



Neutral Citation Number: [2020] EWHC 2744 (TCC)

Case No: HT-2018-000344

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)

Rolls Building
Fetter Lane, London, EC4Y 1NL

Date: 16/10/2020

Before :

MR JUSTICE KERR

Between :

BDW TRADING LIMITED
- and -
LANTOOM LIMITED

Claimant

Defendant

Mr Rupert Choat (instructed by Ashfords LLP) for the Claimant
Ms Jennifer Jones (instructed by Stephens Scown LLP) for the Defendant

Hearing date: 02 October 2020

Approved Judgment

Covid-19 Protocol: This judgment was 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 3pm on Friday, 16 October 2020

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Mr Justice Kerr :

1. This is my judgment on issues arising in the pre-trial review in this case which is listed for an eight day trial starting on 11 January 2021. Most matters were helpfully dealt with by consent and are reflected in a draft order prepared by counsel, for which I am grateful. Apart from two issues relating to the costs of applications made by the claimant, the outstanding matter on which agreement has not been reached concerns the parties' costs budgets.
2. The dispute arises from the supply of certain allegedly substandard stone from 2012 to 2015 by the defendant, a supplier of stone extracted from its quarries in Cornwall, to the claimant, a house builder, for the purpose of a housing development undertaken by the claimant at Penndrumm Fields in Cornwall. The claim as quantified in July 2020 is for damages and indemnities comprising remedial works and expenditure totalling £5.354 million excluding VAT.
3. The causes of action asserted include that the stone was not reasonably fit for the purpose of forming external walls to the houses at the site; and damages under section 2(1) of the Misrepresentation Act 1967 for alleged misrepresentations as to the fitness and qualities of the stone supplied. There are disputes as to what express terms were incorporated into the contract or contracts between the parties and whether certain of the defendant's standard terms, if incorporated, fall foul of the Unfair Contract Terms Act 1977.
4. In addition to 11 witnesses of fact, the trial will feature expert evidence on the geological properties of various stone types; civil and structural engineering; and quantum. Some of the experts have not yet started without prejudice discussions, nor produced joint statements. The agreed directions include provision for this to happen in time for the trial.
5. The first case and costs management conference (CCMC) took place before Adrian Williamson QC, sitting as a High Court judge, on 25 October 2019. He gave directions, including for disclosure. The disclosure models were partially but not in all instances agreed. He approved the parties' costs budgets, with certain adjustments. His order marked the boundary between incurred costs and estimated costs. Costs incurred after his order remain "estimated", under the regime, even if the money has already, as at now, been spent.
6. On 9 March 2020, the claimant's solicitors wrote to the defendant's solicitors requesting a four week extension to disclosure, from 13 March to 9 April 2020, with consequent extensions to other deadlines. Disclosure had already been extended by 14 days, by agreement. The claimant also sought an increase of £90,000 in its costs budget for the disclosure phase.
7. The reason given was that the claimant's costs budget had included an express assumption that fewer than 50,000 documents would be collected for disclosure purposes, with individual review required of no more than 15,000 documents after applying keywords; whereas in collecting the documents it had transpired that they numbered more than 250,000 documents, of which it was thought likely about 70,000 would have to be individually perused.

