[2020] EWHC 1075 (Ch)

IN THE HIGH COURT OF JUSTICE **Claim No F30BM013**
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
BUSINESS LIST (ChD)

Dated: 4 May 2020

BETWEEN:

HEATHFIELD INTERNATIONAL LLC

Claimant

and

(1) AXIOM STONE (LONDON) LIMITED
(2) MEDECALL LIMITED

Defendants

Representation
Martin Budworth instructed by The Wilkes partnership Solicitors for the Claimant
Natasha Dzameh instructed by MB Solicitors for the Second Defendant
(The First Defendant was not concerned in this application)

ON PAPER JUDGMENT ~
SECOND DEFENDANTS' APPLICATION AFTER LATE FILING OF A COSTS BUDGET

I direct that pursuant to CPR 39APD6 paragraph 6.1 no tape recording shall be made of this judgment and that copies of this version shall stand as authentic and be treated as the official transcript.

HIS HONOUR JUDGE SIMON BARKER QC :

1 This action was begun on 6.8.18. The Claimant, Heathfield International LLC, ('C'), as legal or equitable assignee of Quantum Medical Limited ('QML'), claims against the First Defendant, Axiom Stone (London) Limited, ('D1') a sum in excess of £260K allegedly owing in respect of invoices for the provision of medico-legal services pursuant to a written contract between QML and D1, alternatively as a reasonable fee for services rendered, plus interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 totalling a further £100k odd at that time. The claim against the Second Defendant, Medecall Limited, ('D2') is an alternative and secondary claim arising from D1's denial of the claim and assertion that D2 is the

relevant contracting party. D2 filed a Defence and Counterclaim dated 15.2.19. The Defence was drafted and served by D2's solicitors who are MB Solicitors.

2 On 20.3.19 the court issued a Notice of Proposed Allocation to the Multi-Track as a Chancery case. Paragraph 4 of that Notice provides

> "*In accordance with CPR 3.13 all parties, except litigants in person, must file and exchange budgets*
> *…*
> *(b) … not later than 21 days before the first case management conference*".

3 On 8.4.19 D2 filed a Directions Questionnaire stating, at section I, that it intended to make a security for costs application. The draft directions filed with the Questionnaire made no reference to costs budgeting.

4 On 29.7.19, following a hearing at which D2 was represented by counsel, a district judge sitting in the Business and Property Court ('BPC') made an order on a Request for Further Information made by D2 of C.

5 On 7.10.19 the Court issued a Notice of Costs and Case Management Conference ('CCMC') listing the CCMC for hearing in the BPC on 10.12.19 with a time allowance of 2 hours. The notes accompanying that Notice state at paragraph 3

> "***Budgets*** *– These must be filed by the date specified in CPR 3.13*"

and give further explanatory information about the court's powers and the approach to be taken to preparing budgets.

6 In relation to the filing of budgets CPR 3.13 provides

> *"(1) Unless the court otherwise orders, all parties except litigants in person must file and exchange budgets-*
>
> *….*
>
> *(b) … not later than 21 days before the first case management conference*".

7 Based on the court's directions budgets were required to be filed by 18.11.19.

8 C and D1 filed and exchanged budgets on 18.11.19. D2 did not file a budget nor did it seek an extension of time or other order releasing it from the obligation to file and exchange by 18.11.19.

9 By an order made on and dated 6.12.19, but sealed and issued on 17.12.19, the court vacated the CCMC listed for 10.12.19 and relisted it for 30.4.20 allowing a full day so that the hearing could also accommodate the determination of security for costs applications which D1 and D2 had intimated they intended to issue. The making of the order was communicated to the parties prior to 10.12.19. The recitals to this order

state that (1) D1 and D2 had confirmed their intention to make applications for security for costs and (2) the parties had agreed that those applications should be heard at the same time as the CCMC.

10 The evidence filed by the parties does not state or show the date when the parties jointly approached the court to request that the CCMC be adjourned. D2's solicitor, Mr Mobin Hussain, says, at paragraph 12 of his witness statement dated 27.4.20, that

> "*It should be noted that [D2] did not file a costs budget (Precedent H)* as *the parties had agreed for the CCMC to be relisted*".

