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Legal Costs Briefing

Newsletter – April 2015 Volume 1, Number 2

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Welcome to the second edition of our Legal Costs Briefing

Following the huge success of our first edition we have gone to press with our second edition of our Legal Costs Briefing.

In this edition we cover many issues including a detailed review of the fundamental changes that have been made to Part 36 of the Civil Procedure Rules as well as a look at the impact of costs budgeting

News in Brief

SCCO recruit more Costs Judges

Users of the Senior Court Costs Office at last received good news that a process has started to recruit three new Costs Judges. Two of the positions are immediate and the third is being described as a future vacancy. The SCCO has recently witnessed the retirements of Senior Costs Judge, Master Hurst and Master Campbell. A formal announcement of a further retirement is expected soon, so the need for new recruits has become urgent. With detailed assessment hearings presently being listed as far as nine months in advance it is hoped that this recruitment process is swift and that the new Costs Judges not only start soon but also hit the ground running.

Judge was wrong to wipe out damages with a costs order

The Court of Appeal has decided that a Judge was wrong to make a costs order that effectively wiped out the damages that a Claimant had recovered in the litigation.

In *Begum v Birmingham City Council* [2015] EWCA Civ 386 the Claimant had succeeded in her claim for breach of statutory duty, but failed in her claims for negligence and misrepresentation based upon substantially the same facts.

The Court of Appeal was asked to consider whether the Judge was entitled to make such a swingeing costs order due to the Claimant's failure to correctly characterise the legal cause of action. In his ruling Lord Justice Jackson found that

HHJ Grant in the Birmingham Technology & Construction Court was wrong to have done so, and instead made a 15% discount of the claimant’s costs to reflect the Claimant's lack of success on negligence and misrepresentation.

This ruling is consistent with much of the Jackson reforms that included various ways to protect at least a proportion of the Claimant’s damages.

Guideline hourly rates – No Change Again

New Guideline Hourly Rates for 2010

	Band A	Band B	Band C	Band D
London 1	409	296	226	138
London 2	317	242	196	126
London 3	(229-267)	(172-229)	165	121
National 1	217	192	161	118
National 2	201	177	146	111

The rates for London 3, Bands A and B are presented as ranges following the format of The Guide to the Summary Assessment of Costs. These ranges go some way towards reflecting the wide range of work types transacted in these areas.

For the fifth year running the guideline hourly rates (GHR) are to remain fixed at their 2010 levels. In fact they are likely to remain at that level for the foreseeable future after the Master of the Rolls, Lord Dyson decided there was no prospect of the evidence required to change them being produced.

During last July Lord Dyson concluded after a year-long study by the Civil Justice Council’s Costs Committee, that there was insufficient evidence to amend the rates. He also sought urgent discussions with the Law Society and the government to agree steps to obtain the evidence needed.

Lord Dyson stated in early April that those discussions “*have not made any material change to the position I was placed in last July – there is no funding available from any source for undertaking the sort of in-depth survey which the Civil Justice Council’s Costs Committee and its expert advisers consider is required to produce an adequate evidence base.*”

“There is also considerable doubt that, even if such funds were forthcoming, there would be sufficient numbers of firms willing to participate and provide the level of detailed data required to enable the committee (and myself in turn) to produce accurate and reasonable GHRs.”

Lord Dyson also commented that guideline hourly rates are becoming “*less and less relevant*” due to various factors, including the use of costs budgeting and he also expressed his desire to expand the use of fixed fees. However Lord Dyson is not recommending the immediate end to the use of GHRs in detailed and summary assessments and indeed he concluded in his April note “*I am not, therefore, suggesting that the existing GHRs no longer apply. The existing rates will, therefore, remain in force for the foreseeable future and will remain a component in the assessment of costs, along with the application by the judiciary of proportionality and costs management.*”

For paying parties the fixing of guideline hourly rates since 2010 has to some degree stemmed the tide of rapidly increasing hourly rates that were previously witnessed. However some specialists in this field believe proper research and

evidence would have shown that even the GHRs set in 2010 were too high and any new GHRs would have led to a decrease not an increase.

