



Neutral Citation Number: [2021] EWHC 139 (QB)

Case No: QB-2018-001043

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 January 2021

Before :

ROGER TER HAAR Q.C.
(sitting as a Deputy High Court Judge)

Between :

VADIM DON BENYATOV **Claimant**
- and -
CREDIT SUISSE SECURITIES (EUROPE) LTD **Defendant**

Charles Ciumei Q.C. and Andrew Legg (instructed by **Scott+Scott (UK) LLP**) for the
Claimant
Paul Goulding Q.C., Paul Skinner and Emma Foubister (instructed by **Cahill Gordon &**
Reindel (UK) LLP) for the **Defendant**

Hearing dates: 19 January 2021

Approved Judgment

Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on Thursday 28th January 2021.

ROGER TER HAAR Q.C. :

1. This is my sixth judgment in this matter. The first, handed down on 22 January 2020, dealt with the Defendant's applications:
 - i) to strike out the claim brought by the Claimant;
 - ii) if or insofar as that application did not succeed, for a conditional order requiring the Claimant to pay £1.15 million into court;
 - iii) alternatively, for an order that the Claimant provide security for costs in the sum of £1.15 million.
2. In that judgment I dismissed the applications for a conditional order and for security for costs. As to the first application, that succeeded to a significant degree but also failed to a significant degree.
3. My second judgment was handed down on 18 February 2020 and dealt with the costs of the applications. I concluded that the Defendant should pay the Claimant one third of his costs of the three applications.
4. My third judgment was handed down on 20 March 2020, and related to an order as to interim payment as to costs.
5. My fourth judgment was handed down on 25 November 2020 and dealt with the terms of the amendments to the Claimant's pleading which should be permitted and an application on the part of the Defendant to strike out certain parts of the draft Particulars of Claim.
6. In broad terms I decided as follows:
 - i) I dismissed the strike out application;
 - ii) I refused permission to introduce new contractual claims on the basis that they are statute-barred;
 - iii) Otherwise I generally permitted the proposed amendments although I decided that certain allegations should be better particularised.
7. In my fifth judgment I dealt with the following matters:
 - i) Finalising the pleading;
 - ii) The costs of the amendments and the hearing relating to the amendments;
 - iii) Consideration of the Defendant's application for permission to appeal my first judgment;
 - iv) Whether I should vacate the trial window fixed for this case, and, if not, what directions should be given in respect of steps to be taken leading to that hearing.
8. This judgment deals with the parties' costs budgets.

Timing of this cost budgeting exercise

9. The amount claimed in this action exceeds US \$86 million. Accordingly cost budgeting was not inevitable in this case. I understand that there was discussion before Master Davison at the Case Management Conference held on 29 March 2019 as to whether there should be cost budgeting in this case, it being the Defendant's contention that there should not be. The Master ruled against that contention, and ordered that there should be a restored Costs and Case Management Conference to be fixed at a date on which the parties' counsel were available in June 2019 to deal with costs budgeting.
10. In the event cost budgeting was not dealt with in June 2019 and is only now being dealt with because of the extended process of considering the Defendant's strike out application and the Claimant's application to amend the Particulars of Claim.
11. The trial is fixed for a window starting on 26 April 2021: accordingly there is a relatively short time left in these proceedings to which any costs budgets will apply.
12. A somewhat similar problem faced Warby J. in *Arcadia Group Ltd v Telegraph Media Group Limited* [2019] EWHC 96 (QB). At paragraph [34] Warby J. said:

“It is unfortunate that costs budgeting in this case has only been possible two weeks before trial. That, however, is commonplace when a case begins with an urgent application for an interim injunction, and an order is made for a speedy trial. In this case there has also been the Christmas vacation, which has made it harder to get the pre-trial hearings dealt with promptly. What this means in practice is that a large proportion of the costs of the action had already been incurred by the time I came to conduct costs management. Parts of the costs of Disclosure and Witness Statements remain to be spent, but I have no figures for the split and hence I have had to treat all those costs as already incurred. For practical purposes, I have only been able to conduct an approval exercise in relation to the costs of the PTR, Trial Preparation and Trial phases. Budgeting of costs incurred by the time that costs management is undertaken is not possible: PD3E 7.4. All I can do in respect of incurred costs is make comments.”
13. As will be seen below, in this case also a considerable amount of the costs has already been incurred on both sides, but there are significant phases in respect of which costs are yet to be incurred.

