

PRACTICE DIRECTION 51G

COSTS MANAGEMENT IN MERCANTILE COURTS AND TECHNOLOGY AND CONSTRUCTION COURTS – PILOT SCHEME

This Practice Direction supplements CPR Parts 29, 43, 44, 59 and 60

General

- 1.1** This Practice Direction is made under Rule 51.2. It provides for a pilot scheme (Costs Management in Mercantile Courts and Technology and Construction Courts Scheme) to –
 - (1) operate from 1 October 2011 to 30 September 2012;
 - (2) operate in all Mercantile Courts and Technology and Construction Courts; and
 - (3) apply to proceedings in which the first case management conference is heard on or after 1 October 2011.
- 1.2** In this Practice Direction ‘costs management order’ means an order approving the costs budget of any party to the proceedings, after the court has made any appropriate revisions.
- 1.3** The court cannot approve costs incurred before the date of the first costs management order, but the court –
 - (1) may record its comments on those costs; and
 - (2) should take those costs into account when considering the reasonableness and proportionality of all subsequent costs.
- 1.4** Without prejudice to the court’s general powers of management under rule 3.1, in any case proceeding before a Mercantile Court or a Technology and Construction Court in which the judge considers it appropriate to do so, or on the application of any party in accordance with Part 23, the judge may make a costs management order.

Modifications of Relevant Practice Directions

- 2.** During the operation of the Costs Management in Mercantile Courts and Technology and Construction Courts Scheme –

Use of Costs Budgets in Case and Costs Management

- (1) Practice Direction 29 is modified by inserting after paragraph 3A –

‘Case management and costs in Mercantile and Technology and Construction Court cases 3B. In cases within the scope of the Costs Management in Mercantile Courts and Technology and Construction Courts Scheme provided for in Practice Direction 51G, the court will manage the costs of the litigation as well as the case itself, making use of case management conferences and cost management conferences in accordance with that Practice Direction’.

Estimates of Costs to be set out in detailed costs budgets

- (2) Paragraph 6.4(1)(a) of the Costs Practice Direction does not apply to proceedings within the scope of the Costs Management in Mercantile Courts and Technology and Construction Courts Scheme.

- (3) Section 6 of the Costs Practice Direction is modified by substituting for paragraph 6.5 the following –
- ‘Costs Budgets in Mercantile Courts and Technology and Construction Courts
- 6.5 In proceedings within the scope of the Costs Management in Mercantile Courts and Technology and Construction Courts Scheme provided for in Practice Direction 51G, the estimate of costs must be presented as a detailed budget setting out the estimated costs for the entire proceedings in a standard template form, which substantially follows the precedent described as Precedent HB and annexed to that Practice Direction.’

Filing of Costs Budgets

- 3.1** Save where the court otherwise orders, as part of its preparation for the first case management conference, at the same time as filing its Case Management Information Sheet, each party shall file and exchange its costs budget substantially in the form set out in Precedent HB annexed to this Practice Direction.

(In Mercantile Courts cases see paragraph 7.7 of the Practice Direction under Part 59.)

(In Technology and Construction Court cases see paragraph 8.3 of the Practice Direction under Part 60.)

- 3.2** Each party should include separately in its costs budget reasonable allowances for –
- (1) intended activities: e.g., disclosure (if appropriate, showing comparative electronic and paper methodology), preparation of witness statements, obtaining experts’ reports, mediation or any other steps which are deemed appropriate to the particular case;
 - (2) identifiable contingencies, e.g., specific disclosure application or resisting applications made or threatened by an opponent; and
 - (3) disbursements, in particular court fees, counsel’s fees and any mediator or expert fees.

Purpose of Costs Management

- 4.1** The court will seek to manage the costs of the litigation, as well as the case itself.
- 4.2** The objective of costs management is to control the costs of litigation in accordance with the overriding objective. (See rule 1.1.)
- 4.3** At any case management conference or pre-trial review, the court will have regard to any costs budgets filed pursuant to this Practice Direction and will decide whether or not it is appropriate to make a costs management order.
- 4.4** If the court decides to make a costs management order it will, after making any appropriate revisions, record its approval of a party’s budget and may order attendance at a subsequent costs management hearing (by telephone if appropriate) in order to monitor expenditure.
- 4.5** Any party may thereafter apply to the court if that party considers another party is behaving oppressively in seeking to cause that party to spend money disproportionately on costs.

Discussions between Parties and Exchange of Budgets

- 5.** A party submitting a costs budget to the court under this Practice Direction is not required to disclose it to any other party save by way of exchange. The parties should however discuss their costs budgets during the costs budget building process and before each case management conference, costs management hearing, pre-trial review or trial.

Revision of Approved Budget

6. In a case where a costs management order has been made, at least seven days before any subsequent costs management hearing, case management conference or pre-trial review, and before trial, a party whose costs budget is no longer accurate must file and serve a budget revision showing what, if any, departures have occurred from that party's last approved budget, and the reasons for any increased budget. The court may approve or disapprove such departures from the previous budget.

Keeping the Parties Informed

7. No later than seven days after the conclusion of any hearing, each party's legal representative must –
 - (1) notify its client in writing of any costs management orders made at such hearing; and
 - (2) provide its client with copies of any new or revised budgets which the court has approved.

Effect on Subsequent Assessment of Costs

8. When assessing costs on the standard basis, the court –
 - (1) will have regard to the receiving party's last approved budget; and
 - (2) will not depart from such approved budget unless satisfied that there is good reason to do so.

