

Estimates of Costs & Costs Budgets (October 2015)

ESTIMATES OF COSTS

Advisory Note

This only applies to Multi-Track cases issued before 1st April 2013, and Fast-track cases. For other Multi-Track cases, see the part headed “**COSTS BUDGETS**”.

In this part of the note, references to the:

- CPR refer to the pre-1st April 2013 rules. The current CPR rule is given in brackets where applicable;
- Costs Practice Direction mean the pre-1st April 2013 Practice Direction

Key Statutes and Authorities

- *Costs Practice Direction Section 6*;
- *Leigh v Michelin Tyre PLC* [2003] EWCA Civ 1766

Introduction

- Estimates of Costs need to be provided when filing an Allocation Questionnaire or filing a Listing Questionnaire (*PD 6.4*)
 - Generally more reliance is placed on a LQ estimate
 - On the Fast-Track, you only need to complete the small Costs Estimate box in the AQ
 - Client must be provided a copy
- “Estimate” refers to base costs incurred as well as base costs to be incurred (*PD 6.2*);
- Precedent H (*PD 6.5*);
- Success fees and ATE, are not covered by or included in costs estimates (*CPD 6.2(2)*)
- Can be revised at any time, but should only be done if there is a significant

difference from the previous estimate;

- It is not necessary to file and serve an Estimate at the Allocation stage if the claim is a Small Claim or you are a Litigant in Person

Where Estimates Are Exceeded

- Estimates should be a yard-stick (*Leigh v Michelin Tyre PLC* [2003] EWCA Civ 1766). The Court should take into account whether the paying party relied on it and whether different case management directions would have been if it was correct.

Effects on Assessment

- The Courts can refer to previously filed Estimates, in particular on Summary Assessment
- If the costs claimed in a Bill (excluding additional liabilities) are 20% above the estimate, you must provide reasons as to why there is a difference (*PD 6.5A*);
- If Court considers the reasons to be insufficient, or paying party has relied on the estimate, the difference can be used as evidence the costs are unreasonable or disproportionate (*PD 6.6*);
- The Court may also refer to Estimates of Costs when deciding payments on account of costs (*CPR 44.3(8)*; now *CPR 44.2(8)*)

Initial Costs Estimates to Client

Under the Solicitors’ Code of Conduct, clients need to be given costs estimates at the outset:

- *Wong v Vizards (a firm)* [1997] 2 Costs LR 46: costs were limited to the initial estimate because the client was advised that the “proposal hopefully sets out the fullest extent of your liability to this firm for costs”;
- *Mastercigars Direct Ltd. v Withers LLP* [2007] EWHC 2733 (Ch): a qualified estimate isn't a quote to a client;
- *Mastercigars Direct Ltd. v Withers LLP* [2009] EWCA Civ 1526: the Court should determine whether and how the client relied on the estimate, but Solicitors shouldn't be punished for wrong estimates or failing to update it as the case progresses;
- *Garbutt v Edwards* [2005] EWCA Civ 1206: failure to give the client an estimate did not make the retainer unlawful, even though Solicitors Practice Rule 15 says that estimates “shall” be given. Therefore, a Solicitor who does not provide an estimate is in a better position than one who gives a bad estimate.
- *s. 20-21 Consumer Protection Act 1987*: it is an offence to obtain business by providing misleading prices. Therefore, any estimate to a client, unless it states otherwise, includes VAT and disbursements.

COSTS BUDGETS

Advisory Note

This applies to Multi-Track cases issued since 1st April 2013. For other cases, see the part headed “**ESTIMATES OF COSTS**”.

References to the CPR and PDs relate to the post-1st April 2013 rules.

Key Statutes and Authorities

- *CPR 3, Section II*;
- *Practice Direction 3E*;
- *CPR 44 Practice Direction 3*;

Introduction

Budgets apply to most Multi-Track proceedings issued from 1st April 2013, and to all claims from 22nd April 2014, unless valued at over £10 million (*CPR 3.12(1)*).

They are “an estimate of the reasonable and proportionate costs (including disbursements) which a party intends to incur in the proceedings”.

- Litigant-in-Persons don't need to file Budgets (*CPR 3.13*);
- A party that doesn't file a budget is treated as only budgeting for Court fees (*CPR 3.14*);
- On the Standard Basis, the Court will “have regard” to the last approved budget, and will not allow extra costs without a “good reason” (*CPR 3.18*);
- Budgets exclude VAT and additional liabilities

Under *Practice Direction 3E, para 7*:

- Up to £1,000 or 1% of the Budget can be claimed for preparing it. Other costs management costs can't exceed 2%;

- Court can only comment on costs pre-dating the Budget;
- Budgets can be revised if justified by “significant developments”;
- Interim application costs are “additional” to the budget, if “reasonably” not included;
- If the Budget is under £25,000 only page 1 needs to be completed

If the Court doesn’t make an Order under PD 3E, *CPR 44 PD 3* applies:

- A statement of reasons must be provided if the costs claim exceeds the budget by 20%;
- If the paying party claims wants the costs are disproportionate, or relied on the budget, they have to provide a statement showing how;
- If the Court accepts they relied on the budget, it can “restrict” the costs to what is reasonable to pay;
- If a good explanation is not provided, the Court can use it as evidence that the costs are disproportionate;

Effectively *CPR 44 PD 3* replicates the rules that applied to costs estimates under the old *Costs Practice Direction*.

Caselaw

The Court can reduce Estimated Costs if the Incurred Costs are too high (*Redfern v Corby BC* [2014] EWHC 4526 (QB)), and can set its own total figures if it considers the Budget to be unreliable (*CIP Properties (AIP) Ltd. v Galliford Try Infrastructure Ltd.* [2015] EWHC 481 (TCC)).

Budgets are a useful guide if costs are to be assessed on the Indemnity Basis (*Excelerate Technology Ltd. v Cumberbatch; Red Foot Technologies Ltd.* [2015] EWHC 204 (QB)).

In large (six- or seven-figure) Budgets, rates and hours can be considered (*Yeo v Times Newspapers Ltd.* [2015] EWHC 209 (QB)).

Contingencies should not be claimed if the work is not considered to be “probable” (*Yeo*).

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This guidance note should not be considered formal legal advice or legal opinion and should not be relied upon. Appropriate legal advice should be sought before entering into any legal proceedings.