8. In the same letter, the claimant asserted that this amounted to a “significant development” and that the claimant’s costs budget was being updated accordingly. Indicative figures were provided. Other, smaller increases in respect of expert evidence were also separately suggested. The defendant was invited to agree to these increases and the extension of time for disclosure. The defendant did not agree the budget increases and would agree to only a seven day extension of time for disclosure.
9. The claimant then made an application on 13 March 2020 for revisions to the directions, including an increase in its costs budget as previously requested. The application was listed for 15 May 2020, but a consent order was agreed and made on 28 April 2020. The disclosure deadline was extended to 17 April. Other deadlines for witness statements and expert evidence were put back in consequence.
10. The consent order increased the claimant’s costs budget for the disclosure phase by £90,000 to a revised total of £177,624.16 for that phase; and in relation to the structural engineer expert’s fees and associated trial preparation costs, there was an increase of £8,500 for the expert reports phase, to a total of £133,590.66 for that phase. The consent order also increased the defendant’s costs budget by £70,000 for the disclosure phase, to a total of £134,202.50 for that phase.
11. The costs of that application were reserved. A schedule of the claimant’s costs has since been produced, totalling £2,681.42. The claimant claims that sum and I am asked to award it and to assess the costs summarily in that amount. The defendant does not dispute the amount but contends that the order should be costs in the case. I will return to this issue later in this judgment.
12. Disclosure took place in April 2020. Witness statements were exchanged in June 2020. On 23 June, the claimant wrote seeking an increase to its costs budget for the witness statement phase of £55,000 to cover solicitor time costs. The defendant responded on 1 July 2020, not agreeing to this increase. It argued that the increase was already captured by the previously agreed increase in respect of the disclosure phase; and that the budget for witness statements would be nearly doubled and was not reasonable or proportionate. The claimant then on 6 July 2020 made the application now before me.
13. In her witness statement supporting the application the claimant’s solicitor, Ms Lianne Edwards, explained that the unexpectedly high number of documents that had to be reviewed (roughly a five-fold increase as against the initial express assumption) was having a knock on effect on the proofing of witnesses, with whom the additional documents had to be considered. Furthermore, additional witnesses of fact would have to be called. She considered that this amounted to a further “significant development” justifying the increase sought.
14. In August and September 2020, the claimant wrote several times to the defendant, without receiving a response. The claimant was seeking yet further increases to its costs budget in that correspondence. The pre-trial review was already fixed for 2 October 2020 (when it subsequently took place before me). The claimant also produced draft amended particulars of claim, to bring its case up to date following close of pleadings and the extensive disclosure. The application to amend was unopposed and I have granted it.

15. In the correspondence leading to the pre-trial review, the claimant proposed filing a “Precedent T” notice of variation and for its pending application to be dealt with as part of that exercise, at the pre-trial review, together with the further amendments sought after the claimant had made its application dated 6 July 2020. The claimant sent its Precedent T to the defendant on 28 September. The next day, the defendant sent a reasoned response denying that any further increase was appropriate.
16. I should add for completeness that the claimant seeks the costs of the application made on 6 July 2020, which I am asked to assess summarily in the sum of £9,584.28. The claimant has produced a schedule to support that amount. The defendant has not had an opportunity to comment on the amount but resists the application for costs on the basis that I should refuse any budget increase.
17. In its Precedent T, and as explained in a note dated 30 September 2020 prepared for the pre-trial review by Mr Rupert Choat, counsel for the claimant, the budget increases I am asked to approve are now (including incurred costs) an increase of £69,620.00 (to £137,953.70) for the witness statement phase; and an increase of £106,008.94 (to £239,599.60) for the expert report phase.
18. The claimant’s explanation for the increases in the Precedent T form referred to its solicitors’ detailed letter of 28 September 2020. In relation to the witness statement phase, the solicitors explained in that letter that the additional estimated £69,620 comprised £55,000 in respect of additional solicitor time costs and £14,620 in respect of counsel’s fees.
19. The letter continued by giving reasons for the upward revisions. It is easier to quote the letter than to paraphrase the reasoning:
 - “a) The number of documents requiring review for the purposes of disclosure was over 3 times more than we had envisaged. Within the assumptions within the Claimant’s Cost Budget, we stated that the amount of documents collected would be less than 50,000 and that the individual review of documents would be no more than 15,000 after key words were applied. It became clear throughout the course of the proceedings that over 250,000 documents were collected which were reduced to 200,000 after applying initial key words. Thus, we collected 4-5 times more documents than our stated assumption in the Claimant’s Cost Budget. Fortunately, we managed to reduce the number of documents for individual review down to approximately 70,000 by grouping family members and using de-duplication however this was still over 4 times more than we stated as assumed within the Claimant’s Cost Budget.
 - b) We had anticipated that much of the additional volume of documents related to photographs, repetitive correspondence and quantum information which would be reduced during the final disclosure review or would otherwise require minimal time during the witness evidence preparation phase. Our client did not therefore expect an increase to the costs of the witness statement phase at the time of seeking a variation to its Cost Budget for the disclosure phase. However, it subsequently proved necessary to consider a substantial amount of the increased volume of documentation with the witnesses.
 - c) At the time of preparing the Claimant’s Cost Budget, within the assumptions we stated that there would be 3 witnesses of fact. However, after reviewing the voluminous amount of documents disclosed by both parties and in the context of the statements of case, it was necessary for our client to prepare 6 witness statements in the first round of witness