Applicable principles

14. In paragraph 6 of their skeleton argument, counsel for the Defendant helpfully set out the following summary of the principles which I am required to apply:
 - i) Where costs budgets have been filed and exchanged the court will make a costs management order unless it is satisfied that the litigation can be conducted justly and at proportionate cost in accordance with the overriding objective without such an order being made: CPR 3.15(2).

- ii) The court may not approve costs incurred before the date of any costs management hearing, but may record its comments on those costs and take those costs into account when considering the reasonableness and proportionality of budgeted costs: CPR 3.17(3).
 - iii) A costs management order must record the extent to which the budgeted costs are agreed between the parties. In respect of the unagreed budgeted costs, it must record the court's approval after making appropriate revisions: CPR 3.15(2)(a)-(b).
 - iv) When reviewing unagreed budgeted costs, the court will not undertake a detailed assessment in advance, but rather will consider whether the budgeted costs "fall within the range of reasonable and proportionate costs": CPR PD3E, paragraph 12.
 - v) A costs management order concerns the totals allowed for each phase of the budget, and while the underlying detail in the budget for each phase used by the party to calculate the totals claimed is provided for reference purposes to assist the court in fixing a budget, it is not the role of the court in the costs management hearing to fix or approve the hourly rates claimed in the budget: CPR 3.15(8).
15. Those principles are not in dispute, but there are some matters worthy of emphasis from the authorities.
16. In paragraphs [9] and [10] of his judgment in *GSK Project Management Ltd v QPR Holdings Ltd* [2015] EWHC 2274 (TCC); [2015] 4 Costs LR 729, Stuart-Smith J. said:
- "9. The Costs Budgeting regime has led to disagreement about the extent of detailed argument that is appropriate when considering Precedent Hs. Experience in the TCC has shown that most costs budgeting reviews can and should be carried out quickly and with the application of a fairly broad brush. Only exceptionally will it be appropriate or necessary to go through a Precedent H with a fine tooth-comb, analysing the makeup of figures in detail. For reasons which will become apparent, however, this is an exceptional case which justifies a more detailed approach. The justification lies in the fact that the aggregate sum being put forward for approval is so disproportionate to the sums at stake or the length and complexity of the case that something has clearly gone wrong. The court's interest in maintaining a robust and just approach to costs management requires an investigation into what has gone wrong for two reasons. First, to enable it to reach a figure which it is prepared to approve; and, second, so that the court's determination to exercise a moderating influence on costs is made clear.
10. The parties are agreed that the approach adopted by Coulson J in *CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd* [2015] EWHC 481 (TCC) is applicable in the circumstances of this case. I also agree,

though Coulson J's approach may better be seen as a guide rather than a straightjacket. On the facts of that case, he considered:

- i) The Proportionality of claimant's Costs Budget [37-45];
- ii) The Reasonableness of the claimant's Costs Budget [46-82];
- iii) Summary of Options [83-95];
- iv) Conclusions on the Available Options [96-98].

I shall follow his lead.”

