

# **The not so good, the bad and the ugly of claimant costs budgeting**

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# Introduction

The start of 2021 has not been full of good news for the insurance sector with delays to the whiplash reforms and the proposed increase in the guideline hourly rates. However, it's not all bad news and Horwich Farrelly's costs department continues to ensure claimant solicitors don't have things all their own way!

Real examples of this are evidenced by HF Costs Team having secured substantial savings for Admiral Insurance in a trio of high value cases where the courts have made it clear to claimant solicitors that there is no place for excessive costs budgeting.

Whilst claimant solicitors commonly submit high budgets which are, in their view, on a par with their client's high value claim, it is evident that the courts take a different view as to their reasonableness, and rightly so.

Our approach is always robust, but we don't score points for the sake of it. These cases illustrate the different ways that savings that can be achieved and how important it is to lay the ground at the costs case management conference (CCMC), not only securing reductions there and then but also setting boundaries for final costs awards.



# Not just disproportionate, grossly disproportionate

## Mrs Rachel Pegg v Mr Patrick Anderson (1) Admiral Group PLC (2)

At the CCMC heard on 22/01/2021 before HHJ Baucher, the claimant's budget was reduced by a massive 71%.

The claimant served a budget in the sum of £837,556.80 in a claim where liability and quantum are in dispute.

Complimenting Horwich Farrelly on our Precedent R (reply to the costs budget) and in response to our arguments HHJ Baucher dealt with the issue of proportionality head on, rather than leaving the issue to be decided at the detailed assessment hearing at the conclusion of the case.

The budget was reduced to £243,958.80, with the order leaving nobody in any doubt as to her views on both the budget and costs already incurred, including these terms:

***"The costs budget advanced by the claimant in the sum of £837,556.80 is grossly disproportionate."***

The claimant's QC sought permission to appeal against the amount of budgeted costs and the same was refused, on the basis that the sums awarded are within the judge's discretion.

This is a great result for our client with a whopping reduction to the claimed sums. HHJ Baucher's clear ruling on proportionality and focussed proportionality comments on phases of the incurred costs will bear significant weight when it comes to detailed assessment, paving the way for further reductions. We will now be watching with interest to see the impact the budgeting process has on the behaviour of the claimant's team.





# The not so humble lawyer

## Dr Alexander Richardson v Mr Amandeep Singh Karir (1) & EUI Limited T/A Admiral Insurance (2)

At the CCMC heard on 14/12/2020 before Master Eastman, the claimant filed and served a budget in the sum of £788,253.56 (estimated at £555,569.45) in a claim said to be worth more than £2million although lacking evidence to support that at this stage. The claimant's solicitor filed a witness statement with their budget outlining submissions as to why the budget totalled in excess of £780,000 and focussing extensively on his own skills and experience. This lack of humility seems to have backfired on the claimant's solicitor.

Having heard arguments from both parties, Master Eastman, who was generally critical of the claimant solicitor's lack of delegation commented that:

***"If [the claimant's solicitor] is as good as he thinks he is he should be working more quickly."***

He went on to describe the time claimed in the expert report stage variously as:

***"mind-boggling"; "repetitious"; "grossly overstated" and "in need of delegation"***

As a result, the claimant's estimated costs were reduced by nearly £220,000, a substantial 40%.

Again, judicial commentary at costs budgeting stage will provide substantial ammunition when we come to negotiating costs at the conclusion of the claim. Particular emphasis can be put on the specific points made by the judge, in this case the importance of delegation throughout a case, and our arguments are likely to hold more weight with the assessing judge at the conclusion of the claim.

# Back to the drawing board - at the claimants expense

## Mr Sean Thomas Astley v Mr Ryan Moore (1) EUI Limited (Trading as Admiral Insurance) (2)

At the CCMC hearing on 13/01/2021, again before Master Eastman, the claimant submitted a budget for the costs of a split trial on liability only, in the sum of £496,194.85.

We attacked the claimant's budget through our Precedent R with succinct but compelling arguments. Our focus was on the proportionality of the costs, guiding the court to the case law that would support substantial reductions to the costs claimed. The key was inviting the court to consider proportionality in all the circumstances and not being side-tracked that this was a substantial claim, pleaded at over £5 million.

The Master was so unimpressed with the level of the Claimant's costs budget that he ordered them to go back to the drawing board and re-draft it.

The Master reinforced his displeasure with the Claimant's approach to budgeting by ordering that, not only were they not entitled to the costs of preparing their budget, but also ordering them to pay the defendant's costs of considering the first budget.

An order for costs in relation to budgeting is extremely rare and therefore a truly excellent result for the defendant team.

At the subsequent hearing, despite the concerns expressed by the Master, the claimant's re-drawn estimated costs were reduced by 60%.



# Final thoughts

What is clear from these cases is that the courts take costs budgeting seriously. All issues are considered, but the most important in these three cases is proportionality. Proportionality isn't just a case of comparing costs claimed with damages, and it's vitally important that all the circumstances are drawn to the court's attention.

The first step towards ensuring a reasonable and proportionate outcome on costs is the collaborative approach we take with our excellent large loss team and insurer client. That enables us to ensure we have a full grasp of the issues and our clients wider aims in the litigation. The next step then is to agree a reasonable budget; if a budget is not reasonably claimed, a detailed and carefully thought out response is required from the defendant. The key is to guide the court to the outcome you seek, giving them ammunition they need to justify significant reductions to a claimant's budget. Also important is the correct balance between being struck between substantively raising all relevant issues, and not taking issue with anything and everything, which will only weaken your submissions on any given claim and reputation for future budgeting hearings.

We have seen the budgeting process mature over the last few years and we now see more consistent application of the rules. It is also evident that claimant lawyers are getting better at working within budget, and it is therefore crucially important that defendants prepare their case properly at the budgeting stage as this may be the only opportunity to control a claimant's costs and behaviour.

The moral for the claimant lawyers - think carefully before blowing your own trumpet - the better you think you are, the quicker you should be!



“I’m so proud of what the team has achieved here, in particular Charlotte Whalley, not just for demonstrating their excellent technical skills but their tenacity and willingness to go the extra mile on every case for our clients.”

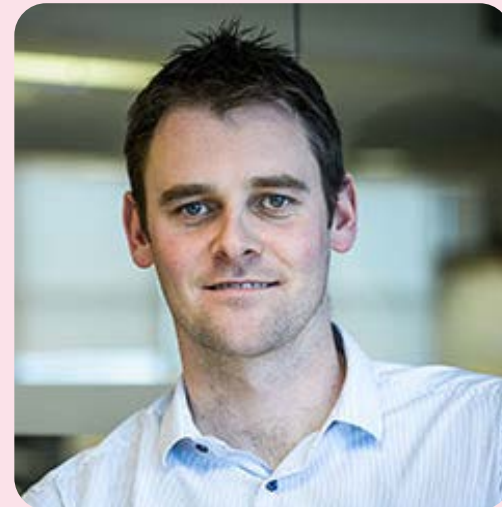
**Paul McCarthy**  
**Partner & Head of Costs**

“These outstanding results serve to demonstrate the value in employing true experts to manage the complex space that is costs budgeting. It’s clear that the Judicial mind is very much open to persuasion and challenge from the Defendant. Thanks to Paul and his dedicated team at HF we’ve got that one nailed.”

**Stuart Cook**  
**Head of Technical Claims at Admiral**

# Key contacts

For further details on these scenarios or to obtain more information in relation to our costs services, please do not hesitate to contact us.



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