statements. This was double the number of witnesses and witness statements than our stated assumption in the Claimant's Cost Budget. It was not until we started proofing and drafting statements that it was identified that other witnesses would be required to adequately address the various factual issues.

d) In addition to our client providing 6 witness statements in the first round of witness statements, our client also filed 6 witness statements by way of supplemental statements. Whilst 4 out of the 6 statements were from the same individuals involved in the first round of statements, the remaining 2 were completely new witnesses (from KCC and Yennadon) and as such, additional time was spent providing them with the relevant information, proofing and drafting. These additional witnesses were necessary to respond fully to points raised within your client's witness statements regarding KCC's performance and alleged issues with Yennadon's stone at other sites. Thus, our client incurred the cost of engaging with – and preparing the statements for – nearly three times the number of witnesses in our stated assumption in the Claimant's Cost Budget, i.e. eight witnesses instead of three.

Moreover, the supplemental statements were also substantial statements (totalling 34 pages) rather than the minimal supplemental statements that had been assumed in our client's Cost Budget. This was due to the number of issues referred to by your client's witnesses which were not anticipated.

e) Finally, the Covid-19 crisis has meant that the production of both rounds of witness statements took longer than originally budgeted as face to face meetings were avoided, save for one witness, and statements were necessarily taken by telephone and email / virtually (as indicated at the start of each witness statement).

We note this increase results in the estimated costs of the witness statement phase being £136,970. Given the various additional issues that our client's statements were required to address to properly cover the matters raised by your client in its Defence and/or its supplemental statements, such as the alleged defects in the properties, discovery of defects with the Lantoom stone, remedial works and losses and the fact that the quantum of our client's claim is also now circa £5.3m, the increase to our client's Cost Budget is reasonable and proportionate in all the circumstances.”

20. In relation to the expert reports phase, the letter of 28 September 2020 explained that the increase of £106,009.94 comprises the following elements: “£25,000.00 for Counsel's fees, £5,800.00 for our client's quantum expert, £48,300.64 for our client's structural expert and £29,908.30 for our client's materials expert”. The reasoning in support of those increased estimates again began with the roughly five-fold increase in the number of documents collected. It was expressed as follows:

“a) The number of documents requiring review for the purposes of disclosure was over 4 times more than we stated as assumed within the Claimant's Cost Budget (see above) which resulted in the need for our client's experts to review and address substantially voluminous documents for the purposes of preparing their reports.

b) It was not until discussions between our clients' respective experts that our client became aware that your clients' experts had visited many other sites, not just St Martin's, and that your client's experts were relying on those other site visits in expressing their opinions. To be able to adequately respond to points being raised by your client's experts, our client's experts have had to visit various other sites to gather relevant information. Within the Claimant's Cost Budget, we had provided estimates based on the

fact that there would be no visits required for the materials / structural experts to other sites, only 1 site visit required to the site for the materials experts and only 2 site visits for our client's structural expert. Given our client's experts are not based in Cornwall, the additional visits required to other sites were fairly substantial and outside of the costs budgeted for in the Claimant's Cost Budget.

c) The parties' liability experts were originally due to file their joint statement in accordance with CPR 35.12(3) on 29 May 2020 however due to the need for additional issues to be discussed and considered the liability experts' joint statement process took a lot longer than expected. Discussions commenced on 13 June 2020 and progressed throughout June, July and August with the joint statement eventually being finalised and filed on 27 August 2020. Within our Claimant's Cost Budget we estimated 7.5 hours for our client's Materials / Geologist Expert together with 25 hours for our client's Structural Expert for the joint statement however the time spent was significantly in excess of this for the reasons explained. The Materials / Geologist Expert has incurred 19.75 hours and the Structural Expert has incurred 118 hours in respect of the Joint Statement.

