

DON'T OVER BUDGET FOR THE COSTS OF LITIGATION – THE COURTS CONTINUE THEIR ROBUST APPROACH TO COSTS MANAGEMENT

GSK PROJECT MANAGEMENT LIMITED (IN LIQUIDATION) V QPR HOLDINGS LIMITED

Mr Justice Stuart-Smith has recently made a costs management decision in the Technology and Construction Court which demonstrates the extent to which the courts are now willing to manage the costs of litigation so that they are proportionate. In this case, the judge described this as “*the court's determination to exercise a moderating influence on costs*”.

A Macfarlanes team led by Senior Counsel, Mark Lawrence, acted for the defendant, who successfully challenged the claimant's proposed costs budget in this case.

BACKGROUND – ACTIVE COSTS MANAGEMENT

One of the central pillars of the Jackson Costs Reforms is the use of active costs management in litigation. In claims of less than £10m (and in other cases at the judge's discretion), courts are assisted in this task by costs budgets, which are produced by each party and which set out the costs they have already incurred and the costs that they anticipate incurring in the future.

At an early stage of the claim, a judge will review the parties' costs budgets and, if appropriate, approve them. Once approved, a successful party is normally limited to recovering from the other party its costs as set out in its costs budget.

RECENT COSTS MANAGEMENT DECISIONS

The Technology and Construction Court, having previously hosted the pilot schemes for costs budgeting, has since been leading the way in providing guidance, through its costs management decisions, on how parties should approach the question of the cost of their dispute.

So, for example, in the recent case of *CIP Properties (AIP) Limited v Galliford Try Infrastructure Limited (Costs No. 2) [2015] EWHC 481 (TCC)*, Mr Justice Coulson reviewed a party's cost budget and then set revised figures for all phases of the litigation, even where some of those phases had already been completed and where the costs incurred significantly exceeded the judge's budget figure. The overall result was that the approved costs budget was only slightly more than the costs that the party had already incurred.

FURTHER GUIDANCE OFFERED IN *GSK V QPR*

In the present case, *GSK Project Management Limited (in liquidation) v QPR Holdings Limited*, Mr Justice Stuart-Smith was faced with a claimant's proposed costs budget totalling £825,000 (including £312,000 already incurred), where the total value of the claimant's claim was only £805,000.

The judge held that the claimant's proposed costs budget was “*so disproportionate to the sums at stake or the length and complexity of the case that something has clearly gone wrong*”.

In those circumstances, the judge decided that:

- ♦ the starting point was to consider the overall proportionality of a costs budget, with regard to the value and complexity of the claim. In this case, it was obvious that a costs budget exceeding the total value of the claim was not proportionate;
- ♦ the next appropriate step was to examine, phase by phase:
 - the hours already spent (and the costs this equated to); and
 - the hours anticipated to be spent in the future (and the anticipated costs this equated to); and
- ♦ if those hours (and those costs) were too high, the judge was entitled to set a revised budget figure for each phase of the litigation, which would then comprise the claimant's approved costs budget.

The judge proceeded to set budget figures for each phase of the litigation (including those phases already undertaken) that it would be reasonable for the claimant to incur, resulting in a total costs budget of £425,000.

In doing so, the judge carefully examined the number of hours spent and proposed to be spent by the claimant's solicitors, barrister and experts and adjusted these figures significantly downwards so as to ensure that the claimant's costs of the litigation were proportionate. In doing so, the judge criticised some of the incurred and estimated hours in the strongest terms: as “*astonishing*”; “*quite simply absurd*”; “*exorbitant*”; and “*grossly excessive*”.

Whilst undertaking this exercise, the judge also had regard to, but was not bound to adopt, the hours that the defendant had spent and estimated spending during the litigation, as set out in the defendant's costs budget. This was because, whilst the parties inevitably had different roles and responsibilities, the defendant's costs budget may "*provide useful indicators about necessary resourcing of the litigation*". Here, nothing justified the claimant's solicitors spending three times as many hours on the case as the defendant's solicitors, as the proposed costs budgets suggested.

CONCLUSION

This decision is the latest example of the courts adopting a sensible, proactive and robust approach to costs management, so as to ensure that proportionality is at the forefront of parties' minds from the outset of any dispute.

Whilst not surprising, this decision underlines the fact that the courts continue to be active in their disapproval of parties incurring unreasonable and disproportionate costs in pursuing or defending a claim.

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