**Costs management in more detail**

This element introduces you to the nature and purpose of budgets and budget discussion reports, and other details of the costs management regime.

**Civil procedure rules**

The main CPR which support the content of this element are:

- CPR 3.12 to 3.18

- 3D PD

**Scope of the costs management regime**

The costs management regime will not apply in all cases. By default, the costs regime applies to all cases except the following cases (CPR 3.12):

- Small claims track, fast track or intermediate track claims.

- Claims commenced on or after 22 April 2014 where the amount of money claimed as stated on the claim form is £10 million or more.

- Claims commenced on or after 22 April 2014 which are for a monetary claim which is not quantified or not fully quantified or is for a non-monetary claim and the claim form contains a statement that the claim is valued at £10 million or more.

- Claims commenced after 6 April 2016 made by or on behalf of a person under the age of 18.

- Claims that are the subject of fixed costs or scale costs.

Note, however, that the court can disapply the costs management regime even when it would normally apply automatically (for example, where a claimant has as a limited or severely impaired life expectation of 5 years or less remaining – 3D PD 1), or require compliance with the regime even when it would not normally apply.

**Overview of the costs management regime**

- Parties prepare budgets: estimates of future costs. Filed and exchanged, usually 21 days before the first CMC. Subsequently discussed by the parties.

- Budget discussion reports record extent to which the parties have agreed budgets. Filed and exchanged, usually seven days before the first CMC.

- Budgets and budget discussion reports are considered by the court.

- Directions are determined in light of estimated costs. Court might make a costs management order: a provisional indication of what should be considered reasonable and proportionate costs in any later assessment proceedings.

**Filing and exchanging costs budgets**

When to file budgets (CPR 3.13(1)(b))?

- Stated value of the claim is less than £50,000: With the parties' directions questionnaires

- Any other case: 21 days before the first CMC

**What is a budget?**

'Budget' is defined in the CPR Glossary as:

"An estimate of the reasonable and proportionate costs (including disbursements) which a party intends to incur in the proceedings."

The statement of truth at the end of the statement of truth must read (22 PD 2.3):

"This budget is a fair and accurate statement of incurred and estimated costs which it would be reasonable and proportionate for my client to incur in this litigation"

The budget relates to what a party might hope to recover from the other side (party/party costs) as opposed to the amount a solicitor can charge a client for acting on its behalf (solicitor/party costs). Solicitor's fees (ie the amount charged to the client by the solicitor) are governed by the retainer (the contract between the solicitor and client), which does not need to bear any relation to recoverable costs. A solicitor may therefore be charging more than is in the budget for each stage of the litigation.

**Points for practice**

Discrepancies between budgets and charges to clients can lead to difficult conversations with clients, who will want to know why they should be paying their solicitor one amount, but claiming a lesser amount in the budget to ensure that it is both 'reasonable and proportionate'.

It is important to involve the client in the budgeting process to try to avoid any such solicitor/client costs issues, and also to warn clients that they may not be able to recover all that they spend on their case**.**

**Preparing the costs budget**

Parties should prepare the budgets carefully and revise them if necessary.

There is a prescribed form for the costs budget, Precedent H (3D PD 4). It requires practitioners to set out any assumptions on which the budget is based and any possible contingencies (things which are anticipated but which may not be necessary, for example, an application for specific disclosure). Note that it must be signed with its own form of statement of truth.

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It should be noted that budgeting is all about **future**costs. Incurred costs (costs incurred pre-budget) are included on the Precedent H, but they cannot be altered by the court and the rule that a party will only recover budgeted costs unless there is good reason (see later in this element) does not apply to costs incurred prior to the production of the costs budget (CPR 3.18(b)).

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**Budget discussion reports**

Once the parties have filed and exchanged costs budgets, they are required to discuss budgets with each other in order to agree the costs figures where possible. The parties must file and exchange budget discussion reports (Precedent R) no later than seven days before the first CMC (CPR 3.13 (2)).

By the budget discussion report, the parties indicate:

- The figures which are agreed and not agreed for each phase of the litigation; and

- A brief summary of the grounds of dispute.

Completing the budget discussion report enables the court to focus on those parts of the costs budget where there is disagreement between the parties.