d) Within the Claimant's Cost Budget we estimated £10,000.00 in respect of stone and mortar tests in addition to the £6,870.00 already incurred. As the issues have been analysed further as a result of the need to respond to matters raised by your client, further testing has become necessary. In particular, further testing has become necessary to address the various specification issues raised in the Defendant's Second Request for Information and in response to requests for further test information from our client's experts. Our client has expended £28,369.45 excluding VAT to date on testing Lantoom stone (i.e. £11,499.45 more than originally budgeted).

e) The variation in relation of our client's quantum expert is as a result of the detailed and voluminous nature of the quantum documents which have required detailed review and auditing to enable our client's quantum expert to make a reasoned assessment of the costs incurred. At the time of our client's Cost Budget, the quantum of our client's claim was anticipated to be circa £2.5m. This has now more than doubled to circa £5.3m. This reflects the additional work required by our client's quantum expert both on the joint statement and in the preparation of his quantum report. Our client budgeted £2,900 regarding the Joint Statement plus £725 for conferencing and £15,000 for the expert report. Our client's expert now anticipates incurring £5,075 for joint statements and £18,624 for his expert report, being an increase of £2,175 and £3,624 for these phases of work respectively.

f) The variation in relation to our client's Counsel is as a result of the need to consider much more documentation as well as to review more drafts and for longer than expected (for a combination of all of the reasons set out above). Our client's Cost Budget assumed 3 review meetings with our client's experts (i.e. 9 in total) but these have been exhausted and further review meetings are and will be taking place. We expect 2-3 times the number of draft reports meetings stated as assumed in the Claimant's Cost Budget.

g) Finally, the Covid-19 crisis has meant that the production of joint statements and expert reports has taken – and is taking – longer than originally budgeted as face to face meetings have been avoided and work has necessarily been done virtually and via email.

We note this increase results in the estimated costs of the expert phase being £221,588.94. Given the numerous technical issues in this case and the fact the quantum of our client's claim is now circa £5.3m, this increase to our client's Cost Budget is reasonable and proportionate in all the circumstances.”

21. The defendant has contended in its solicitors' letter of 29 September and in a note prepared the next day by its counsel, Ms Jennifer Jones, that the claimant's current requests for budget increases should be refused; or, alternatively, allowed in lower amounts than sought; and that the defendant's costs budget should be restored to the level from which it was reduced at the first CCMC, on the basis that its then costs predictions will have proved accurate.
22. That would involve an increase in the defendant's costs budget of £40,000 for the witness statements phase and £50,000 for the expert reports phase. The claimant's position is that if the increases it seeks are allowed, it agrees that the defendant's costs budget should be increased, but by lesser amounts than sought by the defendant; namely, by only £10,000 for the witness statements phase and £25,000 for the expert reports phase.
23. In relation to the witness statement phase, the defendant's reasoning in its solicitors' letter of 29 September was expressed in the following terms:
 - “1. The Claimant has already been allowed an increase to the disclosure phase of their budget of £90,000. This is notwithstanding the fact that the Claimant should have known the extent of its own disclosure at the outset.
 2. The Claimant seeks an increase to the witness statement phase based on the fact that the number of documents that required review was 3 times higher than expected. On the basis that the costs for the disclosure phase have been increased by £90,000, it is not appropriate for a further increase to be included related to increased volume of disclosure in the witness statement phase.
 3. Whilst the Claimant has produced initial witness statements from 6 witnesses rather than the 3 that were allowed for in the original budget assumptions, the statements are all short. 3 of the statements are less than 10 pages. The statements were as follows:
 - Philip Havenhand – 2 pages
 - Steven Fowler – 4 pages
 - Brian Avery – 8 pages
 - Daniel Mountstevens – 19 pages
 - Kate Smallwood – 23 pages
 - Tim Davies – 21 pages
 4. In relation to the supplemental witness statements, these were not substantial. In fact they amounted to a total of only 34 pages. The total number of pages of witness evidence is therefore 111 pages. The Claimant's original budget for this phase was £68,333.
 5. It is not understood how or why the Covid situation has caused an increase to the budget for witness statements. If anything, the fact that discussions related to the statements have taken place by telephone or remotely would have reduced costs as there would be no travel time for visiting witnesses.
 6. The Claim and the Defence have not changed since the date that the original budget was prepared. Whilst it is noted that the Claimant is now seeking to amend its claim and to increase the value, the Claimant's solicitors say in their covering letter that the proposed amendments will not require any new evidence and will in fact reduce the

amount of evidence required as “*there will not be any need for witnesses of fact to be cross examined on the said variation orders*”.

