An eye on the future
Guiding you through all aspects of legal costs
Stop Press

Jackson appointed to head up fixed costs review

Lord Justice Jackson has been commissioned by the Lord Chief Justice, Lord Thomas, and the Master of the Rolls, Sir Terence Etherton, to undertake a review of the fixed recoverable costs regime, which is currently limited to £25,000 in personal injury claims.

Lord Justice Jackson, who in January this year, gave a speech not only suggesting that budgeting was not working as well as he had hoped, but contending the answer was to fix fees for all civil claims up to £250,000 damages, will get to work on his new project in January 2017 and is expected to complete his review by 31 July 2017.

Lord Justice Jackson said:

‘Although momentum is heavily for reform, the review will provide ample opportunity for comments and submissions on the form and scope that reform should take’.

Those wishing to have their say have until 16 January 2017 to do so.

Following his January speech, the MOJ convened a working party to consider this issue. the latest review seemingly the result of that consultation.

Guru will endeavour to keep its readers abreast of developments over the coming months.
Welcome

Welcome to the new look Costs Guru, which is here to guide you skilfully through the litigation minefield during these very changeable times.

We commence with a Stop Press and the news that Lord Justice Jackson has embarked on a further review of litigation costs. This could possibly lead to a move away from budgeting in low to medium value cases and the introduction of fixed fees. In conjunction with the introduction of the online court for claims up to £25,000, that would represent a profound change in approach and will no doubt be hotly debated.

Guru is grateful to our friends at 4 New Square Chambers and Stephen Innes in particular, for his article on part 36 offers. One of the most significant of oft changed rules, the recent change to a ‘winner takes all’ style part 36 regime throws up some interesting questions about ‘when is an offer a genuine attempt to settle?’.

We return to the thorny issue of challenges to ATE premiums, the post-Jackson interpretation of ‘proportionality’ and an interesting recent arbitration decision on the costs of funding. All of the above wrapped up with a whistle-stop tour of current cases.

We do hope you enjoy the refreshed Costs Guru and we look forward to receiving your thoughts and feedback at costsunit@eversheds.com. Contact us here also for additional copies or to join the mailing list for future issues.

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Proportionality bites as “Queen’s” costs bite the dust

For those who can recall the Woolf reforms, one of the cornerstones was to be the concept of ‘proportionality’. Introduced alongside ‘the overriding objective’, millennium lawyers will be aghast to think litigation was ever conducted without regard to these principles.

However, for those tasked at the time with interpreting a complete overhaul of the procedural code, what did proportionality mean? Where was it defined? The fundamental changes in practice brought about by the reforms cannot be overstated, a unified set of rules for both the high court and county court, part 36, and a whole new dictionary of phrases and terms - goodbye ‘plaintiff’, hello ‘claimant’ and so on.

The pre-Jackson proportionality test

Amongst all these new phrases, allocation questionnaires and budgets, proportionality was largely ignored simply because no one really knew what it meant. Until, that is, Lord Woolf himself (in the case of Lownds v Home Office [2002] EWCA Civ 365) explained his thinking, and how we were to apply proportionality.

At paragraph 31 of his judgment in Lownds, Lord Woolf said:

“...what is required is a two-stage approach. There has to be a global approach and an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate...If the costs as a whole are not disproportionate according to that test then all that is normally required is that each item should have been reasonably incurred and the cost for that item should be reasonable. If on the other hand the costs as a whole appear disproportionate then the court will want to be satisfied that the work in relation to each item was necessary and, if necessary, that the cost of the item is reasonable”.

The Lownds so called ‘two stage approach’ was born: consider the costs at the start of the assessment and if appearing disproportionate, the additional ‘necessity’ test would be applied. Quite what the difference between ‘reasonable’ and ‘necessary’ was, was left to interpretation.
The post-Jackson proportionality test

Fast-forward to 2013; the Jackson reforms and a new proportionality test.

The new test provides for the disallowance of disproportionate costs, even if they were reasonably or necessarily incurred.

Factors to determine as to whether costs are proportionate are set out in CPR 44.3(5), which include:

- the sums in issue in the proceedings
- the value of non-monetary relief in the proceedings
- the complexities of the litigation
- whether any additional work has been generated by the conduct of the paying party
- wider factors such as reputation or public importance

The factors are not wholly different from those considered under the old rules. The fundamental change is when and how proportionality is assessed. Remember, under Lownds the question, “do the costs look disproportionate?”, was asked first. If they were, then the test of necessity and reasonableness was applied item by item and once assessed, what was left was what you got.