Of course, we will not know if that is indeed the case unless that evidence is obtained. However paying parties will be relieved that the GHRs are yet again staying the same.

Part 36 – A New Chapter!

As of 6 April 2015, it's been all change again for CPR Part 36.

This article considers the changes, their objectives and possible implications.

The changes were initially set out in Schedule 1 of The Civil Procedure (Amendment no 8) Rules 2014 SI [2014] No 3299 (L.36) and the references in this article are those contained there, unless stated otherwise.

This article will only consider the changes primarily to Section I. The rules in relation to personal injury claims remain largely unchanged, partially because the Committee was advised by PI specialists that they were understood by the industry and partly because much of it was only introduced to compliment the claims portal and minor whiplash claims and have only recently been introduced (2010 and 2014 respectively). These are now grouped in CPR r 36.18 to 36.30.

Transitional Provisions

The transitional provisions contained within s18 of the SI make it clear that the changes will relate to all offers made on or after 6 April 2015 except:

(2) Rules 36.3, 36.11, 36.12 and 36.16 in Schedule 1 to these Rules also apply in relation to any Part 36 offer where—
(a) the offer is made before 6th April 2015; but
(b) a trial of any part of the claim or of any issue arising in it starts on or after 6th April 2015.

CPR r 36.3 are the definitions, r 36.11 relates to acceptance, r 36.12 relates to acceptance where there is a split trial and r 36.16 relates to disclosure of Part 36 offers.

The transitional provision is designed to bring cases where there is a split trial within the remit of the new Part 36 rules, since the old provisions in relation to these were inadequate (see further details below) and the new rules provide much greater clarity.

A Self-Contained Code

The first main change is that, following on from the decision in *Gibbon v Manchester CC* [2010] EWCA Civ 726, CPR r 36.1(1) states: "this part contains a self-contained procedural code about offers to settle made pursuant to the procedure set out in this Part". This merely confirms that the general contract rules relating to offer and acceptance do not apply to Part 36.

Formalities

The strict requirement for a Part 36 offer to "state on its face that it is intended to have the consequences of Section I of Part 36", which has given rise to numerous cases has been tempered somewhat by the new CPR r 36.5(1)(b).

This contains a new requirement that the offer must "make clear that it is made pursuant to Part 36"; a far less odious requirement than the previously prescriptive phrase and allows for a greater flexibility of wording. The other requirements remain the same.

It should be noted that a Part 36 offer must still comply with the formalities to be compliant (CPR r 36.2(2)) and caution should therefore still be exercised in the wording applied.

Scope of the Offer

Under the old regime, there appeared to be some confusion as to how Part 36 would operate in a counterclaim (or cross appeal) situation to the extent that, for example, the Defendant in *AF v BG* [2009] EWCA Civ 757 felt it necessary to head their offer in the counterclaim a 'claimant's part 36 offer'. Whether this confusion was real or merely perceived (see the comments of Lord Justice Lloyd at paras 20 & 21), any possibility of confusion in the future is removed by the new CPR r 36.2(3), which reads:

3) A Part 36 offer may be made in respect of the whole, or part of, or any issue that arises in—

(a) a claim, counterclaim or other additional claim; or
(b) an appeal or cross-appeal from a decision made at a trial

Reference is also made to CPR r 20.2 and 20.3, which provide that references to counterclaims and additional claims are treated as claims, and references to a Claimant or Defendant include a party bringing or defending an additional claim.

CPR r 36.4(2) sets out the definitions to be applied to Part 36 offers where it is made in an appeal. The reference to 'made at trial' in CPR r 36.2(3) (b) confirms that Part 36 does not apply in interim application or appeals on interim decisions, only appeals and cross-appeals from a trial. CPR r 36.4(1) also confirms that an offer needs to be made in the appeal proceedings in order to be effective in those proceedings (i.e. that an offer made before Trial in the main proceedings will have no effect in any Appeal).

Sunset Clauses

Prior to the 2007 overhaul of Part 36, the Department for Constitutional Affairs published a Consultation Paper, which suggested that in order to make Part 36

"easier and more attractive to use" (paragraph 6), Part 36 should allow offers to be withdrawn after the time for acceptance has expired. They viewed this as a *"natural corollary of the offeree being able to accept it without permission after the expiry of the same period*" (paragraph 42).