17. I set out below my application of this guidance.
18. Principle (5) of the principles set out at paragraph 14 above is derived from CPR 3.15(8) and is that it is not the role of the court in the costs management hearing to fix or approve the hourly rates claimed in the budget. This is not in dispute. However, it is Mr Legg's submission for the Claimant, correct in my view, that it is relevant to have regard to the hourly rates of different fee-earners in order to see whether the proposed deployment of the legal team is reasonable and proportionate, subject to avoiding any temptation to micromanage the expenditure or costs. In that regard, not only is the guidance of Stuart-Smith J. set out above relevant, but so also is the guidance of Jacobs J. in *Yirenki v Ministry of Defence* [2018] EWHC 3102 (QB) at paragraph [21]:

“The final vice [in the judgment under appeal], which is apparent from what I have already said, is that the process of setting the budget, and then the question at a detailed assessment of comparing how the budget was spent, becomes something which is being micromanaged by the court. That is something to be avoided. Paragraph 7.3 of the Practice Direction indicates that the ultimate aim is to arrive at budgeted costs which fall within the range of reasonable and proportionate costs. None of that means, of course, that it is not appropriate for the Master, when setting the budget and approving the figures, to look at the constituent parts. Indeed, it is impossible to see how a Master can sensibly come to figures without looking to see how they have been calculated by the party putting them forward. In so doing, the Master should use his or her experience as to how much time should be spent, the type of people who should be doing the relevant work, and his or her experience of hourly rates. However, all of those matters feed in to a finding as to the specific number of hours which are to be spent in the future, or a finding as to [a] specific figure for disbursements to be incurred in the future.”

19. Mr Goulding Q.C. for the Defendant drew my attention to paragraph 5 of Practice Direction 3E, which provides:

“In deciding the reasonable and proportionate costs of each phase of the budget the court will have regard to the factors set

out at Civil Procedure Rules 44.3(5) and 44.4(3) including a consideration of where and the circumstances in which the work was done as opposed to where the case is heard.”

20. CPR 44.3(5) provides:

“Costs incurred are proportionate if they bear a reasonable relationship to –

- (a) the sums in issue in the proceedings;
- (b) the value of any non-monetary relief in issue in the proceedings;
- (c) the complexity of the litigation;
- (d) any additional work generated by the conduct of the paying party; and
- (e) any wider factors involved in the proceedings, such as reputation or public importance.”

21. CPR 44.4 provides:

“The court will also have regard to –

- (a) the conduct of all the parties, including in particular –
 - (i) conduct before, as well as during, the proceedings; and
 - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
- (b) the amount or value of any money or property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (e) the skill, effort, specialised knowledge and responsibility involved;
- (f) the time spent on the case;
- (g) the place where and the circumstances in which work or any part of it was done; and
- (h) the receiving party’s last approved or agreed budget.”

22. In approaching the costs budgets in this case, all the factors in CPR 44.3(5) appear to me relevant except (b) and (d), and also all those in CPR 44.4(3) except (a) and (h): in particular I do not regard the conduct of either party thus far has any relevance on the costs to be incurred going forward. It has not been suggested that I should form any

view as to the conduct of either party in making comments upon the costs already incurred.

23. As set out above, this is a substantial claim (for over US \$86 million). The total amounts in the costs schedules are just over £2 million in the case of the Claimant and almost £3.8 million in the case of the Defendant. These are substantial figures, but amount to about 3% of the claimed amount in the case of the Claimant and 5.7% of the claimed amount in the case of the Defendant.
24. Accordingly, compared to the vast majority of cases which come before this court, the ratio of costs to claimed amount is relatively low.
25. In some cases that alone would be sufficient to dissuade a court from entertaining a cost budgeting exercise in a claim over £10 million, but the decision of Master Davison has ruled out that approach in this case.
26. Some guidance as to the role of cost budgeting in a case where very substantial sums are at stake comes from the decision of Nugee J. in *Sharp v Blank and others* [2015] EWHC 2685 (Ch). In that case the principal issue was whether there should be a cost budgeting exercise at all, but some assistance comes from the following passages in the judgment. First, at paragraph [29]:

