

COSTS BUDGETING: MANAGING YOUR BUDGET

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1. MANAGE CLIENT EXPECTATIONS / CLIENT WARNINGS

- a) Need to give client commercial advice on level of costs budget
- b) ALWAYS discuss the budget with your client
- c) Budget given on the basis that the case will proceed to a fully contested trial: most (approximately 97%) of cases settle before that point
- d) Who pays if you spend more than your budget?
- e) Costs already accrued may be criticised
- f) The budgeting procedure increases costs overall

1. MANAGE CLIENT EXPECTATIONS / CLIENT WARNINGS

- g) Get your client to pay you in advance to cover experts and counsel
- h) Warn clients about the list of irrecoverables –
 - (i) anything above budget
 - (ii) unforeseeables
 - (ii) applications will be extra
- i) Taking trivial points might not do you much good in the long run
- j) Your budget, come assessment, operates as a maximum limit only – it does not stop your opponent taking issue with every stage

2. MANAGE YOUR BUDGET

- a) Distribute budget to whole team (including Counsel and experts)
- b) Liaise with Counsel and experts and any other suppliers about fees being incurred
- c) If Counsel's and expert's fees are likely to exceed the amount budgeted, request that they inform you as soon as possible (and not once the budget has already been exceeded)
- d) If the budget is likely to be exceeded, get consent from your opponent to the amendment (if possible) and apply to amend
- e) Don't leave things until the last minute

2. MANAGE YOUR BUDGET

- f) Composite budgets
 - (i) Different issues
 - (ii) Multiple Defendants
 - (iii) Third parties

- g) Interim applications which reasonably were not included in the budget are additional

- h) As a matter of practice, do not include contingencies which are no more than a possibility or unlikely

- i) Ask the CMC Judge to record your costs already incurred as reasonable

3. UNFORESEEABLES

- a) If a party wishes to provide for contingencies, the contingencies must be
 - (i) identifiable,
 - (ii) fall outside the main categories in Precedent H, and
 - (iii) only be included if they are more likely than not to occur

- b) What are the most unforeseeable events?
 - (i) Court errors
 - (ii) Opponent's conduct
 - (iii) Applications by opponents to reduce cost budget
 - (iv) Weather
 - (v) D v NSPCC
 - (vi) Application by successful party to appeal judgment
 - (vii) HHJ Anthony Thornton

4. COSTS RECOVERY

- a) Balancing efficiency, proportionate costs, and clients' demands for perfect service
- b) Don't expect the costs judge to approve costs simply because they fall within the budget
- c) Need to keep the same records as you would for detailed assessment
- d) Realistic advice to client is that it won't get more than half of its costs back
- e) Effect of budgeting regime is to reduce costs recovery

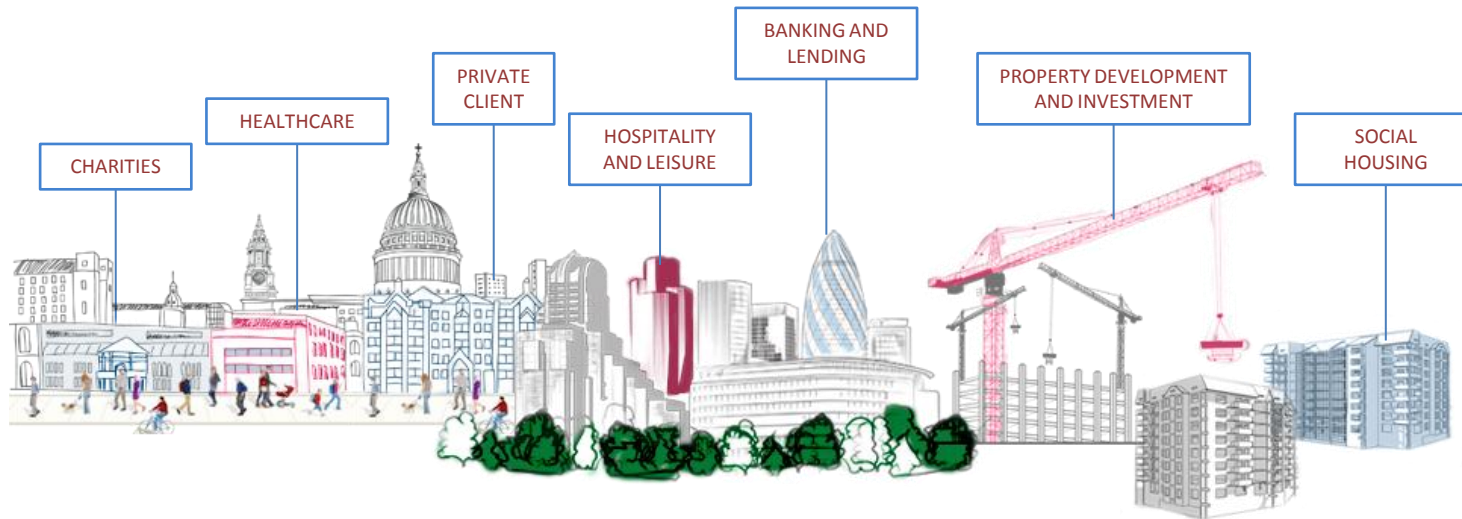
4. COSTS RECOVERY

- f) If 90% of the budget is awarded as an interim costs order:
 - i) is the receiving party likely to take it further?
 - ii) will courageous costs orders reduce the need for detailed assessment?

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