



# Incurred Costs

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# The rules and practice directions

Cost budgeting:

CPR3.12 – All Part 7 multi-claim cases, except:

- Claims where the claim or anticipated value is in excess of £10 million; or
- Where the claim is made by or on behalf of a person under the age of 18 at time of issue; or
- Where proceedings are subject to fixed or scale costs; or
- The court otherwise orders

CPR 3.12(2) – The purpose is that the court manages both the steps to be taken and the costs to be incurred (including costs of any variation) so as to further the overriding objective

## Service of a budget

CPR3.13(1) & (2) - Unless the court otherwise orders...

For claims less than £50,000, with Directions Questionnaires

For other claims, not later than 21 days before the first case management conference

Agreed budget discussion report no later than 7 days before first case management conference

CPR3.13(4) The court MAY in a substantial case direct that budgets are to be limited in the first instance to part only of the proceedings and extended later to cover the whole proceedings

*Freeborn v Marcal* [2017] EWHC 3046(TCC)

*Page v RGC Restaurants Ltd* [2018]EWHC 2688(QB)

# Precedent H

Precedent H – If incurred/estimated costs less than £25,000 or claim less than £50,000 parties must only use first page of Precedent H , OTHERWISE full Precedent H to be used.

First page contains totals for each phase by reference to incurred and estimated costs

Full Precedent H contains additional details for both incurred and estimated costs. Together with supporting assumptions

Completed Precedent H to be verified –

*‘This budget is a fair and accurate statement of incurred and estimated costs which it would be reasonable and proportionate for my client to incur in this litigation’ (22PD2.2A)*

CPR3.15(2) - Record the extent to which the budgeted costs are agreed between the parties :(a)

In respect of budgeted costs which are not agreed, record the court's approval after making appropriate revisions; (b)

Record the extent (if any) to which incurred costs are agreed.

CPR3.15(4) - Whether or not the court makes a costs management order, it may record on the face of any case management order any comments it has about the incurred costs which are to be taken into account in any subsequent assessment proceedings.

CPR3.15(8) – The CMO concerns the totals allowed for each individual phase and it is not the role of the court when fixing the budget to fix or approve the hourly rates claimed

Save in exceptional circumstances, or where the court orders, parties are not expected to lodge any additional documents (3EPD3(a))

3EPD10 refers to a table setting out the work expected to be allocated to each of the 10 phases, and also what not to include. Some aspects of work are missing such as special damages, so where not obvious the assumptions should clarify where the work has been recorded. This applies to both incurred and estimated work.

‘Contingent cost’ section should be for anticipated future costs that do not fall within the main categories. ‘More likely than not’

Woodburn v Thomas [2017] EWHC B16(Costs)

Bank of Ireland v Philip Pank Partnership [2014] EWHC 284



CPR3.15A(1) – Budgets must be revised upwards or downwards if ‘significant developments’ warrant such revisions.

CPR3.15A(2) – Any application must be made ‘promptly’.

CPR3.15A(6) – Where the budget is varied, as part of the variation exercise, the court may vary the costs incurred prior to the order as part of the variation exercise.



CPR3.17(1) – Any case management decision WILL have regard to any available budgets and WILL take into account the costs involved in each procedural step.

CPR3.17(3) – The court may not approve costs incurred up to and including the date of any cost management hearing; but may record its comments on those costs and take those costs into account when considering the reasonableness and proportionality of all budgeted costs

3EPD12 – The court will not undertake a detailed assessment. Costs should fall within a range of reasonable and proportionate costs

CPR3.18(c) – take into account any comments made pursuant to rule 3.15(4) or 3.17(3) and recorded on the face of the order

## Tips and Traps

1. **START EARLY** in preparing the budget! Keep incurred work to the bare minimum.
2. Have regard to excessive incurred costs . Why are they so high? Any explanation should be within the assumptions.
3. Ensure that costs can be justified for the phase they are allocated to. Consider marking the work by reference to the 10 phases, especially when work could be allocated to more than one phase
4. Do not assume all incurred work goes into the 'Pre-Action' phase
5. Check budget reflects the answers to D/Q's and proposed directions.
6. Check that budgets are correct/up to date for CCMC. If necessary amend, but have regard to deadline for discussion report

7. Ensure the incurred costs on the budget are accurate and flow through to the final bill

8. If the budget is amended prior to the CCMC, whilst the figures for incurred/estimated may change, the total should remain the same. If not, why not?

9. If applying for a variation, the court may 'budget' incurred costs or may refuse the application if not made promptly or considered outwith 'significant development'.

## Practical Problems?

1. What are the consequences (if any) of correcting a budget late, but prior to the CCMC?
2. Does it matter if all the incurred work is claimed within the 'Pre-Action' phase? Is there any objection that can be taken?
3. Should parties be seeking a 'comment' on incurred or excessive costs?
4. Does it matter whether the incurred costs for a particular phase exceed a figure that is considered proportionate for the entire phase?
5. What is the consequence, if any of the final figure for incurred costs differing from the figure in the budget?