This is commonly referred to as a 'sunset clause', and these were ruled as being specifically prohibited under the old regime (see *C v D* [2011] EWCA Civ 646 and *Thewlis v Groupama* (above)). This was, however, an unintended consequence of the 2007 drafting (see the 'Annotated Guide to the New Part 36' by Mr. Pepperall, QC).

This drafting error has been corrected in the new revisions by the addition of CPR r 36.9(4) (b): "the offer may be automatically withdrawn in accordance with its terms". In order to avoid arguments that a Part 36 offer is not valid because it does not allow the whole of the relevant period, some care should be taken in the wording used.

Whether this will have the intended effect of making Part 36 more attractive to use will have to be seen, especially as, since the original consultation paper, Jackson expanded Part 36 to provide an enhancement on damages (CPR r 36.17(3) (d)). The enhancement only applies, however, if the offer falls under the Part 36 procedure and may make sunset clauses less attractive for Claimants.

It may, however, have some appeal to Defendants in costs proceedings who are now compelled to make Part 36 offers (CPR r 47n.20 (4)). There has been much resistance from Defendants in doing so (with some Defendants going so far as to make a Part 36 offer of nil alongside a Calderbank offer of settlement). Making use of this provision allows a Defendant to make a Part 36 offer for the relevant sum with Points of Dispute, which can then be withdrawn automatically.

A withdrawn offer will still be an admissible offer in respect of costs (see *Stokes Pension Fund v Western Power Distribution (South West) plc* [2005] EWCA Civ 854 and *Uwug Limited (in liquidation) Uwe Haiss v Derek Ball* [2015] EWHC 74 (IPEC)).

Although the old Part 36 rules provided that a Part 36 offer may be changed so that it is less advantageous, (either with or without the court's permission), the new CPR r 36.9(5) also provides that an offer can be changed to be more advantageous.

Where this change occurs, the original offer will not be treated as withdrawn, and the changed offer will be treated as a new offer (CPR r 36.9(5) (a)). The relevant period will therefore run from the date of the service of the changed offer (CPR r 36.9(5) (b)). This is to allow the original offer to continue to have the costs consequences of Part 36.

Withdrawal/Changing an offer to be less advantageous during the relevant period

Whilst the old rules made brief reference to an offer being withdrawn within the relevant period with the permission of the court, this has been extended and expanded in the new CPR r 36.10. This new section deals with the position where there is a withdrawal or variation made to the offer during the relevant period, which is less advantageous (CPR r 36.10(1)). An offer still cannot be withdrawn/varied after acceptance (see CPR r 36.9(1)).

Permission is no longer required to amend/withdraw if the offeree does not want to accept the offer (CPR r 36.10(2) (a)). Permission is therefore only required if the offeree wants to accept the offer after the variation/withdrawal but within the relevant period (CPR r 36.10(2) (b)).

Unless the offeror makes an application to the court either within seven days of the notice of acceptance (CPR 36.10(2) (b) (i) or, if earlier, before the first day of trial (CPR r 36.10(2) (b) (ii)), then the acceptance automatically takes effect.

The rules previously contained no guidance when such an application may be granted. Following on from earlier decisions, Leggatt, J considered in *Evans v Royal Wolverhampton Hospitals NHS Foundation Trust* [2014] EWHC 3185 (QB) that:

"the test to be applied when the court is considering whether to give a party permission to withdraw a Part 36 offer is whether there has been a sufficient change of circumstances to make it just to permit the party to withdraw its offer".

The new CPR r 36.10(3) gives effect to these comments and provides some guidance on dealing with such an application: "…*the court may give permission for the offer to be withdrawn or its terms changed if satisfied that there has been a change of circumstances since the making of the original offer and that it is in the interests of justice to give permission*".

This must be a change, and not simply a review of the available information by a fresh expert (see *Flynn v Scougill* [2004] EWCA Civ 873). *Evans* (above) also held that where a change of circumstances is contended for, details of that change must be disclosed.