Under the new test framed by Lord Justice Jackson, a line-by-line assessment takes place to determine the reasonable level of costs and then the court can revisit the overall sum allowed, applying a further broad-brush reduction, to reflect proportionality. The assessment process can be further complicated if costs fall either side of the 1 April 2013 change, as the court may have to apply the Lownds test to pre-Jackson costs and the Jackson test for all further costs.

In the case of Kazakhstan Kagazy Plc & Others v Baglan Abdullayevich Zhunnus & Others [2015] EWHC 404 (Comm) when considering an application for a payment on account, Leggatt J provided one example of how the new test should operate:

“The touchstone is not the amount of costs which it was in a party’s best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently having regard to all the relevant circumstances.”

It should be noted that proportionality is not a test kept in a special box, only to be opened by the judge when assessing the receiving party’s costs. The consideration of proportionality is at the forefront of judges’ minds when considering cost budgets, such as in the cases of CIP Properties (AITP) Ltd v Galliford Try Infrastructure Ltd [2015] EWHC 481 and Tim Yeo MP v Times Newspapers Ltd [2015] EWHC 209 (QB). Budgeting will feature heavily in the next edition of Guru, suffice to say at this stage, in both cases, the budgets were reduced considerably in circumstances where the overall costs in the budgets were considered disproportionate.
The new test in practice

A number of recent cases have illustrated how significantly receiving parties’ costs can be reduced where the new rule is applied.

In the case of May & Another v Wavell Group Plc & Another [2016] EWHC B16 (Costs), Brian May of Queen fame and his wife, ex EastEnders’ star, Anita Dobson, objected to their neighbours’ basement plans and issued a claim for private / noise nuisance. They instructed a QC directly, who had a license to conduct litigation, and the claim settled prior to the filing of a defence, with the Mays accepting a part 36 offer of £25,000. Their claim for costs totalled £208,236.54. Costs Judge Master Rowley applied the new Jackson test, assessed reasonable costs at £99,655.74, which in itself is a considerable reduction, and then applied a further global reduction down to £35,000 plus VAT.

In another example, Senior Costs Judge Master Gordon Saker, in the case of BNM v MGN Ltd [2016] EWHC B1 (Costs), reduced a claim for costs from £241,817, on a line by line assessment, to £167,389.45, and then further, applying proportionality, to £83,974.80.

BNM was a privacy action. The claimant lost her mobile phone, which had fallen into the hands of the press. The phone contained private information regarding her relationship with a premiership footballer. The claimant sought an injunction to prevent the defendant using the information on the phone, plus damages. The claim settled with the defendant providing an undertaking not to use the confidential information, plus damages of £20,000.

The claimant’s solicitors were instructed pursuant to a conditional fee agreement (CFA), which was supported by after the event (ATE) insurance. The claimant’s costs included a 60% success fee on the solicitors’ costs and 75% on counsel’s fees.

Having found £167,389.45 to be reasonable, the defendant argued that the costs remained disproportionate and, after applying the proportionality test, the costs were almost halved again to £83,974.80. The costs judge even reduced the claimant’s ATE premium from £58,000 to £30,000 on the ground of proportionality (see elsewhere how rare and difficult a task this is). This reduction was made notwithstanding the costs judge’s acceptance that it was necessary for the claimant to purchase ATE. The costs judge said he:

“could not conclude that the premium was unreasonable...but costs may be disproportionate even though they were necessary”.

A number of recent cases have illustrated how significantly receiving parties’ costs can be reduced where the new rule is applied.
What next?

The BNM case has been appealed to the court of appeal and is due to be heard in December. This appeal will hopefully provide some much needed clarity on the correct approach to proportionality. The outcome of the appeal will no doubt set the volume of costs litigation for the next few years. If the court of appeal uphold the decision, it could spark a raft of costs assessments, with the paying party contending that whilst reasonable and necessary, the costs claimed are simply disproportionate, whatever that means...

