a budget under paragraph (1), all other parties, not being litigants in person, must file an agreed budget discussion report no later than 7 days before the first case management conference.

(3) The court—

(a) may, on its own initiative or on application, order the parties to file and exchange costs budgets in a case where the parties are not otherwise required by this Section to do so;

(b) shall (other than in an exceptional case) make an order to file and exchange costs budgets if all parties consent to an application for such an order.

(4) The court may, in a substantial case, direct that budgets are to be limited in the first instance to part only of the proceedings and extended later to cover the whole proceedings.

(5) Every budget must be dated and verified by a statement of truth signed by a senior legal representative of the party.

(6) Even though a litigant in person is not required to prepare a budget, each other party (other than a litigant in person) must provide the litigant in person with a copy of that party's budget.

### Failure to file a budget

**3.14** Unless the court otherwise orders, any party which fails to file a budget despite being required to do so will be treated as having filed a budget comprising only the applicable court fees.

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### Costs management orders

**3.15**

(1) In addition to exercising its other powers, the court may manage the costs to be incurred (the budgeted costs) by any party in any proceedings.

(2) The court may at any time make a 'costs management order'. Where costs budgets have been filed and exchanged the court will make a costs management order unless it is satisfied that the litigation can be conducted justly and at proportionate cost in accordance with the overriding objective without such an order being made. By a costs management order the court will—

(a) record the extent to which the budgeted costs are agreed between the parties;

(b) in respect of the budgeted costs which are not agreed, record the court's approval after making appropriate revisions;

(c) record the extent (if any) to which incurred costs are agreed.

(3) If a costs management order has been made, the court will thereafter control the parties' budgets in respect of recoverable costs.

(4) Whether or not the court makes a costs management order, it may record on the face of any case management order any comments it has about the incurred costs which are to be taken into account in any subsequent assessment proceedings.

(5) Save in exceptional circumstances—

(a) the recoverable costs of initially completing Precedent H (the form to be used for a costs budget) shall not exceed the higher of—

(i) £1,000; or

(ii) 1% of the total of the incurred costs (as agreed or allowed on assessment) and the budgeted costs (agreed or approved); and

(b) all other recoverable costs of the budgeting and costs management process shall not exceed 2% of the total of the incurred costs (as agreed or allowed on assessment) and the budgeted (agreed or approved) costs.

(Precedent H is annexed to Practice Direction 3D.)

(6) The court may set a timetable or give other directions for future reviews of budgets.

(7) After a party's budgeted costs have been approved or agreed, the party must re-file and re-serve the budget—

(a) in the form approved or agreed with re-cast figures; and

(b) annexed to the order approving the budgeted costs or recording the parties' agreement.

(8) A costs management order concerns the totals allowed for each phase of the budget, and while the underlying detail in the budget for each phase used by the party to calculate the totals claimed is provided for reference purposes to assist the court in fixing a budget, it is not the role of the court in the costs management hearing to fix or approve the hourly rates claimed in the budget.

### Revision and variation of costs budgets on account of significant developments (“variation costs”)

#### **3.15A.**

(1) A party (“the revising party”) must revise its budgeted costs upwards or downwards if significant developments in the litigation warrant such revisions.

(2) Any budgets revised in accordance with paragraph (1) must be submitted promptly by the revising party to the other parties for agreement, and subsequently to the court, in accordance with paragraphs (3) to (5).

(3) The revising party must—

(a) serve particulars of the variation proposed on every other party, using the form prescribed by Practice Direction 3D;

(b) confine the particulars to the additional costs occasioned by the significant development; and

(c) certify, in the form prescribed by Practice Direction 3D, that the additional costs are not included in any previous budgeted costs or variation.

(4) The revising party must submit the particulars of variation promptly to the court, together with the last approved or agreed budget, and with an explanation of the points of difference if they have not been agreed.

(5) The court may approve, vary or disallow the proposed variations, having regard to any significant developments which have occurred since the date when the previous budget was approved or agreed, or may list a further costs management hearing.

(6) Where the court makes an order for variation, it may vary the budget for costs related to that variation which have been incurred prior to the order for variation but after the costs management order.

