

Lessons to be learnt from the reductions to Prince Harry's Budget?

Baroness Lawrence of Clarendon & Ors v Associated Newspapers Ltd (Re Costs Management) (Rev1) (2025) EWHC 106 (KB) (24 January 2025)

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An unusual, if not, unique case. High budgets were presented. Large reductions were made.

Imagine serving a budget and at the CCMC having it reduced to not by, but to 28% of its claim. The Claimants' budget came to £18,744,761.22. It was reduced to (a mere) £4,084,000.00 (estimated costs). The Defendant's budgeted costs not surprisingly suffered a similar fate – total budget £19,850,282.40 with estimated costs reduced to £4,445,000.00.

The matter was heard before the Honourable Mr Justice Nicklin and Senior Master Cook. Each of the 7 Claimants (C3 & C4 are together), served a budget ranging from between £2.6m and £3.3m the total reaching the £18.7m figure.

Senior Master Cook provided the judgment and said the Judge and I have, *"little difficulty in concluding that such sums were manifestly excessive and therefore disproportionate"*. I expect at that level of costs eyebrows were raised and would have taken some time to be lowered!

It was found that – a rate of £740.00 per hour was too high, contingencies were unnecessarily included, there was overlap between the counsel team, the expertise acquired by the legal teams in previous litigation and the Levin Enquiry should have assisted the level of costs. There were also discussions as to how to deal with common costs spread across all Claimants. The case was to involve two CMCs, each of 2 days and a 9 week trial.

The budgets were not agreed hence the matter was left to the Court to set a reasonable and proportionate budget.

The usual provisions of CPR 44.3 (5) and 44.4 (2) were applicable - that is value, complexity, conduct, any wider factors, vulnerability of the party/witnesses, skill, specialist knowledge, place where the work is to be done.

The judgment, together with the basis for the same and the comments made are helpful to remind us of the approach a Court takes when budgeting.

Budgeting is not a detailed assessment, and proportionality is of the utmost importance. The Judge will often have a clear view as to the issues, the difficulties and the amount of time and expense that should be needed.

Reference (paragraph 24) by the Senior Master is actually made to the fact that *"It is very rare to provide a complex clinical negligence claim with many experts...where the budget of the claim exceeds £1m."* A clear indication from the Court that if a complex clinical negligence claim rarely exceeds £1m then the costs presented here should not be as anywhere near as high as they were.

The Judges found fact that the Claimants are well known and that the litigation is high profile does not affect the issues which must be resolved. The Court repeated the often-said phrase of setting reasonable and proportionate parameters.

In my experience, a Judge can have a range of reasonable allowances in mind and if by compromise or perhaps a change of any assumption you present an estimated figure or phase total gets within that range you are more likely to achieve an allowance at that level, perhaps even at the higher end of the range (from the Claimant's point of view of course!).

It is helpful (and a little interesting!) to briefly to look at some of the individual decisions:

Statement of Case

No change to pleadings. The Defendant claims £51,925.00 there was no objection to this by the Claimant – the Judge allowed £0.

Disclosure

The Claimants' claim was £1,822,229.00 – the Defendant's offer £600,000.0. The Defendants claim was £1,299,850.00 – the Claimants offer £800,000.00.

The Judges found there was more obligation on the Defendant, the rates were too high, that the Claimants' contained elements of duplication and allowed £474,000.00 for the Claimants and £750,000.00 for the Defendant.

Witness

The Claimants' claim was £2,142,554.92 – the Defendants offer £415,000.00. The Defendant's claim was £1,335,949.00 – the Claimants offer £665,000.00.

The Judges found insufficient delegation, an overestimate as to the number of witnesses, the fact that the first draft should be by a Grade C, that there was more work for the Defendant to respond to. The Claimants' figure allowed was £525,000.00 and for the Defendant £760,000.00.

CMC

The Claimants claimed £379,471.96 for each of the 2 hearings - the offer was £265,800.00. The Judges allowed £200,000.00 for each party, for each CMC.

PTR

The Claimants' claim was £272,341.94 – the offer £265,621.94. The Defendant's claim was £374,100.00 – the Claimants' offer £200,000.00. The Judges allowed £175,000.00 for each party.

Trial Preparation

The Claimants' claim was £3,649,909.94 – the Defendant's offer £3,150,000.00. The Defendant's claim was £4,569,175.00 – Claimants' offer £3,000,000.00.

The Judges found brief fees were excessive as were the number of hours and the use of high grades. For the Claimants' figure of £1,250,000.00 was allowed and for the Defendant £1,100,000.00.

Trial

The Claimants' claim was £3,098,649.88 – offer £2,462,509.88 and for Defendant £2,476,380.00 was claimed with an offer made of £1,621,425.00. This was for a 45 day trial. The allowance made was £1,100,00.00 for both Claimants and Defendant.

ADR

The Claimants claimed £216,669.02 – the Defendant offered nil. The Judges decided an allowance would be made even if the Defendant thought the case was not suitable. £160,000.00 was allowed for each party.

In summary, for the Claimants' estimated costs they were reduced from £14.6m to just over £4m and the Defendants were reduced from £11.7m to just over £4.4m – reductions to 28% or 38% respectively.

Lessons to be learnt or perhaps, remembered?

1. If the budget is not agreed, that means all phases, then the Court can review every phase. I have had a clear indication from several Judges over the years that the parties have done well to agree budgets because those sums would not have been approved.
2. The Court takes a broad, notional and even hypothetical view. Detail may be needed to prepare a budget, but the Court's task is to review the matter from "*the bigger picture*".
3. Negotiation, reflection and even agreement between the parties is important, realistic proposals should be made by both sides.
4. It appears had the Claimants and the Defendant accepted the offers each had proposed the budget for the Claimants would be over £1.5m higher and for the Defendant just over half a million.
5. Guidance of Judges should always be carefully considered and followed. Here is a detailed judgment from a Senior Cost Master who has been at the forefront of budgeting from its introduction.

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