Dealing with proportionality in practice

So where have these decisions left the practitioner? Not in a very satisfactory position it seems. You can still throw the kitchen sink at a litigation but as in Kagazy, that might quite literally come at a cost. As for the costs process, subject to the BNM appeal, “£x is a reasonable amount, but that might be subject to an additional and arbitrary reduction”.

The question one might ask is, “can a party avoid the test?” The answer is yes if you can secure an order for costs on the indemnity basis. Of course, that is not something which will be known as the costs are being incurred, but will at least make the ex-post facto assessment a more straightforward and predictable exercise.

The answer? Case planning, costs budgeting and monitoring from the outset are essential to ensure costs are proportionate and client’s expectations are managed. For now, whilst we are in need of “education, education, education” as far as proportionality is concerned, we can actively plan and think “budgeting, budgeting, budgeting.”

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What is a “genuine” part 36 offer to settle?

CPR 36.17 sets out the normal consequences of a part 36 offer which has not been accepted. In summary:

(a) by sub-rule (3), where a claimant fails to beat a defendant’s part 36 offer, he gets his costs from the end of the relevant period of the offer and interest on those costs, unless the court considers this unjust.

(b) by sub-rule (4), where the claimant does at least as well as his own part 36 offer, he gets interest on the sum awarded at an enhanced rate, costs on the indemnity basis, interests on costs at an enhanced rate and the additional amount up to £75,000, unless the court considers this unjust.

In considering whether those normal consequences would be unjust, the court must have regard to the factors in sub-rule (5). These include, at the end of the list, a new factor introduced by rule changes in force from 6 April 2015:

(5) In considering whether it would be unjust to make the orders referred to in paragraphs (3) and (4) above, the court will take into account all the circumstances of the case including –

(a) the terms of any part 36 offer

(b) the stage in the proceedings when any part 36 offer was made, including in particular how long before the trial started the offer was made

(c) the information available to the parties at the time when the part 36 offer was made

(d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated

(e) whether the offer was a genuine attempt to settle the proceedings

It seems therefore that the rules committee had identified a concern that parties were making offers which were not genuine offers, solely to try to get the benefits under these provisions of part 36. This raises the question of how the “non-genuine” offers will be identified.
In *Jockey Club Racecourse v Wilmott Dixon* [2016] EWHC 167 there was a claim against the designer/builder of the new grandstand roof at Epsom racecourse. The claim was initially pleaded at £400,000. The claimant made a part 36 offer to settle the issue of liability on a 95% basis in its favour. In the case, there was no possibility of a reduction for contributory negligence. Liability was subsequently resolved by consent entirely in the claimant’s favour.

The claimant sought the usual benefits under CPR 36.17(4) and the defendant argued that that would be unjust. Edwards-Stuart J had to resolve 2 issues:

(a) was this a valid part 36 offer, where 95% liability was not an available outcome?

(b) was it a genuine attempt to settle liability within the meaning of CPR 36.17(5)(e)?

The judge answered both questions positively. In the first place, it was a valid part 36 offer because an offer did not need to reflect an available outcome. Such offers were often made on the basis that most claimant’s prefer certainty to the ordeal of trial and uncertainty of its outcome: *Huck v Robson* [2003] 1 WLR 1340.

Secondly, and more importantly for our purposes, the offer was a genuine attempt to settle. The judge endorsed the dictum of *Henderson J in AB v CD* [2011] EWHC 602 (Ch):

“...a request to a defendant to submit to judgment for the entirety of the relief sought cannot be an “offer”…the offer must contain some genuine element of concession on the part of the claimant, to which a significant value can be attached in the context of litigation... the concept of a settlement must, by its very nature involve an element of give and take.”

In the present case, the judge held that there was a genuine element of concession worth significant value, because in a claim worth £400,000, a concession of 5% was worth £20,000.

The difficulty for us, of course, will be in knowing where the boundaries lie for a concession of significant value. The judgment suggests that the key factor is not the percentage reduction itself, but value of that reduction in a given case, so that it may not be possible always to say that a 5% reduction is sufficient to make an offer a genuine one: say perhaps the claim is worth £1,000, so that a 5% reduction would only be £50.