7. The Claimant is seeking an increase of £69,620 for the witness statement phase. This is double their original budget. The Defendant considers this to be wholly disproportionate.

8. There has been no significant change of circumstances that would justify an increase to this phase of the budget. The increase in the amount of disclosure documents has already been generously accounted for in the disclosure phase increase.

9. It is also relevant that the Claimant challenged the Defendant’s original budget for the witness statement phase and the Defendants budget for this phase was reduced by £40,000.”

24. In relation to the expert report phase, the defendant’s solicitors’ letter of 29 September said this:

“10. The Claimant has already been allowed an increase to the disclosure phase of their budget of £90,000. This is notwithstanding the fact that the Claimant should have known the extent of its own disclosure at the outset.

11. The Defendant has already agreed an increase to the Claimants’ original budget for this phase as they consented to the structural engineer’s fees element being increased by £8,500. This is reflected in the consent order dated 28 April 2020.

12. The fact that the Defendant’s experts had visited other sites is not a significant development. It should have been obvious that the experts would need to carry out a review of other sites that utilise similar products to those being complained of as a comparison.

13. The delay to the dates for the joint statement and the expert ... reports did not in itself increase the amount of work required. It just shifted the dates when that ... had to be undertaken.

14. The additional testing is something that should have been anticipated in the original budget. The Defendant’s case has not changed in relation to this issue.

15. The Claimant should have known the extent of the documentation related to quantum when they prepared their original budget.

16. Insofar as the Claimant seeks to justify the increase to their budget on the fact that the quantum has increased from £2.5m to £5.3m, this is the subject of a pending application to amend the Claimant’s case. If that application to amend the claim is allowed then the usual costs order would be that the Defendant is awarded their costs of and associated with any amendment. The Claimant would not be entitled to any increase in costs and therefore any increase to the expert’s phase of the budget as a result of the quantum increasing should not be allowed.

17. The Covid situation has not caused any increase in work for the expert’s phase. The experts have in fact had face-to-face meetings and the conduct of other discussions by telephone or video will have saved travel cost.

18. The proposed increase of £106,008 is nearly double the original budget for this phase and is wholly disproportionate.
19. There has been no significant change of circumstances that would justify an increase to this phase of the budget. The increase in the amount of disclosure documents has already been generously accounted for in the disclosure phase increase and the increase in the quantum resulting from the proposed amendment is not something that the Claimant should be allowed additional cost for.
20. It is also relevant that the Claimant challenged the Defendant's original budget for the experts report phase and the Defendants budget for this phase was reduced by £50,000."
25. On 1 October 2020, the day before the pre-trial review took place before me, paragraph 7.6 of practice direction 3E was replaced by the new CPR rule 3.15A. I was helpfully referred to the text of both the old and new provision. They are similar but the new rule is clearer. I mention the point for completeness. I need not set out the text of the old and new provisions.
26. Mr Choat submitted that the old wording should apply because the significant developments on which he relies and the correspondence and application pre-dated the change. In the absence of a relevant transitional provision, I am not sure that is right, but neither party contended that the change in wording makes any difference here. The body of learning on what is a significant development justifying a change in a costs budget is not affected by the change of wording.
27. Both parties drew my attention to the passage in the White Book (2020 edition) vol. 1 at 3.15.4 (since 1 October 2020, found at 3.15A.1) in the notes following rule 3.15, cross-referred to practice direction 3E (now referring to rule 3.15A), on the topic of significant developments that may justify a change in a party's costs budget. I have looked at most of the cases cited in that passage and am guided by them, though each case depends on its own facts.
28. I accept, as did the parties, that the law is correctly stated in the following extract from that passage (approved in case law). A significant development includes:
- “any event, circumstance or step which is of such a size and nature as to go beyond the events, circumstances and steps which were taken into account, expressly or impliedly, in the budget previously approved or agreed. A development is taken into account impliedly if it is something that was, or should reasonably have been, anticipated by the applicant for revision with regard to the previously approved or agreed budget or to any earlier budget.”
29. As for costs budgets generally, if an increase is justified, the court's approval is to the total figure for each of the budget phases but the court may have regard to the constituent elements of each total figure. It is not for me to undertake a detailed assessment in advance, nor to fix or approve hourly rates.
30. The question is whether the budgeted costs fall within the range of reasonable and proportionate costs. Normally, that is done quickly and with the application of a fairly broad brush (*GSK Project Management Ltd v QPR Holdings Ltd* [2015] EWHC 2274 (TCC), [2015] BLR 715, per Stuart-Smith J (as he then was) at [9]).

