



Claim No. KB-2023-002631

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

**Neutral citation number:
[2024] EWHC 2248 (KB)**

Before :

MASTER THORNETT

Between :

MR PETER JENKINS

Claimant

-and-

THURROCK COUNCIL

Defendant

Date: 9 September 2024

Ms RUTHERFORD (instructed by Thompsons) for the **Claimant**
Mr HAMILL (instructed by DACB Claims Ltd) for the **Defendant**

Hearing date: 17 July 2024

JUDGMENT

1. This is the reserved judgment following a Costs Management Hearing on 17 July 2024. The issue is the question of costs of costs management, the Claimant's budget having been considerably reduced during the hearing and the Defendant submitting that, in consequence, an order other than "in the case" should be made.
2. The issues featured in this case, both in terms of procedure and facts, follow a very similar path to that I recently considered in *Worcester v Hopley* [2024] EWHC 2181 (KB). In that case, substantial reductions had been made to a claimant's budget because the court was satisfied it had been unrealistic and ambitious. The court had considered submissions from the claimant to the effect that, regardless of the extent of reductions made to a budget, as frequently can be explained owing to reasonable differences of approach and formation by the submitting party, the exercise of budgeting ought not to see costs penalties. The consequent costs order should be "in the case" unless the events had been exceptional. The court agreed that merely because a budget comes to be reduced ought not to see a penalty in costs against a party that had relied upon ordinary and typical reasoning in support of their budget. However, the court had been satisfied that factors featured in r.44.2 were entirely appropriate to consider and apply if time and resources had instead been expended, by both the court and opposing parties, unravelling an unreasonable or unrealistically ambitious budget despite material and justified concerns having been expressed in advance by parties in their Precedent R forms and thereafter. In short, that the court is entitled to take a rounded overview when considering the costs of the budgeting exercise, drawing upon and applying its experience of costs management in the context of the particular case in hand. Accordingly, the court is as much entitled to interpret and apply factors such as success and conduct featured within r.44.2 following a Costs Management Hearing as it is at conclusion of any other hearing. Parties are not in principle immune from costs considerations in costs management hearings.
3. I do not propose to further review the principles of r.44.2 as applied to budgeting for the purposes of this judgment.
4. In his Claim Form issued in June 2023 arising from an accident at work in June 2020, the Claimant certifies his damages exceed £200,000. The Claimant sustained a significant injury to his right foot and ankle whilst working as a refuse collector. There are alleged consequential psychological sequelae. Liability was admitted in March 2021 and the Particulars of Claim expressly relied upon that admission. The Provisional Schedule of Loss pursues a loss of income claim, treatment and therapies, care and assistance, a modest claim for accommodation adaptation and allied heads of loss. In short, the level of sophistry of the case is – without of course being insensitive to importance of the claim to the Claimant personally – towards the lower end of claims as case and costs managed in the High Court and entirely typical of claims

case and cost managed in the District Registries. The point here being that, at least according to the Statements of Case, there is nothing obviously to suggest why this case should see significantly high estimated legal costs. Neither did the Case Management directions engaged through to trial engage anything more (or less) than a typical approach to budgeting. In seeking substantial future legal costs, the Claimant therefore had a reasonably high burden to explain and justify his position at the costs management hearing.

5. A Case Management Hearing took place on 7 June 2024, at which directions were given through to a five-day Assessment of Damages trial in a February to May 2026 window. The level of judiciary at trial was directed to be Category B.
6. As is entirely routine practice by the KB Masters, a separate Costs Management Hearing was listed for a subsequent date (17 July 2024), the purpose of which being to enable the parties to revise their Precedent H and R forms in the light of both the directions made at the Case Management Hearing and also to reflect any preliminary comments made about budgeting at that hearing. Further and importantly, to facilitate further discussion and negotiation about each party's budget.
7. In this case, the court had indeed made preliminary observations at the Case Management hearing about apparent disproportionality of the Claimant's budget. The Claimant had unsuccessfully maintained at the CMC that the case should be listed through to another CCMC rather than trial. Accordingly, the Claimant had served a "full budget" to a trial of all issues that totalled £1,195,754.26 and a second budget through to a 2nd CCMC that totalled £730,396.28. The Defendant's budget reflected directions through to trial, featured two additional expert medical disciplines (permission for which the court granted) yet was in a considerably lower sum of £383,417.20. By comparison, the Claimant's incurred costs were £355,640.61, being only £27,765.59 less than the Defendant's entire budget.
8. Whilst I remind myself that there can be a variety of reasons why defendants' budgets (especially in personal injury and clinical negligence claims) are frequently if not always lower, such that comparison with a claimant's budget is not always an easy or even useful exercise, the feature of an opposing party's budget still being about a third of another's plainly calls for careful consideration and reflection by the party with the much higher budget suitably in advance of the hearing. Particularly when, as here, the court had provided and directed a separate hearing for the purposes of costs management, with an interim period provided to facilitate reflection and negotiation.
9. In consequence to the Case Management Hearing, the Claimant served an updated budget reduced to £944,537.16. This was nonetheless still a very high sum, even if necessarily reflecting the additional two expert disciplines as had been permitted.