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[a blank copy of Precedent R (the budget discussion report) is provided at this point]

**Costs management conference**

The next stage of costs management is the court considering the parties' budgets and the budget discussion reports. This generally takes place at the first case management conference (CPR 3.16). Alternatively, the court can convene a hearing solely for the purpose of costs management, in which case the hearing is called a costs management conference.

What does this consideration result in? There are two main consequences.

**1. Case management decisions**

When the court is making any case management decision, it is to have regard to any available costs budgets and the costs involved in each procedural step of the litigation (CPR 3.17). This applies at any stage in the litigation, but it is particularly significant when the court is making important case management decisions at the first case management conference, such as giving directions for the preparation of the case for trial.

**2. Costs management orders**

The court may, at any time, make a costs management order ('CMO').

The court will consider whether the budgeted costs fall within the range of reasonable and proportionate costs, and then the CMO will:

- Record the extent to which the costs budgets are agreed between the parties. Agreed figures cannot be changed by the court.

- Where the figures are not agreed, “record the court's approval of a costs budget, after making appropriate revisions”.

When the court approves the costs budget, this is an indication that the budgeted costs are reasonable and proportionate. In any case where a CMO has been made, when assessing costs on the standard basis the court will have regard to a party's last approved or agreed costs budget and will not depart from it unless satisfied that there is good reason to do so (CPR 3.18(b)). Departing from the costs budget in this situation means allowing costs in excess of those in the approved costs budget or CMO to be recovered.

Note that, in any assessment process, a fundamental principle is that party cannot recover a greater sum for costs from an opponent than it has in fact incurred: this is true even if the budget provides for a greater sum than has been incurred. The budget effectively becomes a 'cap' on what can be recovered.

**3. Assessment if no costs management order**

If no costs management order is made, then the position is less 'strict'. 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 the bill of costs, and the court may reduce the recoverable sum if the paying party reasonably relied on the budget.

**Revising costs budgets**

If significant developments in the litigation warrant a revision to a party's budget (upwards or downwards), then:

An amended budget should be submitted to the other parties for agreement if possible (using a form prescribed specifically for variations – 'Precedent T', annexed to 3D PD); and

The amended budget then needs to be submitted to court for consideration.

This process is for addressing 'significant developments' in the litigation, not for correcting inadequacies or mistakes in the preparation of a costs budget in the first place, which is not generally allowed.

**Failure to file a budget**

Any party that fails to file a costs budget, when required to do so, will be **automatically** treated as having filed a costs budget comprising of only the applicable court fees unless the court otherwise orders (CPR 3.14). Assuming the court then 'approves' such a budget by a costs management order, this becomes the starting point for what can be awarded in any future assessment proceedings. **This is a draconian provision as in all cases the costs are likely to be significantly more than the court fees. Accordingly, this is a requirement that should never be overlooked by practitioners.**

**Costs and case management conference**

As explained above, costs management generally takes place at the first case management, when directions are also being considered. Such a hearing is therefore often known as a costs and case management conference, or 'CCMC'. The following page illustrates the combined key procedural stages in preparing for a CCMC, and its product.

**Overview of costs and case management conference procedure**

Not later than 21 days before first CMC – Budget

Not less than 14 days before first CMC – Disclosure report (and Electronic Documents Questionnaire?)

No later than / at least 7 days before first CMC – Draft directions – Budget discussion report

Also before the CMC: applications? Bundle and/or case summary?

Cost and case management conference

Product of CCMC – Directions – Costs management order

**Summary**

- In most multi-track cases, budgets need to be filed and exchanged not later than 21 days before the first CMC. Failure to file a budget on time leads to automatic and serious sanctions.

- A budget is an estimate of the reasonable and proportionate costs which a party intends to incur.

- In most multi-track cases, parties must discuss budgets before the CMC, and file and exchange a budget discussion report indicating the state of their agreement at least 7 days before the CMC.

- The court will consider budgets when making any case management decision.

- The court may make a costs management order, recording or fixing a costs figure for each party for each phase of the proceedings. When it comes to assessment, the court will not depart from approved / agreed budgets unless satisfied that there is good reason to do so.

- Parties can agree a revised budget if necessary, failing which a revised budget should be submitted to court.