However knowing where to draw the line seems subjective. If the percentage itself is not determinative, that might suggest that in a £10 million case, an offer to accept 99.8% would be genuine, because the discount would be worth £20,000, the same amount as in this case. I would tentatively venture to suggest, however, that such an offer should not be considered as genuine, because in the context, the reduction would be considered immaterial, or *de minimis*. 
The judgment also raises a question mark as to how this principle would apply in relation to defendants’ offers. Imagine the position where a defendant makes a part 36 offer to pay £1. At first blush it sounds a trivial amount. But significantly, the offer carries with it under part 36 the liability to pay the claimant’s costs if accepted. Assuming the offer is made some time into the dispute, that may be a concession of real value: we know from experience that sometimes (perhaps quite often) even a “drop hands” offer may be accepted because the risk of avoiding liability for adverse costs is considered valuable. I would therefore suggest, less tentatively this time, that a defendant’s part 36 offer to pay £1 should be considered a genuine offer.

The test applied by the court would seem to have provided fertile ground for further disputes, so the best advice I can give is: watch this space!

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the top set nationally for costs expertise

Legal 500, 2015

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Are funding costs recoverable?

It has long been an anomaly of the UK legal system, a system which provides restitution, that successful claimants will suffer a shortfall on legal costs incurred. Still further, additional expenses or costs incurred to free up funds to fight litigation, such as bank loans, overdraft fees or more recently, third party funding, are expenses which will be borne by the claimant and never recovered. Until now that is.

In *Essar Oilfields Services Limited v Norscot Rig Management PVT Limited*, the arbitrator allowed Essar to recover their third party funding costs, the arbitrator finding the phrase “legal and other costs” under s.59(1) (c) of the Arbitration Act 1996 was wide enough to include such recovery. This decision was appealed and heard by Judge Waksman QC in the high court, [2016] EWHC 2361 (Comm), where the appeal was dismissed. The court upheld the arbitrator’s decision on the basis that it did not fall outside the arbitrator’s wide-ranging discretion.

Essar had entered into a third party funding arrangement under which a success fee was payable on the monies advanced by the funders, being 300% of the sum loaned, or 35% of damages recovered, whichever was the higher. In considering the reasonableness of allowing the same as ‘other costs’, the arbitrator found that Norscot had forced Essar to seek third party funding in order to continue its claim. Norscot were aware that Essar were impecunious and their conduct was designed to stop the arbitration being brought by virtue of Essar being simply unable to afford it.

Whilst this judgment supports the recovery of third party costs in English seated arbitrations, it remains to be seen whether an arbitrator will be persuaded to allow such ‘costs’ in instances where claimants obtain third party funding merely to conduct litigation off balance sheet as opposed to having no choice.

Whilst a fact-specific exercise of discretion, this case has clearly increased the appeal of an English seated arbitration for parties who are considering third party funding and in a position to forum shop.

Inevitably questions are likely to be raised about the need for disclosure of funding arrangements at the start of proceedings.
Such disclosure may ultimately be provided for in the Arbitration Act but until then, careful consideration should be given as to the information to be provided. Indeed, we may see a plethora of cases where one party threatens the other with the matter being funded by a third party, increasing the exposure and thus the appetite for settlement.

Recovery of such costs in civil litigation is not provided for under common law, the court of appeal in *Hunt v Douglas (Roofing)* holding that costs of funding were not a recoverable item. However, a distinction can potentially be drawn between the cost of funding a litigation and the cost of providing security for costs, or indeed damages, in the litigation.

In the case of the latter, in the case of *EVP v Malabu*, the senior courts costs office allowed the recovery, not only of an insurance premium purchased by the claimant to provide the defendant with fortification in relation to damages, a premium in the region of £700,000, but also allowed approximately £2.3 million being the cost incurred by EVP to fund the purchase of the premium. As per *Essar* above, 300% of the amount funded. EVP were successful in obtaining a worldwide freezing injunction for 215 million USD which was paid into court by Malabu and the court ordered EVP to provide 10 million USD by way of fortification in damages. EVP were unable to do so but the court accepted the policy as an acceptable alternative.

The policy was a pre-Jackson policy albeit, not an ATE. The court was persuaded that the 300% funding cost was not a cost of funding the litigation but rather, it was funding the premium to provide fortification in damages. Further, the fortification was, something which the defendant had insisted was provided.

Recent case authority (see Guru cases update) supports the contention that the right ATE policy can satisfy an application for security for costs. In the post-Jackson era, ATE premiums are not considered recoverable from a paying party. However, faced with an application for security, what choices does a litigant have?

