

## South West Costs seminar - your questions answered

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### 1 **When time recording on a case subject to costs management, how and where should generic costs that don't fall into any specific phase or contingency be recorded**

This is a question which is very much open to debate. Paragon would claim such items under Pre-Action (prior to the issue of proceedings) or Trial Preparation (post issue of proceedings). We would submit that it ultimately shouldn't make much difference, albeit that you are clear and consistent about it. We eagerly await the revised Precedent H guidance as we are assured it will clear up many of the questions which surround Precedent H at the moment.

### 2 **What is a precedent Q?**

Precedent Q is the interim measure being adopted to compare a Bill of Costs (which hasn't been prepared by reference to phases) to the approved or agreed Budget. It was introduced as of 01 October 2015. Further details can be found [here](#).

### 3 **Should you keep your drafts as evidence of time spent and work done on documents?**

Absolutely. On Assessment this is a very valuable tool in demonstrating how a document has developed. Track changed versions are especially useful. A Judge will find it much easier to appreciate the time spent if they can clearly see what value has been added with that time.

### 4 **Is it sensible to instruct costs specialist counsel for a CCMC rather than the potential trial advocate?**

There are pros and cons both ways. It is essential that your Advocate has both case and costs knowledge and awareness. Many of the CMCs do not raise complex costs arguments and, in theory, shouldn't. However Budgeting is a very important aspect of your case and therefore you must ensure that an Advocate with sufficient knowledge and understanding of the costs rules is instructed. Counsel that specialises in both costs and the underlying litigation would be ideal. Alternatively it is not unusual for Counsel and a Costs Lawyer to attend CMCs in relation to high value or hard fought cases. You may not be able to recover the costs of two Advocates but the benefit may outweigh the cost.

### 5 **Should counsel be billing work by reference to phases also?**

Yes. If they haven't then ask their clerk nicely and I'm sure they'll be happy to provide you with a phased fee note.

### 6 **If a Bill of Costs reasonably took over 3 months to prepare, would DJ Middleton award interest on that Bill for the period of delay until it is served?**

Interest is at the discretion of the Court. The test will be whether the delay was reasonable.

### 7 **Can we have a brief recap on interest on costs. Rate, period, pre and post judgment?**

The current rate of Judgment interest is 8%; this is statutory and applies to all post judgment costs. *Hunt v R M Douglas (Roofing) Ltd* [1990] 1 AC 398 confirms that interest runs from the date Judgment was pronounced, not the date of the Order. *Involnert Management Inc v Aprilgrange Limited & Others* [2015] EWHC 2834 (Comm) demonstrates that the Court may depart from the rule if it is 'unjust'.

Interest on pre Judgment costs may be awarded. *Powell v Herefordshire Health Authority* [2002] EWCA Civ 1786 deals with the facts that the Court has discretion. In *Bim Kemi AB v Blackburn Chemicals Ltd* [2003] EWCA Civ 889 (24/06/03) the Court stated that the rate of pre Judgment interest is discretionary. In this case 1% was allowed. In the case of *Jeffrey Jones & Ors v The Secretary of State for Energy and Climate Change & Coal Products Limited* [2013] EWHC 1023 (QB) (03 May 2013) a rate of 4% was awarded in line with charges under a credit agreement for disbursements.

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### 8 Please better explain phasing.

Again, this is something which will hopefully be cleared up by the new guidance anticipated. However, at present, the current guidance can be found [here](#). We would encourage firms to adopt their own internal time recording policy. Paragon Costs do provide training for time recording by phase, to find out more please [contact us](#).

### 9 Why is it just solicitors' costs which appear to be slashed on assessment/CCMC and not counsel's?

DJ Middleton answered this question by saying that this is because solicitors choose to instruct Counsel; they are outsourcing aspects of the case due to particular expertise required.

### 10 Can your standard assumption on a budget be used if you know your opponent won't conduct matters reasonably?!

Paragon submit that it is a standard assumption and it is only fair to assume that reasonable conduct will be 'norm'. However, DJ Middleton commented that unreasonable conduct should be addressed with costs penalties such as indemnity costs awards and it is for the Claimant to drive the litigation and seek to impose penalties where possible.

### 11 44.3(2) disproportionate costs MAY be disallowed even if necessary etc. Does that mean it is merely permissive rather than mandatory?

'May' often means 'will', but it is of course within the very wide discretion of the Judge.

### 12 Can the panel offer any practical guidance on Broadhurst v Tan?

This decision simply highlights and emphasises the benefit of making sensible and early offers.

### 13 Will budgets prepared within a costs pilot be subject to the phasing rules (where those rules were not in place at the time)?

If a costs budget has been served or filed, then it would be wise to phase your work and produce a phased bill of costs.

### 14 Can you explain the J-codes and also offer your view on whether those codes are eventually likely to become a formal requirement of costs budgeting?

'J-codes' are effectively a way of recording time to match with the Budget. Solicitors are used to recording their time by reference to 6 minute units and usually some form of activity code (such as letters out or telephone calls) and the J code will be another layer of information applied to time recording by reference to phases as well as time and activity. I think the concept that J codes may become a formal requirement is unlikely and, more importantly, almost irrelevant as the codes are simply the tools by which solicitors are able to competently record their time and manage their costs with reference to their Budget.

### 15 What is the panels' view on the 'annex' yes or no?

DJ Middleton made it clear that he doesn't like the Annex and he doesn't want to see one. However, many of the Courts do find them useful and have commented on the aid they provide at a CMC. This is a case of appreciating the different approaches to Costs Budgeting and, my view would be that it's better to do one and it not be used than not to do one and wish you had. If nothing else, in our experience, the Annex is a really helpful means of giving your Budget the thought required - it allows the solicitor to consider what is required and what the anticipated spend is. The figures "calculated" in the annex are a representation of where your Costs Draftsman/Lawyer has calculated the hours from and thus to transfer the same to a Court friendly document should not significantly increase costs.