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### Costs management conferences

#### **3.16**

(1) Any hearing which is convened solely for the purpose of costs management (for example, to approve a revised budget) is referred to as a ‘costs management conference’.

(2) Where practicable, costs management conferences should be conducted by telephone or in writing.

### Court to have regard to budgets and to take account of costs

#### **3.17**

(1) When making any case management decision, the court will have regard to any available budgets of the parties and will take into account the costs involved in each procedural step.

(2) Paragraph (1) applies whether or not the court has made a costs management order.

(3) Subject to rule 3.15A, the court—

(a) may not approve costs incurred up to and including the date of any costs management hearing; but

(b) may record its comments on those costs and take those costs into account when considering the reasonableness and proportionality of all budgeted costs.

(4) If an interim application is made but is not included in a budget, the court may, if it considers it reasonable not to have included the application in the budget, treat the costs of such interim application as additional to the approved budgets.

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### Assessing costs on the standard basis where a costs management order has been made

**3.18** In any case where a costs management order has been made, when assessing costs on the standard basis, the court will –

- (a) have regard to the receiving party's last approved or agreed budgeted costs for each phase of the proceedings;
- (b) not depart from such approved or agreed budgeted costs unless satisfied that there is good reason to do so; and
- (c) take into account any comments made pursuant to rule 3.17(3) and recorded on the face of the order.

(Attention is drawn to rules 44.3(2)(a) and 44.3(5), which concern proportionality of costs.)

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## III COSTS CAPPING

### Costs capping orders – General

**3.19**

(1) For the purposes of this Section—

- (a) 'costs capping order' means an order limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made; and
- (b) 'future costs' means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.

(2) This Section does not apply to judicial review costs capping orders under Part 4 of the Criminal Justice and Courts Act 2015 or to protective costs orders.

(Rules 46.16 to 46.19 make provision for judicial review costs capping orders under Part 4 of the Criminal Justice and Courts Act 2015.)

(3) Omitted.

(4) A costs capping order may be in respect of –

- (a) the whole litigation; or
- (b) any issues which are ordered to be tried separately.

(5) The court may at any stage of proceedings make a costs capping order against all or any of the parties, if –

- (a) it is in the interests of justice to do so;
- (b) there is a substantial risk that without such an order costs will be disproportionately incurred; and
- (c) it is not satisfied that the risk in subparagraph (b) can be adequately controlled by –
  - (i) case management directions or orders made under this Part; and
  - (ii) detailed assessment of costs.

(6) In considering whether to exercise its discretion under this rule, the court will consider all the circumstances of the case, including –

- (a) whether there is a substantial imbalance between the financial position of the parties;
- (b) whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
- (c) the stage which the proceedings have reached; and
- (d) the costs which have been incurred to date and the future costs.

(7) A costs capping order, once made, will limit the costs recoverable by the party subject to the order unless a party successfully applies to vary the order. No such variation will be made unless –

- (a) there has been a material and substantial change of circumstances since the date when the order was made; or
- (b) there is some other compelling reason why a variation should be made.

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## Application for a costs capping order

### **3.20**

(1) An application for a costs capping order must be made on notice in accordance with Part 23.

(2) The application notice must –

- (a) set out –
  - (i) whether the costs capping order is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately; and
  - (ii) why a costs capping order should be made; and
- (b) be accompanied by a budget setting out –
  - (i) the costs (and disbursements) incurred by the applicant to date; and
  - (ii) the costs (and disbursements) which the applicant is likely to incur in the future conduct of the proceedings.

(3) The court may give directions for the determination of the application and such directions may –

- (a) direct any party to the proceedings –
  - (i) to file a schedule of costs in the form set out in paragraph 3 of Practice Direction 3E – Costs capping;
  - (ii) to file written submissions on all or any part of the issues arising;
- (b) fix the date and time estimate of the hearing of the application;
- (c) indicate whether the judge hearing the application will sit with an assessor at the hearing of the application; and
- (d) include any further directions as the court sees fit.

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## Application to vary a costs capping order

**3.21** An application to vary a costs capping order must be made by application notice pursuant to Part 23.

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## Footnotes

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