31. I note that this is not a case like *GSK Project Management Ltd* where the grand total of the proposed revised costs budgets was wholly disproportionate to the maximum value of the claim. Here, the revised grand total of the claimant's costs budget would be a little under £1 million, while that of the defendant would be a little over £900,000, making a combined grand total in the region of £1.9 million, as against a claim valued by the claimant at £5.354 million.
32. The parties' submissions largely followed the lines of argument set out in the correspondence I have quoted above. For the claimant, Mr Choat's submissions repeated and adopted the reasoning in the letter of 28 September, which I have just quoted. He submitted that each element of the proposed increases arose from a significant development in the litigation, justifying the increase.
33. Mr Choat submitted in oral argument that the issue as to whether a development had impliedly been taken into account did not arise. The assumptions underpinning the original budget figures had been expressly stated in the claimant's Precedent H document.
34. He submitted that the same logic applied to the knock on effects on post-disclosure phases of the five-fold increase in collected documents compared with expectation, as had applied to the impact of that increase on the disclosure phase itself. The defendant had consented to the increase sought at that stage; it was inconsistent and wrong to say that its impact had already been captured in post-disclosure phases.
35. While accepting that comparisons between figures in the parties' respective budgets must be approached with caution, since it is trite that equality is not always appropriate, Mr Choat pointed to the figure of £96,835 in the defendant's budget for the witness statement phase. The defendant's evidence, moreover, did not have to cover progress of remedial works, complaints from residents or quantum matters.
36. He submitted further that the defendant's budget figure for the expert report phase (£199,985.30), was not much less than the claimant's revised total of £239,599.60 for the same phase. The claimant's experts had carried out a lot more documentary work than the defendant's; and had been obliged to incur the additional testing costs referred to in the correspondence.
37. Ms Jones, for the defendant, submitted that the developments relied on by the claimant were not significant. The claimant's representatives had merely underestimated the number of documents collected. The significant aspect of that was already reflected in the agreed increase to the claimant's budget (and a corresponding one to the defendant's) for the disclosure phase.
38. The statements of case, she pointed out, had not been amended at all until very recently, days before the hearing; the increases now sought were not predicated on amendments to the parties' cases. The defendant's original costs budget estimates had been significantly curtailed. She repeated and adopted the reasoning in the letter of 29 September 2020, from which I have quoted above.
39. Ms Jones explained that the parties had disagreed since the outset about what the core issues in the case are. The claimant had always contended that it was the performance of the stone, while the defendant had always contended that it was the quality of the

claimant's design and workmanship of the houses within the development. Consequently, when the defendant had sought documents on the latter issue, the claimant had initially denied their relevance.