ANNEX

Precedent HB

Clear all

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1	In the:		Party filing cost estimate:		
2	Parties:				
3	Claim number:		estimate of costs dated:		PRECEDENT HB

	Work done / to be done	Assumptions [to be completed as appropriate]	(cont'd.)	Disbursements	Profit Costs	Total
5	Pre-action costs					
6	Issue / pleadings					
7	CMC					
8	Disclosure					
9	Witness statements					
10	Expert reports					
11	PTR					
12	Trial preparation					
13	Trial					
14	Settlement					
15	Contingent cost A:					
16	Contingent cost B:					
17	Contingent cost C:					
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29	GRAND TOTAL (including both incurred costs and estimated costs):					

	comprising incurred costs of:	
	and estimated costs of:	

<p>This estimate excludes:</p> <p><input type="checkbox"/> VAT (if applicable)</p> <p><input type="checkbox"/> Costs of detailed assessment</p> <p><input type="checkbox"/> Success fees and ATE insurance premium (if applicable)</p> <p><input type="checkbox"/> Other, specify: </p>	<p>Assumed into the costs of each stage should be the time costs for (a) attendance on own client (b) correspondence with the other party and (c) the general project and strategy management of completing that stage</p> <p>A breakdown of the above figures is found on the following pages.</p>
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1	In the: 	Party filing cost estimate:
2	Parties: 	
3	Claim number: 	estimate of costs dated: PRECEDENT HB

4 Select as applicable:	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated
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	RATE (per hour)	Pre-action costs		Issue / pleadings		CMC		Disclosure		Witness statements		Expert reports	
		Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total
8 Fee earners' time costs													
9 Band A													
10 Band B													
11 Band C													
12 Band D													
13													
14													
15													
16													
17 Sub-total fee earners' time costs													
18 Expert's costs (1)													
19 Fees													
20 Disbursements													
21 Counsel's fees [indicate seniority, number of years since called] (2)													
22 Leading counsel													
23 Junior counsel													
24 Court fees (3)													
25 Other disbursements (4)													
26 Explanation of disbursements [complete details indicating which disbursement (1)-(4)]													
27 Sub-total disbursements													
28 Grand Total													

Band A - solicitors with over 8 years post qualification experience including at least 8 years litigation experience.

Band B - solicitors and legal executives with over 4 years post qualification experience including at least 4 years litigation experience.

Band C - other solicitors and legal executives and fee earners of equivalent experience.

Band D - trainee solicitors, paralegals and other fee earners.

1	In the:	Party filing cost estimate:	
2	Parties:		
3	Claim number:	estimate of costs dated:	PRECEDENT HB

4 Select as applicable:	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated
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	RATE (per hour)	PTR		Trial preparation		Trial		Settlement <input type="checkbox"/> negotiation <input type="checkbox"/> mediation		Contingent cost A:		Contingent cost B:	
		Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total
8 Fee earners' time costs													
9	Band A												
10	Band B												
11	Band C												
12	Band D												
13													
14													
15													
16													
17 Sub-total fee earners' time costs													
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1	In the:			Party filing cost estimate:		
2	Parties:					
3	Claim number:					
		estimate of costs dated:				PRECEDENT HB
4	Select as applicable:	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated
5						
6		Contingent cost C:				
7						
8	Fee earners' time costs					
9	Band A					
10	Band B					
11	Band C					
12	Band D					
13						
14						
15						
16						
17	Sub-total fee earners' time costs					
18	Expert's costs (1)					
19	Fees					
20	Disbursements					
21	Counsel's fees [indicate seniority, number of years since called] (2)					
22	Leading counsel					
23	Junior counsel					
24	Court fees (3)					
25	Other disbursements (4)					
26	Explanation of disbursements [complete details indicating which disbursement (1)-(4)]					
27	Sub-total disbursements					
28	Grand Total					

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1	In the: <input style="width: 90%;" type="text"/>	Party filing cost estimate: <input style="width: 90%;" type="text"/>	
2	Parties: <input style="width: 90%;" type="text"/>		
3	Claim number: <input style="width: 90%;" type="text"/>	estimate of costs dated: <input style="width: 20%;" type="text"/>	PRECEDENT HB

4	Select as applicable:	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated	<input type="checkbox"/> Incurred <input type="checkbox"/> Estimated
5							

6		RATE (per hour)												
7			Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total

8	Fee earners' time costs												
9	Band A												
10	Band B												
11	Band C												
12	Band D												
13													
14													
15													
16													
17	Sub-total fee earners' time costs												

18	Expert's costs (1)												
19	Fees												
20	Disbursements												

21	Counsel's fees [indicate seniority, number of years since called] (2)												
22	Leading counsel												
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24	Court fees (3)												
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1	In the:			Party filing cost estimate:		
2	Parties:					
3	Claim number:			estimate of costs dated:		PRECEDENT HB

	Work done / to be done	Assumptions [continued]
5	Pre-action costs	
6	Issue / pleadings	
7	CMC	
8	Disclosure	
9	Witness statements	
10	Expert reports	

1	In the:		Party filing cost estimate:		PRECEDENT HB
2	Parties:				
3	Claim number:		estimate of costs dated:		
4	Work done / to be done		Assumptions [continued]		
5	PTR				
6	Trial preparation				
7	Trial				
8	Settlement				
9	Contingent cost A:				
10	Contingent cost B:				

Clear page

1	In the:		Party filing cost estimate:		
2	Parties:				
3	Claim number:			estimate of costs dated:	
4	Work done / to be done		Assumptions [continued]		
5	Contingent cost C:				
6					
7					
8					
9					
10					

Clear page

1	In the:		Party filing cost estimate:		PRECEDENT HB
2	Parties:				
3	Claim number:		estimate of costs dated:		
4	Work done / to be done		Assumptions [continued]		
5					
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7					
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9					
10					