

# DEFAMATION PROCEEDINGS COSTS MANAGEMENT SCHEME

**This Practice Direction supplements CPR Parts 29 and 44**

## General

- 1.1** This Practice Direction is made under rule 51.2. It provides for a pilot scheme (the Defamation Proceedings Costs Management Scheme) to –
- (1) operate from 1 October 2011 to 30 September 2012;
  - (2) operate in the Royal Courts of Justice and the District Registry at Manchester;
  - (3) apply to proceedings in which the claim was started on or after 1 October 2009.

(Rule 30.2(4) enables cases issued at other district registries to be transferred to London or Manchester if those court centres are more appropriate.)

- 1.2** The Defamation Proceedings Costs Management Scheme will apply to proceedings which include allegations of –
- (1) libel;
  - (2) slander; and/or
  - (3) malicious falsehood.

- 1.3** The Defamation Proceedings Costs Management Scheme provides for costs management based on the submission of detailed estimates of future base costs. The objective is to manage the litigation so that the costs of each party are proportionate to the value of the claim and the reputational issues at stake and so that the parties are on an equal footing. Solicitors are already required by paragraph 2.03 of the Solicitors Code of Conduct 2007 to provide costs budgets to their clients. Accordingly, it should not be necessary for solicitors to incur substantial additional costs in providing costs budgets to the court.

## Modifications of relevant practice directions

- 2.** During the operation of the Defamation Proceedings Costs Management 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 defamation proceedings
- 3B In cases within the scope of the Defamation Proceedings Costs Management Scheme provided for in Practice Direction 51D, the court will manage the costs of the litigation as well as the case itself, making use of case management conferences and costs management conferences in accordance with that practice direction.’

### Estimates of costs to be detailed budgets

- (2) Paragraph 6.4(1)(a) of the Costs Practice Direction does not apply to proceedings within the scope of the Defamation Proceedings Costs Management Scheme.

- (3) Section 6 of the Costs Practice Direction is modified by substituting for paragraph 6.5 the following –  
‘Costs budgets in defamation proceedings  
6.5 In proceedings within the scope of the Defamation Proceedings Costs Management Scheme provided for in Practice Direction 51D 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 HA and annexed to that practice direction.’

### **Preparation of the costs budget**

- 3.1** Each party must prepare a costs budget or revised costs budget in the form of Precedent HA –
- (1) in advance of any case management conference or costs management conference;
  - (2) for service with the pre-trial checklist;
  - (3) at any time as ordered to by the court.
- 3.2** A litigant in person shall not be required to prepare a costs budget unless the court otherwise orders.
- 3.3** Each party will include separately in its costs budget reasonable allowances for –
- (1) intended activities, for example: disclosure, preparation of witness statements, obtaining expert reports, mediation or any other steps which are deemed necessary for the particular case;
  - (2) specified contingencies, for example: any application on meaning (if required); specific disclosure applications (if an opponent fails to give proper disclosure); resisting applications (if made inappropriately by opponent);
  - (3) disbursements, in particular, court fees, counsel’s fees and any mediator or expert fees.
- 3.4** Each party must update its budget for each subsequent case management conference or costs management conference and for the pre-trial review. This should enable the judge to review the updated figures, in order to ascertain what departures have occurred from each side’s budget and why.

### **Discussions between parties and exchange of budgets**

- 4.1** During the preparation of costs budgets the parties should discuss the assumptions and the timetable upon which their respective costs budgets are based.
- 4.2** The parties must exchange and lodge with the court their costs budgets in the form of Precedent HA not less than 7 days before the date of the hearing for which the costs budgets are required.
- 4.3** A budget provided to the court will not (unless the providing party consents) be released to any other party (except a litigant in person) until that party is ready to exchange.

### **Effect of budget on case management and costs**

- 5.1** The court will manage the costs of the litigation as well as the case itself in a manner which is proportionate to the value of the claim and the reputational and public interest issues at stake. For this purpose, the court may order attendance at regular hearings (‘costs management conferences’) by telephone wherever possible, in order to monitor expenditure.
- 5.2** At any case management conference, costs management conference or pre-trial review, the court will have before it the detailed costs budgets of both parties for the litigation, updated as

necessary, and will take into account the costs involved in each proposed procedural step when giving case management directions.