That is somewhat ambiguous. On one reading it implies that the agreement had been made before the filing date (18.11.19) and communicated to the court in good time for the court to vacate the CCMC and, thereby, the filing obligation; on another, it is an explanation why no later application was made for relief from the automatic consequence of CPR 3.14 which leaves the original failure to comply unaddressed.

11 CPR 3.14 provides

> "*Unless the court otherwise orders, any party which fails to file a budget despite being required to do so will be treated as having filed a budget comprising only the applicable court fees*".

12 Mr Hussain's evidence is challenged by a witness statement of Mr Nishad Nijamali, a director of C, dated 29.4.20 made in response to D2's application for relief from sanctions for not filing a costs budget. At paragraph 6 Mr Nijamali says that the application to adjourn the CCMC and subsequent order were made after the deadline (18.11.19) which is why C and D1 filed and served their budgets.

13 Mr Hussain's evidence sits uncomfortably with a letter dated 23.4.20 from C's solicitor, Mr Andrew Garland of The Wilkes Partnership LLP, to D2's solicitor, Mr Hussain. I am not aware of any detailed answer to this letter. The letter was sent as a covering letter to C's Precedent R response to D2's budget, eventually served by D2 on 14.4.20. Mr Garland's letter contains the following narrative setting out D2's (in)activity in relation to budgets (typographical errors uncorrected)

> "*Originally the CCMC was listed on 10 December 2019 at 2pm. Accordingly costs budgets were due to be served by 18 November 2019. Both the Claimant and the First Defendant produced, served, and lodged with the Court costs budgets within the prescribed timeframe. The Claimant also served its precedent H on the Second Defendant's solicitors in time. The Claimant and the First Defendant thereafter complied with the Court budgeting process with precedent R's etc. The Second Defendant neither served its Precedent H on time, asked for an extension nor applied for an extension of time, within time and failed to apply for relief form sanction out of time.*
>
> *When the CCMC was re-listed for the 30 April 2020, any costs budgets / revised costs budgets were again due to be served by 8 April 2020. Both the Claimant and the First Defendant complied with the deadline, albeit in the first Defendant's case they wrote within the stipulated timescale confirming their budget was*

unchanged. The Second Defendant's solicitors on 8 April 2020 confirmed that it would accept service by email of any precedent H and the Claimant served its Precedent H on the Second Defendant. The Second Defendant's solicitors wrote, asking as to whether the Claimant would accept service of its precedent h budget by email. The Claimant confirmed that it would but its rights to object to the same on the basis of late service were fully reserved. Despite this the Second Defendant's budget was still not served, in accordance with the timescale ordered by the Court.

The Second Defendant's Precedent H was only sent by email on 14 April 2020 , 6 days after its deadline. Again, neither in that occasion the Second Defendant asked for an extension or applied for an extension of time, not has applied for and been granted relief from sanction. It has provided no explanation for its complete disregard for court procedure".

C's solicitor concluded the letter by stating that C's Precedent R form relating to D2's budget was produced without prejudice to the contention that D2 should not be entitled to costs.

14 However, further relevant light appears from the court file. It appears from documents on the file that the request to adjourn the CCMC was made by an application and draft consent order delivered by hand to the court on 4.12.19 under cover of a letter from C's solicitor. This casts further doubt on the explanation given in evidence by Mr Hussain.

15 It is not appropriate to attempt to reconcile or to decide where the truth lies between this conflicting material at an interim hearing, particularly one which, by consent, is to be decided on paper. However, in the light of the date of the lodging of the draft consent order seeking vacation of the CCMC (4.12.19) it is fair to regard Mr Hussain's evidence as less than complete and open to doubt.

16 D2's security for costs application is dated 6.2.20 as is the supporting witness statement. This was some 10 months after the intimation in the Directions Questionnaire (8.4.19) that a security for costs application would be made. It is not clear on the information before me when the application was sent to the court for issue. By a Notice of Hearing dated 10.3.20, but not issued until 1.4.20, the hearing of D2's security for costs application was confirmed for 30.4.20 and directions were given for service and filing of evidence in response 21 days before the hearing and evidence in reply 14 days thereafter. Given a hearing date of 30.4.20 it was incumbent on D2 to serve its application and supporting evidence promptly. In the event the application and supporting evidence were not served until 15.4.20. This obviously thwarted the court directed timetable.