“It does seem to me, however, that in the circumstances of this case, where, as I have said, the considerations of proportionality are much less to the fore than they are in smaller claims, that it may very well be that if the budgets that are exchanged reveal that both parties are proposing to conduct the case in a way which is not obviously out of line with the issues at stake and the amounts in issue, the court may think it unnecessary to make a costs management order. I certainly do not regard the order which I will make for budgets to be filed and exchanged as leading to any presumption or prima facie conclusion that this is an appropriate case for costs management order. I regard this as a case where the purpose of budgeting is to enable the parties to keep an eye on whether the costs that have been incurred, and are expected to be incurred, are reasonable and proportionate, with a view to asking for a case management order if they can make out a case that they are not. But if they are reasonable and proportionate, it by no means follows that the court would require a costs management order.”

27. In this case, each party suggests that in some respects the other party’s costs budget is unreasonable and therefore seeks the making of a costs management order.
28. Secondly, Nugee J. said at paragraph [23]:

“Here, however, the amount at stake is, as I have already referred to, between £215 million and £280 million so the concerns of proportionality are likely to be much less to the fore. That does not mean that the parties have *carte blanche* to spend as much money as they want, but it is unlikely the costs of the order of

£20 or 30 million or so would necessarily be regarded as disproportionate in the same way.”

29. Finally, Mr Legg drew to my attention the following apposite passage in the judgment of Foskett J. in *Simpkin v The Berkeley Group Holdings plc* [2016] EWHC 1619 (QB); [2017] 1 Costs LO 13:

“[49] There is no doubt that on the figures deployed this is potentially an extremely large claim, possibly exceeding £10 million, and it might be said not the kind of claim where costs budgeting is to be considered, although the observations of Mr Justice Coulson in *CIP Properties (AITP) Ltd v Galliford Try Infrastructure Ltd* [2014] 6 Costs LR 1026 at para 27 are relevant in this regard. However, this is not a contest between two giant corporate entities – it is a dispute between a private individual and one giant corporate entity. The claimant may have been paid well during his time with the defendant and he may have, since his dismissal, acquired a job, that by the standards of many people, is well paid, but his resources for conducting litigation are minuscule by comparison with those available to the defendant. What the defendant chooses to pay its lawyers is, of course, a matter entirely for it to decide upon. Those lawyers will not be restricted to recovering from their clients sums well in excess of anything that may be permitted by the court by way of costs budgeting. However, the advantage of costs budgeting from the claimant’s point of view is that he, or those who may in due course fund him, will know that it would have been assessed as reasonable in advance of proceeding further, rather than simply awaiting the outcome of an assessment in due course.”

General Matters

30. The costs in the Claimant’s costs budget are £944,128.97 in respect of incurred costs and £1,386,566.25 in respect of budgeted costs, a total of £2,330,695.22.
31. The costs in the Defendant’s costs budget are £1,662,067.47 incurred and £2,136,750.00 in respect of budgeted costs, a total of £3,798,817.47.
32. The figures have since moved a little, as I explain below, but on any view (a) both parties’ figures are substantial; and (b) the Defendant’s figures are substantially higher than the Claimant’s figures.
33. My previous judgments in this matter were the subject of applications for permission to appeal on the part of the Defendant. In refusing permission to appeal Stuart-Smith L.J. described the costs as “already excessive”. That comment reflected the fact that the costs incurred by the parties in respect of the interlocutory applications were already into seven figures.
34. Thus, in absolute terms, the costs contained in the two budgets were substantial and out of the norm. However, those costs need to be considered in the context of the following factors arising out of the provisions of CPR 44, referred to above:

- i) The amount in issue is US \$86 million: on any view this is a substantial sum, which is a relevant matter under CPR 44.3(5)(a) and CPR 44.4(3)(b): there was a suggestion on behalf of the Claimant that I should take into account the amount put forward by the Defendant in its Counter-Schedule of Loss (£1,365,817.16). I reject that suggestion – it is the amount claimed by the Claimant that matters;
 - ii) The case is of very great importance to both parties, engaging CPR 44.4(3)(c), and involves issues of reputation for both parties, but particularly the Defendant, and potentially involves issues of public importance in respect of the obligations of employers to employees, thus engaging CPR 44.3(5)(e);
 - iii) The proceedings involve complex issues, particularly of law, thus engaging CPR 44.3(5)(c) and CPR 44.4(3)(d), and involve difficult and novel questions of law, engaging CPR 44.4(3)(d);
 - iv) The work going forward will involve considerable skill, specialised knowledge and responsibility, engaging CPR 44.3(3)(e);
 - v) A considerable amount of work will have to be done in the weeks between now and trial, engaging CPR 44.3(3)(f);
 - vi) The work to be done will have to be done under circumstances of considerable pressure, engaging CPR 44.3(3)(g).
35. Taking all those factors into account, and taking the broad brush suggested by Stuart-Smith J. in the *GSK* case, very substantial costs can undoubtedly be justified.
36. However there are some big issues which it seems to me I need to consider:
- i) The disparity between the two costs budgets;
 - ii) The incurred costs in the costs budgets;
 - iii) The costs outside those costs budgets spent in the interlocutory proceedings which have led to my previous judgments.

Hourly Rates

37. Before I turn to the individual elements of the costs budgets, I should deal with submissions made by the Claimant in respect of the hourly rates deployed by the Defendant in its costs budget. The Claimant's offers are based on hourly rates of £750 for Grade A, £425 for Grade B, £275 for Grade C and £165 for Grade D as against claimed costs for Grade A and B fee earners, at hourly rates of £780 and £515 respectively.
38. As set out above, it is no part of my task to resolve whether these are reasonable rates.
39. The rates used by the Defendant are undoubtedly high, but, insofar as it is appropriate for me to comment, I do not regard the Grade A and Grade B rates used by the Defendant as being in themselves unreasonable applying the CPR 44.3 and 44.4 factors set out above: this is a major international bank resisting a significant financial claim involving novel and difficult legal issues.

40. It is also relevant that the basis upon which the Defendant's solicitors charge means that a certain amount of tasks which other solicitors would charge as separate line items or cost heads, are included within the Grade A and Grade B charges.
41. However, such expensive professional resources must, of course, be used as frugally as is consistent with the fair conduct of the Defendant's defence.

Pre-Action Costs

42. These are outside the exercise which I have to carry out.

Issue/Statement of Case

43. The Claimant's incurred costs are said to be £400,719.59. The budgeted costs (which are principally in respect of an Amended Reply) are £47,615. These are agreed and therefore do not fall for consideration by me.
44. The Defendant's incurred costs as stated in its costs budget are £580,975.53, and the budgeted costs are £156,750.
45. Before me, Mr Goulding explained that the whole of the £156,750, whilst future costs at the time of preparation of the costs budget, is now incurred cost. Thus the incurred costs figure becomes £737,725.53.
46. The work going forward consists of reviewing the Amended Reply when received. I suggested £20,000 would cover that, and neither party disagreed.
47. Accordingly for the purposes of cost budgeting, the future costs allowance will be £20,000.
48. What of the incurred £737,725.53? I can comment upon that, and I do. Many quite hefty disputes are dealt with for that sort of expenditure on the part of one party. I take this into account in this way: the incurred costs coupled with massive expenditure on the interlocutory stages which stands outside this cost budgeting exercise (the strike out and some of the amendment matters) mean that there cannot be a single member of the Defendant's legal team who is not well versed in the intricacies of her or his particular parts of this case, save as to evidence yet to be obtained. Accordingly, I should be cautious about expenditure on the other phases of this case.
49. However, in respect of the aspect upon which I have to make a determination, given that both parties are content that £20,000 should be allocated for future costs, I approve that figure.