- 5.3** At any case management conference, costs management conference or pre-trial review, the court will, to the extent the budgets are not agreed between the parties, record approval or disapproval of each side's budget and, in the event of disapproval, will record the court's view.
- 5.3A** For the avoidance of doubt, the court cannot approve costs incurred before the date of the first costs management conference. However, the court may record its comments on those costs and should take those costs into account when considering the reasonableness and proportionality of all subsequent costs.
- 5.3B** When approving or disapproving a budget, the court will not attempt to undertake a detailed assessment in advance, but will consider whether the budgeted totals for each stage of the work are within the broad range of reasonable and proportionate costs.
- 5.4** Directions orders produced at the end of case management conferences and/or costs management conferences must be given to the parties on each side by their respective lawyers, together with copies of the budgets which the court has approved or disapproved.
- 5.5** Solicitors must liaise monthly to check that the budget is not being exceeded. In the event that the budget is or is likely to be exceeded, either party may apply to the court to fix a costs management conference as described in paragraph 5.1 above.
- 5.6** 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 HA

Clear all

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

4	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	Any application on meaning					
9	Disclosure					
10	Witness statements					
11	Expert reports					
12	PTR					
13	Trial preparation					
14	Trial					
15	Settlement					
16	Contingent cost A:					
17	Contingent cost B:					
18	Contingent cost C:					
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29	GRAND TOTAL (including both incurred costs and estimated costs):					

This estimate <u>excludes</u> :		comprising incurred costs of:	
<input type="checkbox"/> VAT (if applicable)			
<input type="checkbox"/> Costs of detailed assessment		and estimated costs of:	
<input type="checkbox"/> Success fee [delete if no CFA]			
<input type="checkbox"/> ATE insurance premium [delete if no ATE insurance]			
<input type="checkbox"/> Other, specify:			

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

A breakdown of the above figures is found on the following pages.

1	In the: <span style="border: 1px solid black; display: inline-block; width: 250px; height: 15px;"></span>	Party filing cost estimate: <span style="border: 1px solid black; display: inline-block; width: 150px; height: 15px;"></span>	
2	Parties: <span style="border: 1px solid black; display: inline-block; width: 250px; height: 15px;"></span>		
3	Claim number: <span style="border: 1px solid black; display: inline-block; width: 250px; height: 15px;"></span>	estimate of costs dated: <span style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></span>	PRECEDENT HA

  

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		Any application on meaning		Disclosure		Witness statements	
		Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total
8 Solicitors' time costs [descriptions to be amended as applicable to retainer]													
9	Band A												
10	Band B												
11	Band C												
12	Band D												
13													
14													
15													
16													
17 Sub-total solicitor's 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 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 HA

  

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)	Expert reports		PTR		Trial preparation		Trial		Settlement <input type="checkbox"/> negotiation <input type="checkbox"/> mediation		Contingent cost A:	
		Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total
8 Solicitors' time costs [descriptions to be amended as applicable to retainer]													
9	Band A												
10	Band B												
11	Band C												
12	Band D												
13													
14													
15													
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17 Sub-total solicitor's time costs													
18 Expert's costs (1)													
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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 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: <span style="border: 1px solid black; display: inline-block; width: 250px; height: 15px;"></span>	Party filing cost estimate: <span style="border: 1px solid black; display: inline-block; width: 150px; height: 15px;"></span>	
2	Parties: <span style="border: 1px solid black; display: inline-block; width: 250px; height: 15px;"></span>		
3	Claim number: <span style="border: 1px solid black; display: inline-block; width: 250px; height: 15px;"></span>	estimate of costs dated: <span style="border: 1px solid black; display: inline-block; width: 50px; height: 15px;"></span>	PRECEDENT HA

  

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)	Contingent cost B:		Contingent cost C:									
		Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total

  

8 Solicitors' time costs [descriptions to be amended as applicable to retainer]													
9	Band A												
10	Band B												
11	Band C												
12	Band D												
13													
14													
15													
16													
17	Sub-total solicitor's 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	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 HA

  

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	Solicitors' time costs [descriptions to be amended as applicable to retainer]												
9	Band A												
10	Band B												
11	Band C												
12	Band D												
13													
14													
15													
16													
17	Sub-total solicitor's 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	Disbursements (4)												
26	Explanation of disbursements (complete details indicating which disbursement (1)-(4))												
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1	In the:	<input style="width: 95%;" type="text"/>	Party filing cost estimate:	<input style="width: 95%;" type="text"/>	PRECEDENT HA
2	Parties:	<input style="width: 95%;" type="text"/>			
3	Claim number:	<input style="width: 95%;" type="text"/>	estimate of costs dated:	<input style="width: 95%;" type="text"/>	

  

	Work done / to be done	Assumptions [continued]
5	Pre-action costs	<div style="height: 40px;"></div>
6	Issue / pleadings	<div style="height: 40px;"></div>
7	CMC	<div style="height: 40px;"></div>
8	Any application on meaning	<div style="height: 40px;"></div>
9	Disclosure	<div style="height: 40px;"></div>
10	Witness statements	<div style="height: 40px;"></div>

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

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

  

	Work done / to be done	Assumptions [continued]
5	Contingent cost B:	
6	Contingent cost C:	
7		
8		
9		
10		

Clear page

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