40. The claimant had simply underestimated the complexity of the case, Ms Jones argued. She sought to liken this to a "careless mistake" case such as where a party forgets to include success fees or ATE insurance premiums in its budget. The increases sought arose from that underestimate and it was not a significant development in the litigation. The increases should therefore be disallowed entirely or, alternatively, severely curtailed and matched by the corresponding increases sought in the defendant's costs budget for, respectively, the witness statement and expert report phases.
41. Ms Jones pointed out that the compass of the lay witness evidence was relatively narrow: only 34 additional pages of written evidence after the additional statements had been added to the claimant's written witness evidence, with a total of 125 pages of written evidence, excluding cover sheets. The additional evidence above that which had been anticipated did not come near justifying the substantial increase sought.
42. Mr Choat's riposte to that particular submission was to the effect that the quantity of written evidence is not the right measure; brevity is a virtue and parties were required not to elongate witness statements with pointless quotations. A short statement may take longer to prepare than a lazy, lengthy one. The latter type of statement is strongly and rightly deprecated.
43. Both parties mentioned in their submissions the potential impact of the Covid-19 pandemic on the taking of evidence and on preparation for experts' reports. Mr Choat submitted that in virtual meetings, things take longer. Ms Jones responded that this point was exaggerated; any increase in time due to lack of face to face contact was probably offset by the saving of travelling time. I agree with Ms Jones that the Covid-19 effect cuts both ways.
44. I turn to my reasoning and conclusions. I accept the claimant's proposition that the collecting of four to five times more documents than anticipated (and expressly assumed) and the need to review nearly five times as many documents as anticipated (and expressly assumed), is a significant development in the litigation. It was implicitly, if grudgingly, accepted as such by the defendant when it agreed to the consent order of 28 April 2020, which also uplifted the defendant's costs budget for the disclosure phase, following the same logic.
45. I do not accept Ms Jones' argument that all the consequences of that development were captured by the claimant's £90,000 increase for the disclosure phase. The increase was not part of and did not apply to work done in the witness statement and expert report phases; but the knock on effects of the avalanche of documents anticipated by neither side were, by the same logic, likely to impact on the adequacy of budget provision for subsequent phases unless the additional documents proved irrelevant or repetitive.
46. While the additional witness evidence from the claimant's side is not prolix, repetitive or irrelevant, I do think the amount claimed is excessive, accepting in part the reasoning in Ms Jones' submissions and in the letter of 29 September. I will allow an additional £40,000 for solicitor time costs and an additional £10,000 in respect of counsel's fees. I will allow an increase of £20,000 to the defendant's costs budget in respect of the

witness statement phase to reflect the need for more expansive evidence than anticipated on its side.

47. As for the expert report phase, I accept that the claimant's experts have had to review more documents than expected. But the visiting of more sites by the defendant's experts than the claimant had expected is not in itself a separate significant development in the litigation. It falls the other side of the line from the plethora of documents. The visiting by experts of more sites than expected does not appear to me to be a direct consequence of the additional documents.
48. Following that reasoning, a broad brush apportionment is necessary between those parts of the anticipated increases in the expert reports phase which can fairly be attributed to the additional documents and those which cannot. I will reduce the £25,000 sought for counsel's fees to £15,000. I will allow £4,000 of the £5,800 sought for the quantum expert's fees. I will allow £24,000 in respect of the claimant's structural expert and £15,000 for its materials expert; in each case, around half the amount sought. I will also allow an increase of £25,000 to the defendant's costs budget in respect of the expert reports phase.
49. I turn to the question of costs. In relation to the consent order of 28 April 2020, I do not accept Ms Jones' submission that the defendant could legitimately have opposed it and was just being helpful. The defendant did oppose the application and then reversed its position after costs had already been incurred. I will award the claimant its costs of that application, assessed in the sum of £2,681.42, less the court fee of £255 which, Mr Choat conceded, would have been incurred in any event because of the extension of time for disclosure.
50. In relation to the costs of the application made on 6 July 2020, the position is different. That application predated the Precedent T exercise, which at a late stage just before the pre-trial review date increased the figures proposed in the original application. The budget figures in the Precedent T form have only partially been allowed and the defendant's budget has been increased in an amount greater than the claimant would accept.
51. The pre-trial review was due to take place irrespective of the application dated 6 July. Some costs of preparing for it would have been incurred even without the court dealing with the costs budget dispute. The parties have not yet had an opportunity to address me about the costs of the 6 July 2020 application knowing the outcome of that dispute. As I indicated at the hearing, they may now make brief written submissions on that costs issue, if it is not agreed.