17 In the meantime, and as is apparent from the extract from Mr Garland's letter of 23.4.20 cited above, on 8.4.20, 22 days before the CCMC, C again served its budget on D2. It appears from Mr Garland's letter that on 8.4.20 D2 was expressly made aware of the need to serve its costs budget, sought and obtained permission to serve by email, but failed so to do, or at least further delayed before so doing.

18 There are differing accounts as to the date of service and filing of D2's budget, the alternatives being 14.4.20 and 16.4.20. As C states that it received D2's budget on the earlier date, 14.4.20, I treat that as the correct date. That was less than 21 days before the CCMC. C responded with a Precedent R report on 23.4.20. This was duly included in the CCMC bundle. The report includes the observation that D2 had failed to take into account the requirement (introduced on 1.10.19) that all costs up to and including the CCMC should be treated as incurred costs.

19 Following the Covid-19 outbreak and lockdown, effective as from 23.3.20, it became necessary to arrange for the hearing listed for 30.4.20 to be a remote hearing. The parties' solicitors co-operated and C's solicitor agreed to host and record the hearing. As the allocated hearing judge, on 20.4.20 I issued, by email direct to the parties' solicitors, a directions order for the CCMC and security for costs applications. The case is not on CE File and being locked down in London I did not have access to the full court file and was not aware of the directions order made for evidence in relation to D1's and D2's applications for security for costs. At paragraph 10 of my 20.4.20 order I directed that

> "*In the event that the evidence for the Applications is not yet complete the Defendants and the Claimant are to endeavour to agree a timetable to ensure completion of the evidence in time for its inclusion in the Bundle. The Defendants' solicitors and the Claimant's solicitor have permission to refer any timetabling issue directly to the Judge by email … provided the other parties' solicitors are copied in*".

This provided D2 with an opportunity to revisit the timetable for the security for costs application. D2 did not refer any timetabling issue to me notwithstanding that D2 served its application at a time which rendered the court directed timetable for evidence unattainable.

20 Also in the 20.4.20 directions order I directed, at paragraph 12(A)(7), that the hearing bundle should include, if budgets were in issue, the budgets and budget discussion reports. The hearing bundle was directed to be compiled and ready for service and filing by 2.00pm on 24.4.20. Obviously it was to include Precedent H budgets and Precedent R reports in relation to each party's costs. C and D1 complied fully in time. D2 had served its budget (late) but did not serve and has not filed any Precedent R report.

21 At 15.53 on 28.4.20 D2 sent an 80 page supplemental electronic bundle by email to C's and D1's solicitor and to the court. This bundle included an application for relief from sanctions and a supporting witness statement of Mr Hussain. This was obviously too late for inclusion in the hearing bundle and left the other parties only 1 day to consider any response.

22 The application is dated 26.4.20 and unsealed. The supporting witness statement is dated 27.4.20 and concluded with an incorrect (out of date) statement of truth. In the statement Mr Hussain said that the budget was filed 8 days late. Mr Hussain stated that granting relief would serve the interests of justice and not add significant costs. Mr

Hussain said that the breach should not be viewed as serious or significant because it did not have an impact on the litigation or cause C inconvenience, all other directions had been complied with and C had filed a Precedent R report in response to D1's budget. As to why the default occurred and whether there was a good reason, Mr Hussain accepted responsibility and said that "*the incorrect date [had been] diarised in my calendar*". As to all the circumstances, Mr Hussain said that the conduct of the litigation had not been affected, and the case involved a lot of money, was not straight forward and required a lot of time and cost. Mr Hussain said that D2 had otherwise conducted the litigation efficiently and at proportionate cost. As to enforcement and compliance, Mr Hussain said that compliance is not an end in itself nor does it take precedence over the interests of justice, and D2's breach should not prejudice its counterclaim.

23 Ms Natasha Dzameh, D2's counsel, filed a skeleton argument, authorities and draft security for costs order at 17.46 on 29.4.20 by email directly to me. Ms Dzameh apologised for the late filing of these documents and explained that she had been instructed "*relatively late on this matter*". This was the first time that D2 had produced a draft of the security for costs order sought.