10. In his Witness Statement dated 25 July 2024, directed by the court to be prepared on the issue of costs following the Costs Management Hearing, Mr Christopher Asbury, Costs Lawyer on behalf of the Defendant, describes how the polarity between the Claimant's first budget and the Defendant's first Precedent R resulted in the parties' costs lawyers agreeing on 24 May 2024 that they would be unable to present any agreement about costs at the Case Management hearing. So from that date, in anticipation of KB Masters' practice, a further Costs Management hearing seemed inevitable. The clock was set, to so speak, for the Claimant carefully to consider whether his budget was proportionate.
11. I pause here to comment that subsequent specific Costs Management hearings are not always inevitable. Many parties have agreed their respective budgets by the time of the Case Management Conference. Many still do so subsequently, such that the Costs Management hearing as provided becomes unnecessary and is vacated. Under no circumstances can parties therefore assume that because a hearing has been listed, and because that hearing is interlinked with case management, that the order at the next hearing will be bound to be "in the case". The resources and time of both the court and other parties, as with any hearing, always have to be considered by all those participating; and, critically, throughout the period leading to the hearing. In short, a continuing realistic appraisal (as is required before any hearing) why the hearing is proceeding and whether, having regard to the Overriding Objective, a more costs efficient alternative approach is possible.
12. Mr Asbury describes how, in preparation for the 11 July 2024 hearing, a further discussion took place with the Claimant's costs lawyer on 9 July 2024 in attempt to negotiate. The Claimant was invited to, and did, present some counter-budget proposals in writing. However, the counter-figures still did not reflect the Defendant's position on proportionality neither, as it transpired, the court's similar views at the subsequent hearing. No further discussions took place, the Claimant in effect taking the view that his budget was reasonable and that the Defendant's counter submissions had sufficiently little currency to deserve any further discussion.
13. At the hearing on 17 July 2024, the court was entirely satisfied that the Claimant was maintaining an unrealistic and inappropriately ambitious budget, having regard to the requirements of the case. Despite the Claimant having attempted to offer slightly reduced figures, the court found that the Defendant's submissions as to proportionality remained far closer to what, on any objective terms, could be submitted as within a reasonable range. Further, this was in respect of the management of such phases the court decided could be costs managed, despite the polarity between the figures.
14. Critically, the court concluded that that the high figures proposed for Trial Preparation and Trial phases would accordingly be better deferred to a date closer to the Trial Window, at which time the court might be in a more informed position, on the evidence as had by then transpired, to gauge whether the Claimant's estimated costs

totalling £204,742.98 had any greater foundation than was apparent at the Costs Management Hearing.

15. Likewise, ADR costs management was adjourned for the same or similar reasons, the court noting the Claimant's figure in excess of £49,000 for this phase seemed considerably higher than normally seen for an ADR phase; indeed, even in catastrophic cases.
16. The table at the conclusion of this judgment, drawn from Mr Asbury's Witness Statement, illustrates the respective figures sought, offered, counter-offered and as then approved. The Defendant's budget remained agreed, as previously, in the sum of £368,427.30 including estimated costs of £215,295.00.
17. Costs were reserved having regard to the significant percentage deductions to the Claimant's budget. The court also expressed an observation that the Claimant's incurred costs seemed high at £358,762.51, given the case had proceeded on quantum since March 2021 and only two quantum expert reports had been disclosed by the Claimant. The court specifically described the Disclosure phase as apparently "significantly disproportionate".
18. My conclusion is that the Claimant had presented and maintained an unrealistic and disproportionate approach to his estimated costs in the context of the demands and requirements of this case. He continued to do so despite the opportunity to modify his position in response respectively to the Defendant's first Precedent R, observations made at the Case Management Conference and then overtures made by the Defendant during an intervening period before the Costs Management Hearing, a period as prescribed by the court specifically to facilitate appropriate discussion and negotiation.
19. The hearing on 17 July 2024 therefore could well have been avoided had a more reasonable modified approach been taken by the Claimant. If and in so far as the hearing should be taken as having still been necessary, then in terms of success and conduct I see no reason why the Claimant should be the beneficiary of a "costs in the case" direction. In real terms, the fact that liability is admitted means he is likely to receive his costs despite the events I describe.
20. I instead direct, for the reasons discussed, that the Claimant pay the Defendant's costs of and occasioned by the Costs Management Hearing on 17 July 2024.
21. I am satisfied that there is a further relevant point on costs that should be recognised: the extent to which the Claimant's costs of preparing several budgets through to the hearing on 11 July 2024 ought to be capped having regard to the approach he adopted.

22. I accept that some costs would always have to be incurred in preparation but conclude these, if the Claimant becomes a receiving party, should not be to an extent that incorporates crafting an inappropriate and unrealistic approach. The costs of the Claimant's costs management as assessed, to the extent recoverable having regard to the consequences of the order at Paragraph 20 above, should be reduced by 35%.

Phase	Incurring Party	Incurring Party	Budgeted costs as sought	Budgeted costs as offered (BDR)	Claimant's counter offer	Amount allowed	Percentage of costs as sought
Pre-action costs	£ 155,286.57	£ -	£ -	£ -			
Issue / statements of case	£ 34,127.54	£ 47,440.00	£ 12,170.00	£ 24,100.00	£12,170.00	25.63%	
CMC	£ 11,926.10	£ -	£ -				
Disclosure	£ 87,091.40	£ 59,060.00	£ 32,850.00	£40,900.00	£33,000.00	55.87%	
Witness Statements	£ 11,958.90	£ 61,681.00	£ 11,270.00	£ 24,816.00	£15,000.00	24.32%	
Expert Reports	£ 57,754.00	£ 161,726.67	£ 84,140.00	£114,980.00	£97,000.00	59.98%	
PTR	£ -	£ 2,083.00	£ 2,083.00	£ 2,083.00	Agreed	Agreed	
Trial Preparation	£ -	£ 122,154.66	£ 50,338.00	£ 92,508.00	TBC	TBC	
Trial	£ -	£ 82,588.32	£ 56,800.00	£ 71,793.32	TBC	TBC	
ADR / Settlement discussions	£ 618.00	£ 49,041.00	£ 15,789.00	£ 34,996.00	TBC	TBC	
Total	£ 358,762.51	£ 585,774.65	£ 265,440.00	£406,176.32			