Split Trials

The old Part 36 rules were not designed to deal with cases where there was a split trial. This problems were considered in *AB v CD* [2011] EWHC 602 (Ch) by Henderson, J who explained it thus:

"[18] It seems to me that there is a real problem here. If the existence of a Part 36 offer cannot be disclosed, except where the parties agree, until the conclusion of the second stage of a split trial, such agreement is unlikely to be forthcoming in any case where the disclosure might prejudice the position on costs of either the offeror or the offeree at the conclusion of the liability stage. It would seem to follow that in nearly all split trial cases where a Part 36 offer has been made all questions of costs would have to be reserved to the conclusion of the second stage, because it will be in the interests of at least one party to refuse consent to its disclosure at the liability stage. But it will often be desirable in principle, and in the wider interests of justice, for the costs of the liability hearing to be dealt with at its conclusion."

They were further considered by Eder, J in *Ted Baker Plc & Ors v AXA Insurance Plc & Ors* [2012] EWHC 1799 (Comm). He concluded that:

"[19] In my view, there is an urgent need for CPR 36.13 to be reviewed and possibly reformulated in order to deal in particular with the question of "split trials" and the kind of difficulties which have arisen in the present case."

These concerns have now been addressed by the Rules Committee and are dealt with in the new CPR r 36.12, which states:

(1) This rule applies in any case where there has been a trial but the case has not been decided within the meaning of rule 36.3.

(2) Any Part 36 offer which relates only to parts of the claim or issues that have already been decided can no longer be accepted.

(3) Subject to paragraph (2) and unless the parties agree, any other Part 36 offer cannot be accepted earlier than 7 clear days after judgment is given or handed down in such trial.

'Trial' is defined in CPR r 36.3(c) as "any trial in a case whether it is a trial of all issues or a trial of liability, quantum or some other issue in the case". 'Decided' is defined in (CPR r 36.3(e)) as "when all issues in the case have been determined, whether at one or more trials".

So, once, for example, liability has been determined any offers relating to other issues (such as quantum) cannot be accepted within seven days of the judgment unless the parties agree. This is to allow the parties time to consider their respective positions, and review whether any or all previous offers need to be withdrawn. If the offer/offers are not withdrawn, it can be accepted once the seven days have expired.

The position with split trials is further assisted by the amendments to CPR r 36.11(3) (d). Permission is required to accept a Part 36 offer where "a trial is in progress". This change to the wording is to ensure that the old description of a trial having started cannot be interpreted to prevent acceptance of an offer from the start of the liability trial until the conclusion of the quantum trial, which may be a considerable time later.

As a compliment to these provisions, the rules on disclosure have also been updated in CPR r 36.16(3) & (4) (amendments are in bold):

(3) Paragraph (2) does not apply—
(a) where the defence of tender before claim has been raised;
(b) where the proceedings have been stayed under rule 36.14 following acceptance of a Part 36 offer;
(c) where the offeror and the offeree agree in writing that it should not apply; or
(d) where, although the case has not been decided—
(i) any part of, or issue in, the case has been decided; and
(ii) the Part 36 offer relates only to parts or issues that have been decided.
(4) In a case to which paragraph (3)(d)(i) applies, the trial judge—
(a) may be told whether or not there are Part 36 offers other than those referred to in paragraph (3)(d)(ii); but
(b) must not be told the terms of any such other offers unless any of paragraphs (3) (a) to (c) applies.

A party is thus able to communicate to the court the existence of a Part 36 offer and its terms in relation to the issue decided. This avoids the concerns voiced by Henderson, J (above), as it will allow a costs order to be made on that issue at the conclusion of the first trial.

If the offer made is a global one (global in this context means one that is in relation to both liability and also quantum) that relates to the issue determined and also to matters not decided, then the court may be told of the existence of the offer, but not its terms. It is likely in these matters that costs will still have to be reserved. The provision in CPR 36.12 (2) ensures that a party who has made a global offer in this way is still protected; it doesn't need to be withdrawn as it cannot be accepted and the Part 36 costs consequences are thus preserved.