24 In her skeleton argument Ms Dzameh referred to D2's obligation to exchange and file budgets under CPR 3.13 and calculated the deadline to have been 7.4.20, being 21 clear days before 30.4.20 calculated as provided for by CPR 2.8. Ms Dzameh referred to service and filing by D2 occurring on 16.4.20. Ms Dzameh submitted that, although failure to submit a budget is generally considered serious, in this case it is of little significance. Ms Dzameh's reasons included that the parties are not prejudiced, as evidenced by the fact that C was able to submit a budget discussion report; the failure was due to an oversight on the part of D2's solicitor and D2 was not at all at fault; neither the court nor court users have suffered any inconvenience; and, in the circumstances the consequences of CPR 3.14 would be disproportionate. Ms Dzameh referred to Manchester Shipping Ltd v Balfour Worldwide Ltd and another [2020] EWHC 164 (Comm) as a factually similar case in which relief was granted.

25 In Manchester Shipping Ltd the defendant had conceded liability and the only live issue for trial was loss. The parties had agreed a detailed procedural timetable of some 19 steps leading to the CMC, which included significant variation of the normal steps. The agreed steps did not address costs budgeting nor did they agree that there was not to be costs budgeting. The hearing was on 17.1.19 and C served and filed its budget on 24.12.19. D served and filed its budget on 8.1.19, i.e. 8 days before the hearing date. D's solicitor explained that it had not been appreciated that there would be costs budgeting at the CMC. Mr Lionel Persey QC, sitting as a DHCJ, started from the position that D's failure to serve and file was serious and that each case should be judged on its own circumstances so that citation of authorities was likely to be of little benefit. In this case C had been able to address D's budget fully in a Precedent R report and there had been full argument at the CMC. There had been no inconvenience to the parties or the court. Although they had taken their eye off the ball, which was not a good reason for the failure, the DHCJ accepted that the failure was both inadvertent and understandable viewed in the context of the CMC arrangements. There had not been an agreement not to deal with costs budgets but D's failure was

not egregious. Having regard to all the circumstances the failure was serious but, there having been no inconvenience to the court of other court users, the consequences of CPR 3.14 would be disproportionate and relief should be granted. Pausing here, I do not regard this case as analogous for reasons including that D2 cannot, and in fairness does not, contend that costs budgeting was not expected to be on the agenda for the CCMC. I also agree with the DHCJ's view that the decision in each case should turn on the particular facts of the case with the result that consideration of the facts of and decisions in other cases is likely to be be of limited benefit.

26 At the telephone hearing on 30.4.20, which covered most but not all of the CCMC issues and, by consent, was otherwise adjourned to 26.6.20, the parties' representatives agreed that D2's application for costs budget relief should be determined on paper.

27 Mr Martin Budworth, C's counsel, with my permission, filed a short skeleton argument on 1.5.20 in response to D2's late application and Ms Dzameh's later skeleton argument.

28 Mr Budworth submitted that there is no basis for asserting that D2's costs budget failure is anything other than serious. He also submitted that the reason given by Mr Hussain is not a good one. As to all the circumstances, Mr Budworth submitted that D2 has a history of tardiness in this litigation. He set out a number of D2's defaults in an accompanying schedule. Mr Budworth cited a double default in filing budgets (November 2019 and April 2020), unexplained delay in issuing and serving its security for costs application, no Precedent R report, a complete failure on D2's part to engage in budget discussions, and the very late filing of a supplementary bundle for the 30.4.20 hearing. Mr Budworth referred to appellate authorities where apparently less significant breaches had led to a refusal to grant relief from the consequences of CPR 3.14 which refusals had been upheld on appeal.

29 In one of the authorities referred to by Mr Budworth, Lakhani and another v Mahmud [2017] EWHC 1713 (Ch), Mr Daniel Alexander QC, sitting as a DHCJ, upheld on appeal a refusal to grant relief where the budget was filed 1 day late. In that case the defendant only started preparing a budget following receipt of the claimant's budget; the budgets had been discussed and only £3k was in dispute; and, the CCMC was extended from 45 minutes to ½ day and was dominated by the relief application. The DHCJ also pointed to the fact that the application for relief was last minute and the claimant was effectively precluded from making a considered response; the late service had the potential to disrupt the orderly agreement of budgets; and, the claimant had not used the CPR as a tripwire. The DHCJ considered the decision below to be at the tougher end of the spectrum but nevertheless a valid exercise of the court's discretion.

