



## LEGAL BRIEFING

### *Stella Willis v (1) MRJ Rundell & Associates Ltd (2) Grovecourt Ltd*

[2013] EWHC 2923 (TCC), Mr Justice Coulson

#### *The Facts*

This case concerned a claim brought in the TCC by the claimant against the second defendant in relation to allegedly defective work. The proceedings were subject to the costs management pilot scheme under Practice Direction 51G ('PD 51G').

At the first Case Management Conference ('CMC') on 14 December 2012 both parties submitted cost budgets for £821,000 plus VAT and £616,000 (with no VAT being claimed) respectively. There was insufficient time available during the CMC to explore the detail of either party's cost budget so no Costs Management Order was made but the Judge expressed concern that the costs seemed disproportionate in the context of a claim for £1.6 million. The Judge scheduled the trial for October 2013.

Neither party returned to Court to seek approval of their costs budgets.

The parties engaged in mediation during June 2013 but otherwise failed to comply with the Court's directions. By the time of the Pre-trial Review in July 2013 it became apparent that neither party would be ready for trial. The Judge therefore adjourned the trial but due to his concerns that the adjournment would result in further increases to what he already considered to be excessive costs, he ordered a CMC to take place on 25 September 2013 to deal solely with costs management issues.

#### *The Issue*

What, if any, Costs Management Order should be made?

#### *The Decision*

The Judge declined to make a Costs Management Order or approve either parties' cost budgets on grounds that they were disproportionate and unreasonable. He considered that the parties' efforts should be focused on preparing for the trial rather than preparing fresh costs budgets.

The Judge directed the parties to keep their cost budgets updated and make them available at the next pre-trial review.

#### *Commentary*

Although this case was concerned with the application of PD 51G under the costs management pilot scheme, some useful guidelines for navigating the new cost management rules, in effect from 1 April 2013, have emerged. The key points of interest are as follows:

- (i) Where the aggregate of the cost budgets exceed the maximum amount claimed, the Court is likely to take the view that the cost budgets are disproportionate and unreasonable.
- (ii) It is essential that any cost budgets submitted are sufficiently detailed to enable the Court to undertake a proper review and assessment. In view of the Judge's criticisms in this case, the following should be avoided:

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- (a) Large rounded up figures for which no breakdown is provided;
  - (b) Lump sum items which are not properly substantiated and explained. For example, it is not appropriate to include a single sum for 'contingent costs' without further detail;
  - (c) Describing components of the cost budget as 'incurred/estimated'.
- (iii) If the Court only gets to see the budgets by the time that a substantial proportion of costs have already been incurred, this will undermine the effectiveness of the cost management regime and the Court's ability to contain costs.
- (iv) The parties should aim to obtain approval for their cost budgets at an early stage and be prepared to make pro-active and prompt applications to the Court if budgets are exceeded.
- (v) If a party wishes to attack the other's cost budget, it should present the Court with alternative figures for any items which are contested. In this case neither side offered substitute figures in respect of each others' cost budgets. As a result, the Judge concluded that he did not have sufficient information to propose alternative figures and stated that it would be inappropriate for the Court to do so without notice and without any necessary supporting detail.

Whilst the Judge was critical of both parties' cost budgets, he stopped short of concluding that a party's failure to have its cost budget approved would result in it being unable to recover any costs at all. He considered that such a punitive approach would be contrary to the letter and spirit of both PD 51G and the new costs management regime. However, the costs management rules are still in their infancy and the Courts may well adopt a more rigorous approach once the regime has become more established.

Rebecca Williams  
October 2013

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