Jackson Additional Amount

CPR r 36.17(4) (d) now starts with the words "*provided that the case has been decided and there has not been a previous order under this sub-paragraph…*". This merely makes it clearer that the additional amount can only be paid once and once the case has been decided.

Pre-Commencement Part 36 Offers

Although the previous CPR 36.3(2) (a) confirmed that an offer may be made at any time, including prior to the commencement of proceedings, CPR 36.10 and 36.11 were written with the presumption that there will be extant proceedings and thus caused some confusion as to whether such costs were recoverable.

Although this did not appear to create enormous difficulties (the issue was considered by Master Haworth in *Udogaranya v Nwagw* [2010] EWHC 90186 (Costs) but not ruled on as the offer in that case was not Part 36 compliant in any event), it has in any event been clarified.

CPR r 36.13(1) now confirms that "…*where a Part 36 offer is accepted within the relevant period the claimant will be entitled to the costs of the proceedings (including their recoverable pre-action costs) up to the date on which notice of acceptance was served on the offeror*".

Abandonment

Previously, a Claimant was automatically entitled to all its costs if it accepts an offer that relates to part of the claim and abandons the balance of its claim with the acceptance.

Under CPR r 36.13 (2), the Claimant will now only be entitled to their costs of the part of the claim to which the offer relates, unless the court orders otherwise. This allows a Claimant to make representations if they consider there is some reason why they should have all their other costs, but removes their automatic entitlement to them.

Genuine Offers

There had been concerns that Claimants were abusing the Part 36 process by making offers which were not genuine attempts to settle but merely attempts to secure the benefits of indemnity costs and the additional sums provided for in CPR r 36.17(4)(d) (see *Huck v Robson* [2002] EWCA Civ 398 and AB v CD (above)).

The court had the ability to consider all the circumstances of the case when determining an offer, however, the Rules Committee obviously considered that a more specific requirement was required. As such, a new factor has been added at

CPR r 36.17(5) (e): "*whether the offer was a genuine attempt to settle the proceedings*".

But what will constitute a genuine attempt to settle? In *AB v CD* (above), Mr. Justice Henderson commented that to be genuine, the offer must have:

"[22] … some genuine element of concession on the part of the claimant, to which a significant value can be attached in the context of the litigation… The concept of a settlement must, by its very nature, involve an element of give and take. A so-called "settlement" which was all take and no give would in my view be a contradiction in terms."

Parker, LJ in *Huck v Robson* (above) considered that an offer must:

"[63] …represent at the very least a genuine and realistic attempt by the claimant to resolve the dispute by agreement. Such an offer is to be contrasted with one which creates no real opportunity for settlement but is merely a tactical step designed to secure the benefit of the incentives"

How the court will judge whether an offer was genuine or not will be subjective and is likely to be fact and case-sensitive and is likely to be ironed out through case law.

Budgets

Where a party has failed to file a budget and is therefore limited only to court fees under CPR r 3.14, such as *Mitchell v Newsgroup* [2013] EWCA Civ 1537, Part 36 should still be able to operate. However, in order to do so, the defaulting party must have an incentive to make a reasonable offer and their opponent should not have a carte blanche to simply continue with litigation in the face of almost no costs risk.

CPR r 36.23 thus seeks to redress the balance:

(2) "Costs" in rules 36.13(5)(b), 36.17(3)(a) and 36.17(4)(b) shall mean—
(a) in respect of those costs subject to any such limitation, 50% of the costs assessed without reference to the limitation; together with
(b) any other recoverable costs.

CPR r 36.13 (5) (b) relates to costs where the Part 36 offer has been accepted out of time. CPR r 36.17(3) (a) relates to an award of costs where a Claimant has failed to obtain a judgment more advantageous than a Defendant's Part 36 offer and CPR r 36.17(4) (b) relates to an award of costs when judgment against the Defendant is at least as advantageous as the proposals in a Claimant's Part 36 offer.

It is therefore designed to encourage the non-defaulting party to accept a reasonable offer, thus the defaulting party will still not receive this additional benefit where an offer is accepted within the relevant period.

