



Neutral Citation Number: [2024] EWHC 824 (Ch)

Case No: PT-2024-BRS-000009

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN BRISTOL**  
**PROPERTY TRUSTS AND PROBATE LIST (ChD)**

Bristol Civil Justice Centre  
2 Redcliff Street, Bristol, BS1 6GR

Date: 12 April 2024

Before :

**HHJ PAUL MATTHEWS**  
**(sitting as a Judge of the High Court)**

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Between :

**COTHAM SCHOOL**  
**- and -**  
**(1) BRISTOL CITY COUNCIL**  
**(2) KATHARINE WELHAM**  
**(3) BRISTOL CITY COUNCIL**

**Claimant**  
  
**Defendants**

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Ruling on costs budgeting  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this revised version as handed down may be treated as authentic.

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This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 11:00 am on 12 March 2024.

**HHJ Paul Matthews :**

1. This is a short ruling, given on the court's own initiative, in response to a query by the second defendant about the court's order of 2 February 2024. Because it arises out of an earlier judgment given after a contested hearing, I have not thought it necessary to ask for further argument from other parties. But I have made it available in this form in case it is of wider interest.
2. On 2 February 2024, I handed down judgment in relation to (inter alia) an application for a cost capping order under CPR rule 3.19: see [2024] EWHC 154 (Ch). As part of my reasoning for refusing that application, I said this:

“111. It seems to me that, if there is any risk, let alone a substantial risk, that disproportionate costs would be incurred in this case, the better instrument for preventing that undesirable event is effective costs management orders, rather than the ‘blunt instrument’ of a costs capping order. In the circumstances, I propose to order pursuant to rule 3.15(1) and (3)(a) that, although this is a Part 8 claim, and although the second defendant is a litigant in person (albeit employing counsel on a direct access basis), all parties must file and exchange costs budgets not later than 21 days before the first case management conference. Having so ordered, the preconditions for a cost capping order under rule 3.19 are not satisfied, and I decline to make such an order.”
3. I therefore made an order in this litigation requiring *all* parties to file costs budgets not less than 21 days before a CCMC. That CCMC has now been arranged for 13 May 2024, and therefore 21 days before that date is Monday 22 April 2024. The usual notice of the CCMC has been sent out by the court. It is not a court order. But it does contain directions in standard form prepared by HMCTS. Two of these directions (paragraphs 5 and 6) refer to the filing of costs budgets.
4. Paragraph 5 refers to a date “by which legally represented parties must file and serve costs budgets”, and paragraph 6 begins, “Although litigants in person are not obliged to file and serve costs budgets...” The second defendant, who is not represented by solicitors, but instructs counsel on a direct access basis, has asked for confirmation that she is under no obligation to file a costs budget.
5. The general rule is that litigants, whether represented or not, in Part 8 proceedings (as these are) do not have to comply with costs budgeting: CPR Rule 3.12(1). And, even in Part 7 proceedings, litigants in person are under no obligation to file and serve costs budgets: see CPR rule 3.13(1). No doubt that is why the standard directions prepared by HMCTS say what they do. But CPR rule 3.12(1A) confers power on the court to make a costs management order even in Part 8 proceedings, and rule 3.13(3) confers power on the court to order a person who otherwise would not be obliged to file and serve costs budget to do so.
6. In relation to the latter rule, in *Campbell v Campbell* [2016] EWHC 2237 (Ch), Chief Master Marsh said this:

“10. In an ordinary case, in which a litigant in person conducts the case with limited assistance, there may be little need for the court to exercise control over the costs which are recoverable by the making a costs management order. The litigant in person hourly rate is currently set at £19 per hour and the amount of costs should rarely be disproportionate to what is at stake. Where, however, the claim is complex and counsel is instructed on a Direct Access basis, the litigant in person’s recoverable costs may be substantial when disbursements and the cost of legal services are taken into account.

[ ... ]

18. A The default provisions for the service of budgets in CPR 3.13 exclude litigants in person because the majority of cases in which litigants in person appear will not require the litigant in person’s costs to be managed. But a litigant in person may opt to serve and file a budget, or the court may order a litigant in person to do so. Furthermore, the court may decide to make a costs management order in relation to a litigant in person’s budget. Indeed, in a case in which a litigant in person is likely to be seeking a substantial costs order, whether because there will be fees of counsel under the Direct Access scheme or otherwise, it may well be desirable to do so.”

7. On the other hand, in *CJ and LK Perk Partnership v Royal Bank of Scotland* [2020] EWHC 2563 (Comm), the judge was asked, but refused, to make an order that the claimants (who were also without solicitors, but instructed direct access counsel) should file and serve a costs budget. HHJ Pelling QC considered the circumstances of the case, and said this:

“9. I am satisfied in the circumstances of this case that it would not be appropriate to direct the claimants to file a budget, at any rate at this stage. The £87,000 bill that is pointed to as being a justification for concern, I am satisfied was something which was a unique circumstance arising in the particular circumstances of the application. The reality is that the defendant is well able to estimate the likely costs of preparation of the trial and the trial itself, the estimates that can be made at this stage for the costs of assistance in relation to disclosure and witness statements are so unpredictable as to be really not worth the effort and if and to the extent there is a mediation, it will be open to the defendant to request costs estimates from the claimant at that stage. In those circumstances, I refuse the application for a direction that the claimants file a costs budget.”

8. In the present case, the second defendant similarly does not employ solicitors, but instructs counsel on the direct access basis. From the scale of the costs incurred in relation to the hearing in January this year (on the statement dated 23 January 2024), I know that the usual fees of the second defendant’s counsel are substantial. If the matter goes to a full trial, and she is successful, there will be a significant claim for costs. In the circumstances, it seemed to me

appropriate that, although these were Part 8 proceedings, and the second defendant was a litigant in person, everyone, including her, should file and serve a costs budget, as part of ensuring effective costs management. The draft minute of order submitted by counsel correctly recorded my intended order.

9. Accordingly, the second defendant *is* covered by the order which I made on 2 February 2024, and the direction by court staff in standard form to the contrary in the notice of hearing is erroneous in relation to this case. I am sorry if the second defendant was misled by this. But she too must file and serve a costs budget.