- provide the security, but such monies are paid into the court funds office where they attract a minimal amount of interest?
- purchase ATE to provide security?

If the former, surely, the litigant is entitled to seek some sort of fortification in relation to lost interest for the period that the monies are held? Ultimately, such recompense may take the form of damages. As such, and in circumstances where security can properly and cost-effectively be provided by way of ATE, the litigant should be entitled, if successful, to recovery of the premium. Again, this may be by way of damages but if not, it is arguable at least, that the premium becomes a recoverable cost.

*Essar* may not be the catalyst some hoped to open up the recovery of litigation funding costs, but it certainly opens the door for consideration of innovative funding methods, whilst lessening, or sharing, the risk.

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Challenging ATE premiums

Whilst the Jackson reforms have brought an end to the recovery of after the event (ATE) premiums by claimants, there are still a number of cases which are yet to go through the system and challenges to ATE premiums are still very much relevant for the time being at least.

It is therefore worth considering the ATE premium claimed and whether the same can be challenged.

In light of some early authorities around ATEs, notably Rogers v Merthyr Tydfil BC (see below), courts have been reluctant to reduce ATE premiums absent evidence from the paying party that the premium was unreasonable. In effect, reversing the standard basis costs test. However, with proportionality gaining greater prominence post Jackson, a window appears to have opened.

The two most common types of ATE Insurance are:

- block rated premiums; and
- individually rated premiums

I deal with them separately below.

A block rated premium is a one size fits all premium, sometimes a one off payment, sometimes staged, but a premium which does not alter to fit the specific circumstances of the case. Typically, such premiums were commonplace on volume personal injury cases and more recently, financial claims. In calculating a block rated premium, the insurer will consider the risk across a book of cases and does not specifically consider the risk on an individual case.
The then senior costs judge, Master Hurst in *Kelly v Black Horse Limited* [2013] EWHC B17 (Costs) found that the final stage of a three stage, block rated ATE premium in relation to a PPI mis-selling claim, was wholly disproportionate. The claimants were partially successful and were awarded damages along with costs, to be subject to detailed assessment if not agreed. The costs claimed included an ATE premium in the sum of £15,900. The ATE premium was challenged and the claimants offered no evidence to support the level of the ATE premium, save for providing a copy of the solicitor’s risk assessment which stated that this was a 50 / 50 case. The ATE premium was considered wholly disproportionate and was reduced to £3,750 plus insurance premium tax.

This decision was followed by the court in the recent case of *Yunas & Yunas v Lloyds Bank PLC*, a case where Guru acted for the bank and in which, a premium of £9,187.50 was reduced to £3,750 in line with the decision in *Kelly*.

In light of *Kelly* it is now incumbent on the receiving party to provide evidence to support the level of the premium claimed and absent such evidence, the court can find the premium unreasonable and considerable savings can be achieved.

An individually rated premium is one where the premium is calculated by reference to the risks and exposure of the specific case. Occasionally, premiums will be a mixture of block and individual, a block rate applied to all cases which settle pre-issue, with a further block premium added once proceedings are issued, and a further 3rd stage premium added before trial, but individually rated at that time.

In *Rogers v Merthyr Tydfil Borough Council* [2006] EWCA Civ 1134 the court approved the approach above, staged but block premiums as the matter progressed, followed by a final individually rated sum. Whilst the final premium was greater than the damages claimed, the court of appeal considered the methodology of calculation to be such that it could not be criticised.

Shortly before *Rogers*, the senior courts costs office considered the operation of what is known as ‘pursuit policies’. Pursuit policies are ones in which the premium is calculated by reference to an initial consideration of risk, which provides a multiplier, which is then applied, at the conclusion of the case, to the costs which the other side have incurred to that point. The rationale being the longer the case runs, the greater the exposure and therefore, the higher the premium.
In RSA Pursuit Test Cases [2005] EWHC 90003 (Costs), whilst the court found some flaws in the way in which such premiums were calculated, the basic operation and methodology was approved such that when faced with a pursuit style policy, the level of the premium increases proportionally to the costs of the litigation.

The decisions reached in the respective cases above, and the subsequent allowance of seemingly unreasonable and disproportionate premiums, seemed to have shut the door on parties opposing ATE premiums. Indeed, for many years, this remained the case.