If one of the prescribed circumstances occurs, the defaulting party will be entitled to an assessment of the whole of its costs, without reference to the limitation and will then receive from that assessment 50% of the costs that were 'subject to the limitation' (those that were disallowed by the sanction). In addition, they will receive 'any other recoverable costs', which would include pre-budget costs and, of course, the court fees.

Payment

As a word of caution to Defendants, CPR r 36.14(7) has been revised to allow a Claimant to obtain judgement where they make an offer relating to a single sum of money (CPR r 36.14(6)) which is accepted if payment is not made within fourteen days.

The rule allows for the parties to agree a longer period, but this must be done in writing. Defendants should therefore take care to either ensure that they have the agreement in writing when an extended period applies, or have procedures in place to ensure that payment can be made within the fourteen day timescale to avoid judgment being entered against them.

Practice Directions

The Practice Directions change very little, the only real change being that CPR r 36 PD 3.2 removes the ability for the parties to agree that an application for permission to accept a Part 36 can be heard by the Trial Judge, so that a different judge will now always hear such applications.

Omissions

Under the old Part 36 regime, CPR r 36.10(1) provided the Claimant with an automatic entitlement to their costs if their offer is accepted and is preserved in CPR r 36.13(1). There is no discretion afforded in those circumstances for a Defendant to argue that some or all of those costs should not be paid except within the limited confines and restricted powers of a Judge on a detailed assessment. However, if the same offer is accepted after the expiry of the relevant period, CPR r 36.13(4) (b) engages and it is for the court to determine the costs unless the parties can agree them.

This lacuna was considered by Mr. Justice Akenhead in *Bellway Homes Limited v Seymour (Civil Engineering Contractors) Limited* [2013] EWHC 1890 (TCC), who concluded that "*it may be that the Rules Committee might want to consider this*".

It appears, however, that they have not taken the opportunity to do so. Mark Friston in Civil Costs: Law and Practice suggested that a work-around to this lacuna may be to accept the Part 36 offer on the day after it expires (provided it is not withdrawn) to allow CPR r 36.13(4)(b) to engage.

If the offer is withdrawn, then the solution may be that suggested by MacDuff, J in *Pankhurst v White* [2010] EWHC 311 (QB): *"[47] However, an offer… would have given him a strong platform from which to resist this application. That would have been a genuine attempt to duplicate the Claimant's earlier offer, against the new landscape… It would not have provided the Defendant with costs protection for his own costs in view of the eventual award. But it would have provided a strong argument, two years later, to resist an application for an enhanced consequences order.*"

Conclusion

The policy objective of Part 36 had been to ensure "*equal or equivalent treatment of claimants' and defendants' offers*".

This was not a result achieved in 2007 and in our opinion has not truly been achieved with the new rules; for example, a Claimant will get the Jackson additional amount and indemnity costs if an offer is beaten at trial, whereas a Defendant in the same position merely obtains their costs from the expiry of their offer on the standard basis.

However, the new rules do provide greater room to maneuver in more cases, which may make Part 36 more attractive for both Claimants and Defendants.

Whatever the future holds for Part 36, the words of Macur, LJ in *Thinc Group Ltd v Kingdom* [2013] EWCA Civ 1306 should be borne in mind:

“a Part 36 offer is a significant factor in any action requiring the parties to focus upon the issues, appraise expectations and draw back from the fray in order to avoid adverse cost and interest implications and, in so doing, to give due regard to CPR 1.3 and 1.4. It is particularly important in an action of relatively low monetary worth and will require careful scrutiny”

Budgeting – All Thorns, No Roses?

Master David Cook recently said the litigation system will ‘cease to function’ if changes are not made and we are therefore looking very briefly at this thorny issue.

Master Cook also expressed concern at the lack of training given to judges and that the difficulties faced were more than just a ‘bedding in’ of the budgeting process following the reform.

We take a look at this criticism.

Anyone with experience of budgeting will have some sympathy with these comments, there being an apparent inconsistency in the way Judges deal with budgets, even within the same court. From the inception of budgeting, there was always going to be a conflict between budgeting and assessment. Master Gordan-Saker has emphasised this difference in the past, and considered that judges should not look at hourly rates or hours but rather at overall reasonableness and proportionality.