Case Management Conference

50. The Claimant put forward incurred costs of £66,422.36 and budgeted costs of £68,225, a total of £134,647.36. The Defendant agreed the budgeted costs of £68,225, but was not required to agree or disagree the incurred costs.
51. As this is a judgment following the CMC, all the costs are now incurred. Accordingly I have no jurisdiction to approve or disapprove the Claimant's budgeted costs.

52. The Claimant's costs for the CMC are dwarfed by the Defendant's. The Defendant has incurred costs for the CMC of £78,150.25 and budgeted costs of £113,490.00, a total of £191,640.25.
53. Because, inevitably, all these costs have been incurred before the CMC at which I am carrying out the cost budgeting process, I have no jurisdiction to approve or disapprove the figures put forward. I fully understand my task is to take a broad brush approach making any comments on incurred costs as well as in approving budgeted costs: I do, and my conclusion is that in due course both parties' incurred costs will call for close scrutiny by a costs judge.

Disclosure

54. The Claimant puts forward incurred costs of £68,370.32 and budgeted costs of £29,506.25, a total of £97,867.57. The budgeted costs of £29,506.25 are agreed by the Defendant.
55. It seems hard to see how the Defendant could have done otherwise: its incurred costs are £829,350.20 and its budgeted costs are £58,625, a total of £887,975.20.
56. It is obviously the case that in the circumstances of this case, the real burden of the disclosure process falls disproportionately on the Defendant. Thus, it is not surprising that the Defendant's disclosure costs are very much higher than those of the Claimant.
57. It is also right that in correspondence over the past few weeks questions as to disclosure have been raised by the Claimant's lawyers. However those are generally checking that disclosure which should already have been given has been given.
58. My approach is that disclosure on the part of the Defendant should have been completed some time ago. In the run up to trial it is reasonable that there is a final check as to whether disclosure is complete. I think that a reasonable allowance for that exercise, given what has already been spent, would be £25,000.

Witness Statements

59. The Claimant claims £1,860 as incurred costs and £95,170 for budgeted costs, a total of £97,030. The Defendant offers £48,000 being £30,000 for time costs and £18,000 for disbursements.
60. The Defendant claims for £2,395.83 as incurred costs and £218,600 for budgeted costs, a total of £220,995.83. The Claimant offers £75,350.00 by way of time costs and £40,000 for disbursements.
61. It seems to me that both parties should have done very substantial factual investigations in order to prepare the pleadings filed thus far, and reflected in other parts of the costs budgets, and in order to deal with the interlocutory stages of this case, not allowed for in the costs budgets.
62. I am required to take a broad brush on this exercise: I take into account that there will be more new witnesses for the Defendant and more work to be done by the Defendant than by the Claimant.

63. I accept that this is an important stage for both parties to review the state of evidence in respect of their respective cases, so substantial costs, including counsel's fees, are likely to be incurred.
64. Doing the best I can, I allow £60,000 for the Claimant's costs of this phase, and £100,000 for the Defendant's costs.

Experts' Reports

65. The Claimant claims £57,194.73 as incurred costs and £204,065 for budgeted costs, a total of £261,259.73. The Defendant offers £165,000.
66. The Defendant claims for £47,918.50 as incurred costs and £221,300 for budgeted costs, a total of £269,218.50. The Claimant offers £187,400.
67. In my view there should be equity between the parties: given that the Claimant has agreed £187,400 for the Defendant's experts, it seems to me reasonable that the Claimant should be allowed a sum of the same order.
68. I would round the figure for budgeted costs (i.e. future costs) for each of the two parties up to the sum of £190,000.