However, the status-quo was upset in the case of Redwing Construction Limited v Charles Wishart [2011] EWHC 19 (TCC). The claimant entered into a CFA in respect of enforcement proceedings, and an ATE was purchased alongside it. Two days after notification of the CFA, the undisputed sum of the claim was paid in full.

Costs were summarily assessed and Akenhead J, when considering the 100% success fee, held there was little or no chance that the claimant would wholly fail in the enforcement proceedings. As such, 20% was reasonable as a success fee. The ATE premium claimed at £8,840 for £20,000 worth of cover was considered by Akenhead J “very high”. Having found that a reduction to 20% for the success fee was reasonable, Akenhead J applied the same rationale to the premium, reducing it to 20% of the amount claimed, adding that there was “no presumption that the premium was reasonable…”.

Whilst the Jackson reforms saw the end of the recoverability of ATE premiums, there are still cases making their way through the system and post Redwing and more particularly, BNM, it seems simply pointing to the premium being disproportionate, even if reasonable, could be sufficient to lead to a considerable reduction.

For a long time the door has been shut to challenges to ATE premiums, however it appears to have swung back open briefly on the grounds of proportionality.

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Notice of discontinuance does not avoid indemnity or wasted costs order

Adam Thompson v Go North East Ltd (Defendant) & Bott & Co Solicitors (Respondent) [2016]

The claimant filed a notice of discontinuance shortly before trial in his claim for personal injury. The claimant was found to have been fundamentally dishonest in bringing the claim and the notice of discontinuance was subsequently set aside and the proceedings were restored to allow for a costs order to be made against the claimant on an indemnity basis. Due to their support long after the claim became unsupportable, the claimant’s solicitors were also subject to a wasted costs order.

ATE policy to be taken into account when deciding on security for costs

(1) Premier Motorauctions Ltd (In Liquidation) (2) Premier Motorauctions Leeds Ltd (In Liquidation) v (1) Pricewaterhousecoopers LLP (2) Lloyds Bank Plc [2016]

The existence of an after the event insurance policy was relevant when considering whether to make an order for security for costs on the basis that there was reason to believe that the claimants would be unable to pay costs if ordered to do so. This was the case even where the claimants were insolvent. Having regard to the terms of the ATE policy, the nature of the allegations raised, along with all the other circumstances, the question to be asked was whether there was reason to believe the ATE policy would not respond so as to enable payment of the defendants’ costs.
Quid pro quo - security for costs of counterclaim

_Dawnus Sierra Leone Ltd v Timis Mining Corp Ltd & Anor_ [2016] EWCA Civ 1066

A judge had erred in not making an order in respect of the costs of the respondent’s counterclaim when the judge ordered a company to provide security for the costs of its claim against the respondent company, on the basis that it was more than just simply a defence to the claim.

Proportionality has effect on interim costs certificate

_Helen Briggs & 598 Ors v First Choice Holidays & Flights Ltd_ [2016]

The court declined to issue an interim costs certificate in a group action for £881,000 to 599 claimants following settlement of their claim for loss of enjoyment of holidays. Base costs totalled £1.95 million and the defendant had already paid £1.8 million on account. The claimants had failed to keep their costs at a reasonable and proportionate level.

Costs not taken into account when considering part 36 offer

_Transocean Drilling UK Ltd v Providence Resources Plc_ [2016] EWHC 2611 (Comm)

For the purposes of part 36.14(1)(b), costs did not fall to be taken into account determining whether a judgment against a defendant was at least as advantageous to the claimant as a proposal contained in his part 36 offer.

Litigants in person and costs management orders

_Campbell v Campbell_ [2016] EWHC 2237 (Ch)

Litigants in person are exempt from the requirement to file and serve costs budgets, pursuant to CPR 3.13. However, in _Campbell_, it was held that the court had jurisdiction to order a litigant in person to produce a costs budget and subsequently impose a costs management order in respect of the litigant in person costs.

Costs judge’s powers on assessment where costs management order in place

_Valerie Elsie May Merrix v Heart of England NHS Foundation Trust_ [2016]

In the absence of good reason, the powers of a costs judge were not fettered by the CPR part 3 regime and the budgeted figures should not be exceeded.

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