However, In *Yeo v Times Newspapers* [2015] EWHC 209 (QB), Warby, J considered that in a case where the budget ran to six or seven figures, the judge should *“have regard not only to the factors listed in CPR 44.3(5) but also to the hours and rates, as would be done upon a summary assessment of costs at the*

end of an interim hearing. That is not the same as conducting a detailed assessment”.

This is really like a convoluted game of ‘spot the difference’, since this process is what a judge does on a detailed assessment. We are therefore being asked to believe that budgeting and assessment use the same processes, and yet are still different! It’s really no wonder that judges are struggling to manage budgets.

To make matters worse, the new concept of proportionality gives rise to the possibility of what may be considered disproportionate at the conclusion of a trial may have been deemed proportionate at a costs and case management conference part way through the case. These difficulties are particularly apparent in clinical negligence budgets. The number of clinical negligence cases in the courts has increased in the past year from 993 in 2013 to 1,398 in 2014, leaving the courts already overstretched.

Budgets in clinical negligence cases are far less likely to be agreed than in commercial disputes, meaning that costs management hearings are necessary in almost all cases, further adding to court strain. The reasons for this are varied. Defendants attempting to protect public funds and patient interests, want the opportunity to limit Claimant costs. There has also been criticism of some Defendants (who thanks to QOCS are unlikely to recover any costs in any event) providing unrealistically low budgets. On the other side, Claimants include any and all conceivable contingencies, or make strategic assumptions in their budgets. This is an effort to avoid being stung at the conclusion of the case and to avoid having to file a revised budget (particularly after the comments made in *Elvanite Full Circle Limited v AMEC Earth and Environmental (UK) Ltd* [2013] EWHC 1643 (TCC)), but which ultimately result in overly high budgets.

Claimants ought to be cautious of the contingencies they are claiming, however. In *Yeo* (above), Warby, J held that *“work should be included as a contingency only if it is foreseen as more likely than not to be required… If work … is included in a budget but not considered probable by the court no budget for it should be approved.”*

In *CIP Properties (AIPT) Limited v Galliford Try Infrastructure Limited* (Costs No 2) [2015] EWHC 481 (TCC), Coulson, J attacked the Claimant’s budget as being an *‘unreliable document’*. This conclusion was based primarily on considering the Claimant’s assumptions. As an example, one such assumption was that witness statements would be no longer than twenty pages. Coulson, J observed that the assumptions were crafted so as to allow the Claimant to argue for higher costs at the conclusion of the case. However, the Claimant’s budget was already substantially higher than any of the Defendants’ and the Judge noted that the Claimant had already incurred substantial costs. Coulson, J therefore concluded that the Claimant’s budget was a *‘wholly illegitimate exercise’* designed to undermine the budgeting system and restricted the costs accordingly.

As Master Cook observed, the costs management system itself is probably in need of an overhaul. Whether such change will actually be realised is another matter, but the disputes and problems that presently exist with the system are unlikely to improve without it.

Meet The Team – Natasha Stroud

Natasha is the youngest member of our team, yet has already gained considerable experience dealing with a wide range of cases.

Natasha tells us a bit about herself.

Why a career in law?

My previous role as a Probate Administrator is what led me to a career in law. It sparked my interest and from there I decided to undertake a part time Law Degree.

What do you enjoy about your work

I really enjoy the variety of work and legal issues that I come across day-to-day.

Career high

I do not believe I can possibly say I have had a career high at 25 and I hope to have many more years of hard work ahead of me before I can claim to have a 'career high'. However striking out a party's unreasonable additional liabilities on a couple of occasions and successfully obtaining large reductions on behalf of our clients has given me a lot of satisfaction.

Favourite Book

It's easier for me to name my favourite authors which are Dan Brown, Mark Billingham and Ian Rankin.

Favourite Film

Lord of the Rings or Blood Diamond

TV Programme

Game of Thrones and Sons of Anarchy

Holiday Destination

Anywhere in Italy