Pre Trial Review

69. The Claimant claims £59,500 for budgeted costs. The Defendant accepts that figure.
70. The Defendant claims £112,440 for budgeted costs. The Claimant offers £26,375 by way of time costs and £35,440 for disbursements.
71. This is another area where it seems to me parity is important. The Defendant has chosen to retain three counsel: that is its entitlement, but for cost budgeting purposes I take the view that parity in allowance of number of counsel is the right approach.
72. Generally, a PTR involves more expenditure for the Claimant's team than for the Defendant's team.
73. In the circumstances, I think the Claimant's figure is reasonable, and I see no reason why the allowance for the Defendant should be significantly higher.
74. I allow £59,500 for each party's costs of the PTR.

Trial Preparation

75. The Claimant claims £554,810 for budgeted costs, being £399,560 for disbursements and £155,250 for time costs. The Defendant offers £430,000.
76. The Defendant claims for £64,995.50 as incurred costs and £774,675 for budgeted costs, a total of £839,670.50. The Claimant offers £387,000 by way of disbursements and £125,050 for disbursements, a total of £512,050.

77. I am not clear in respect of what work the Defendant has already incurred costs relating to trial preparation, but insofar as costs have been incurred they are not part of my approval process.
78. I bear in mind that if the parties had agreed figures, I would have no discretion to approve or disapprove costs - accordingly it seems to me that the minimum which I should approve for each party is the lowest common denominator: thus in respect of disbursements, the Claimant allows £399,560 in its costs budget, and the Defendant allows £595,000 in its budget. On that basis the lowest common denominator for disbursements (mainly counsel's brief fees) is £399,560.
79. In considering whether more than £399,650 should be allowed for disbursements, it is relevant that counsel for both parties have now been immersed in these proceedings for a substantial time, and the budgeted costs in earlier phases for the Defendant include (even after the reductions above) very substantial figures in respect of counsel's involvement (as do the incurred costs).
80. Stepping back, and adopting a broad brush approach, and even allowing for all the CPR 44 factors to which I have referred above, it seems to me an allowance of £399,650 for disbursements in the trial preparation phase is certainly not more than is reasonable and proportionate.
81. In respect of time costs, the difference in budgeted costs is not so stark: it is between £155,250 for the Claimant and £179,675 for the Defendant. Applying the broad brush which I am required to apply, it seems to me to try to assess whether the figure should be £155,000 or £179,000 or some other figure is inappropriate. I approve each party's time cost figure as put forward in their respective costs budgets.
82. In addition to the incurred costs, it will be for the Defendant in due course to explain the costs already incurred in respect of trial preparation. I did not ask the Defendant to explain this cost item, so I express no view as to whether these are recoverable in principle or reasonable in amount.

Trial

83. The Claimant has put forward a budget of £282,900, being £180,900 in respect of time costs and £102,000 in respect of disbursements. The Defendant has offered £230,000.
84. The Defendant has put forward a budget of £383,320 being £194,100 for time costs and £189,220 for disbursements. The Defendant has agreed to an offer from the Claimant of £166,500 in respect of time costs.
85. I see no reason why there should be any disparity in respect of time costs: accordingly I approve £166,500 in respect of time costs, which does not seem to me to be a disproportionate amount for either party.
86. There is a significant difference between the parties as to disbursements, being principally counsel's refreshers. I find the Defendant's figures difficult to approve notwithstanding the CPR factors which I have discussed above. It seems to me that the Claimant's allowance of £102,000 is reasonable and appropriate even in a case of this difficulty.

87. However, as is frequently the case, neither party has allowed for the additional expense which will be incurred by the parties if time is taken for written closing submissions to be requested or ordered by the court after the evidence is concluded. In my experience as counsel, this exercise can be expensive. Accordingly, I record that the costs budgets do not allow for such costs, if they are in due course incurred.

ADR

88. Both parties' costs budgets for the ADR phase are budgeted on the assumption that there will not be a mediation. (Some ADR has already taken place). The figure in each party's budget is agreed by the other.
89. I record the optimism expressed to me that mediation will take place between now and trial. That it should take place is much to be desired.

Conclusion

90. I will ask the parties to draw up revised costs budgets reflecting my decisions above.