

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

[2021] EWHC 1749 (QB)
25 June 2021

BEFORE:

MASTER DAVISON

BETWEEN:

PATRICIA SMITH

CLAIMANT

- and -

W FORD & SONS (CONTRACTORS) LTD

DEFENDANT

Legal Representation

Mr Stephen Glynn (instructed by Thompsons Solicitors) on behalf of the Claimant
Mr David Platt QC (Instructed by Keoghs) on behalf of the Defendant

Hearing date: 13 April 2021

Judgment

Master Davison:

1. What follows is the text of an *extempore* judgment which I gave in the course of a CMC in an asbestos claim in the Asbestos List. Because it deals with an issue common to all cases in that list and because it carries the approval of the Asbestos Masters, I am promulgating it on Bailii.
2. There is a convention – not a rule of law but a convention, quite a firm convention – that costs budgeting is generally disapplied in the Asbestos List. I quote from the relevant part of the commentary to the Practice Direction, which is in the White Book at 3DPD 5.3 under the heading *Costs budgeting at the CMC in mesothelioma and other asbestos disease cases*. (Those words *and other asbestos disease cases* are perhaps worth noting.) It states as follows:

“The convention of dispensing with costs budgeting in asbestos disease cases has been reinforced by the introduction of PD 3E paragraph 2(b) which indicates that in all cases where there is limited or severely impaired life expectation (five years or less remaining) the Court will ordinarily disapply costs management.”
3. The convention reflects the fact that the Asbestos List is conducted with despatch, both at the interlocutory and trial stages. By way of examples, the first CMC in an asbestos case can be listed within weeks, or even days sometimes, of the issue of a Claim Form. And an asbestos case can be listed for trial and concluded within three, or sometimes even fewer, months of issue. In order to administer the Asbestos List efficiently, the Asbestos Masters make no distinction, in terms of listing, between mesothelioma and asbestosis (or pleural thickening) cases, and fatal cases.
4. Obviously, there is a big difference in terms of life expectancy between the first two of those categories, and life expectancy does not arise at all in the third. But all asbestos cases are, nevertheless, listed for a first CMC very rapidly, and all are subject to the same, or very similar arrangements, for fixing a trial date, albeit I acknowledge not all of them are given an expedited trial.
5. These listing arrangements cannot accommodate costs budgeting. That is a simple fact of life. And I would add that they cannot accommodate too many debates, or contested hearings, about whether costs budgeting should or should not apply. Having made those general observations, I will turn to the Defendant’s arguments in favour of costs budgeting this case, which I think fall into three parts or categories.
6. Firstly, Mr Platt points out that this is a deceased case. I think I have already dealt with that. We (by “we” I mean the Asbestos Masters generally) make no distinction on that ground. If we did, it would impose its own administrative burden and it would have a profound knock-on effect on living cases.
7. Secondly, Mr Platt points out that this is a heavily contested trial and not, to quote from his skeleton argument “a straightforward disposal process”. That is, in fact, not at all unusual. It does not take this case out of the ordinary. A large number of asbestos cases are heavily contested and it is commonplace to encounter disputed medical evidence and disputed, often complex, engineering evidence. (I mention that this case is, in fact, less complex than those where the Helsinki criteria fall to be applied.)

8. The third category of Mr Platt's arguments could be applied across the board in that it amounted to a general encomium in favour of costs budgeting.
9. I would make several observations about that. The first is that these factors were considered corporately by the Asbestos Masters and by the senior judiciary who devised the present system and approved the convention that costs budgeting should not usually apply. The factors that are generally in favour of costs budgeting were judged to be subordinate to the factors that I have mentioned. I would make two further observations, which are related. The first is that there is no evidence that the process of detailed assessment is not adequately controlling costs in asbestos cases. If the costs of asbestos cases were placed against the costs incurred in other cases of industrial disease, which have been costs budgeted, I would be surprised if there were much, if indeed any, difference. At any rate, if a defendant wishes to displace an important and well-established convention, then it seems to me that it is for that defendant to show, rather than merely assert, that costs in asbestos cases are disproportionate or not adequately controlled. Secondly, QB Masters, Chancery Masters and Costs Judges do not necessarily share this defendant's expressed confidence that costs budgeting controls costs better, or more effectively, than detailed assessment. This is a large topic and a complex and somewhat sensitive issue. The present hearing is not, perhaps, the forum to debate it at any length. Suffice it to say that I do not agree with the Defendant's characterisation of this case as presenting a dichotomy between the tight control of costs on the one hand and a free-for-all on the other. That is, in my view, inaccurate.
10. So, for all those reasons, I will in this case follow the convention and I will dispense with costs budgeting.