

Costs Management

As well as being able to manage the steps the parties need to take up to trial (as part of case management), the Court also has the ability to manage the costs that are incurred by both parties, and decide which of those costs are recoverable from the losing party after a trial. The reasons behind costs management are to ensure that claims are dealt with at a proportionate cost, and that the costs of bringing a claim to trial do not outweigh the value of the claim itself.

Costs management was introduced for all multi-track cases (i.e. those with a value in excess of £25,000 increasing to £100,000 from 1 October 2023) from 2014 and applies to all cases, except those where the claim is in excess of £10 million, where the claim is made on behalf of a person under 18, or where the claim is subject to fixed costs. There is usually no costs management for litigants in person (i.e. people who do not have legal representation), but costs management does apply even if a party is in receipt of legal aid.

Costs management generally consists of four elements:

- The parties must prepare and exchange litigation budgets (and in some cases amended budgets as the case proceeds).
- The parties must seek to agree those budgets, but ultimately the Court will determine to what extent those budgets are approved.
- The Court will then seek to manage the claim so that it proceeds within those approved budgets.
- At the end of the case, the successful party's costs are assessed by the Court in order to determine how much they are able to recover from their opponent.

THE COSTS BUDGET

All parties in multi-track cases (except litigants in person and unless the Court orders otherwise) must file and exchange costs budgets that set out the estimated costs of each stage of the proceedings. The costs budget should be in a required form, known as Precedent H.

In cases where the value of the claim does not exceed £50,000, the costs budget should be filed with the Directions Questionnaire. (This requirement may change after 1 October 2023 with the introduction of the intermediate-track, which will raise the threshold for multi-track claims to £100,000).

In all other cases, the costs budget should be filed 21 days before the first case management conference (or costs and case management conference).

The costs budget is quite a complicated document (in Excel spreadsheet format) and your solicitors will normally complete it with the aid of a legal costs draftsman, who has experience in completing budgets and knowing the estimated costs of each part of the proceedings.

Failure to file a costs budget on time can have serious ramifications for your claim. If a party does not file their budget by the stated deadline, then that party will be treated as filing a budget which only consists of Court fees (such as the issue fee). As such, even if you are successful in your claim, these are the only fees you would be able to recover from your opponent, meaning you would have to pay your own legal fees from your own pocket rather than recover some of them from your losing opponent.

Whilst the Court has scope to set aside such a sanction, you need very good reasons to show the Court as to why they should deviate from the above.

THE COSTS DISCUSSION REPORT

After the parties have exchanged budgets, they are encouraged to attempt to agree each other's budget and if not, identify the areas of disagreement, which will then be determined by the Court at the Costs and Case Management Conference (CCMC).

The parties must set out any agreed figures and a summary of disputed sums in a costs discussion report, known as a Precedent R. This is usually to be provided to the Court seven days before the CCMC.

THE COSTS MANAGEMENT HEARING

As part of the CCMC, the Court will consider the costs budgets and costs discussion reports from both parties. They will hear representations from both parties as to why their costs should be accepted. The Court will then determine the level of costs allowed by each party for each stage of the proceedings and

will make a Costs Management Order, which records the agreement between the parties as to costs. If agreement has not been reached, it sets out the Court's order as to costs. At the end of the trial, the Court will then re-visit the Costs Management Order to check that the successful party's actual incurred costs did not exceed the budgeted costs, and will make any deductions it deems appropriate before ordering the amount of costs to be paid to the successful party by the unsuccessful party.

AMENDING BUDGETS

Parties are advised to keep track of their costs as they proceed throughout the litigation process. If they need to increase their budget during a particular stage, for example because a disclosure exercise is larger than first anticipated, then an application needs to be made to the Court to amend the budget. The Court will consider the application and determine whether additional costs can be incurred. Good reasons are needed to show to the Court why you have exceeded a stage of an approved budget. Parties cannot usually set off costs from one stage of the proceedings for another stage. As such, if you have budgeted costs of £20,000 for disclosure and £15,000 for witness statements, but actually incur £25,000 for disclosure, and only £10,000 for witness statements, you cannot use the £5,000 you 'saved' from the witness statement stage to cover your overspend in the disclosure stage.

GET IN TOUCH



Mark Ovenell

PARTNER

Dispute Resolution
E: mark.ovenell@bindmans.com
T: +44 20 7833 4433



The lawyers have incomparable client service skills. They are very clear and always make sure they understand the picture, even if it is a complicated one.

CHAMBERS AND PARTNERS 2022

BINDMANS LLP

236 Gray's Inn Road | London | WC1X 8HB
T: +44 20 7833 4433 | E: info@bindmans.com | W: bindmans.com