

COSTS MANAGEMENT

1. This is an informal note for publication by the ChBA to provide information about the way in the Chancery Division in London approaches the subject of costs management. It is not a Practice Note and does not attempt to summarise all the relevant provisions in the CPR.
2. The subject of costs management surfaces for the first time in a claim after a defence is filed with the court. That prompts the court to send out two documents. The first is Form N149C which provisionally allocates the claim to the multi-track and gives a date by which Directions Questionnaires and draft directions are to be filed. The second document, which is sent with Form N149C, is a Note which provides more general directions specifying the documents which must be filed to enable the court to undertake an initial case review on paper.
3. By sending the Note, claims are taken out of the default provision for filing and exchange of costs budgets under CPR 3.13(1) which specifies this must be done not less than 21 days before the first CMC. The Note specifies that, unless exempted because the claim has a value in excess of £10 million or the party is a litigant in person, costs budgets must be filed with the Directions Questionnaire, draft directions, Disclosure Report and list of issues.
4. Importantly, the Note states:
“The parties should jointly consider whether they wish the court to exercise its costs management powers and should notify the court in their Directions Questionnaires of their views. Please note that even if you agree that you do not wish there to be costs management you must serve and file a costs budget.”
5. The court’s power to make a costs management order is separate from the requirement to file and serve costs budgets. Under CPR 3.15(2), the court may decide not to make a costs management order, and thus obviate the need for a costs management hearing to approve budgets, if “... it is satisfied that the litigation can be conducted justly at reasonable and proportionate cost in accordance with the overriding objective...”.
6. The court is unable to consider making an order under CPR 3.15(2) without adequate information about the budgeted costs. Normally this will require budgets in Precedent H to be prepared. However, an alternative, which may be acceptable to the court where all the parties agree to seek an order that the case should be taken out the costs management regime, is for budgets to be prepared using only the first page of Appendix H, as if the claim had a value of less than £50,000 and the costs were less than £25,000.
7. The exercise of the court’s discretion under CPR 3.15(2) will be based upon a number of factors, including the agreement of the parties. However, agreement by the parties to take the claim outside the costs management regime is not determinative. Each case will turn on its own facts and the court will consider the type and size of the claim, the amount of the budgeted costs on each side and the extent to which there is equality of arms.
8. It is extremely unlikely the court will take a case out of costs management if one of the parties is a litigant in person or a represented party objects to such an order.

Matthew Marsh

Chief Master 1/11/16