30 Unlike Mr Hussain and Ms Dzameh I regard the breach as serious, both in its own right and as a continuing demonstration of D2's lack of engagement with costs budgeting. I also disagree with their contention that D2's failure has not affected the efficient progress of the litigation. It placed an unreasonable burden on C in preparing for the CCMC and also on the court. Even before D2's supplemental bundle, the bundle for

the CCMC ran to 220 pages and the bundle for D1's and D2's security for costs applications added a further 600 pages. D2's supplemental bundle and other consequential and late documents added a further 125 pages to the bundle. As to the burden on the court it is relevant in this case that there was direct email dialogue between the parties' solicitors and the judge (me) prior to the 20.4.20 directions order. This was necessitated by the impact of Covid-19 and lockdown. The important point is that it provided ample opportunity for D2's solicitor to raise relief from CPR 3.14 as an agenda item for the CCMC and have timetabled by directions for evidence and/or submissions an application under CPR 3.14 and/or CPR 3.9. But for the parties' agreement with my suggestion that D2's application could be dealt with as an on paper application, there would inevitably have been further disruption of this litigation by extension of the hearing time. Of course, whether as an on paper determination or a determination at a remote hearing, the time required to be devoted to this application is time diverting judicial attention from other litigation and thereby affecting other court users.

31 I do not regard D2's reason as explained by Mr Hussain as a good reason. Disregarding for the moment the apparent original failure to engage with budgeting in November 2019, it is striking that there was an email exchange between Mr Hussain and Mr Garland on 8.4.20 about service of budgets by email and almost a full further week passed before D2's costs budget finally surfaced. Mr Hussain's evidence in support of the application for relief is perfunctory as to the reason for the failure. I regard it as at least inadequate. The absence of any challenge to Mr Garland's account of the facts in his 23.4.20 letter to Mr Hussain and the content of the documents on the court file relevant to the November 2019 deadline point to a real possibility that Mr Hussain's evidence lacks candour. That said, it is not appropriate or necessary for the purposes of this application to make such a finding, and anyway such a finding should not be made without providing an express opportunity to answer. For present purposes the relevance of the possibility is that it puts in the spotlight the actual explanation given and its brevity and vagueness and that is unquestionably less than complete.

32 There is a further reason why costs budgeting should have been not just at the forefront of Mr Hussain's mind but actioned in good time. That reason is that as long ago as 8.4.19 D2 had made clear its intention to make an application for security for costs. The production of a budget should have been on D2's agenda when preparing the application in February 2020 and completed in good time for proper consideration before the combined adjourned CCMC and application for security for costs. Budgeting should have been a priority in D2's own interests.

33 It is therefore necessary to consider all the circumstances.

34 I keep in mind that it is D1's response to C's claim that has caused C to include D2 as a defendant on a secondary alternative basis, but that does not entitle D2 to take a more relaxed or casual approach to participation as a party in this litigation.

35 I also keep in mind that the sum of money claimed is not small (circa £260k plus £100k for interest and statutory penalty at the time of issue in 2018) but not that large either.

This is relevant in at least two ways. First, this is the sort of litigation where each party's costs may easily become disproportionate to the sum in issue and efficient conduct of the litigation is of paramount importance. Secondly, it follows that cost control and costs budgeting are all the more important.

36 Next, I bear in mind that there are very significant direct and underlying allegations of dishonesty and unreliability made on both sides. These extend to all parties and QML and those behind or in control of the parties and QML. The case against C, albeit by D1, includes that the contract relied upon by C is a false document. This is a case where it is a realistic possibility that the successful party will be awarded costs on the indemnity basis. Of course, costs budgets are supposed to reflect only standard costs, but these are generally the lion's share of a party's total costs. To uphold the deprivation of standard costs at an interim stage may leave that party, if vindicated at trial, regarding the outcome as somewhat wanting in the doing of justice as things turn out. The answer to that is that the defaulting party has only itself or its legal representative to blame.

37 The chronology set out in the first part of this judgment demonstrates an abysmal approach on D2's part to conducting this litigation efficiently including, but also going well beyond, costs budgeting. D2's apparent failure to engage with costs budgeting in November 2019 is not adequately explained by Mr Hussain's evidence. The 20.3.19 proposed allocation notice and the 7.10.19 CCMC hearing notice had drawn express attention to the budgeting requirements. D2 had been provided with C's budget in November 2019. D2 made clear its intention to seek security for its costs at an earlier stage in the litigation (8.4.19). The intention to seek security for costs should have been an added reason to produce a costs budget in good time and then seek to agree or at least discuss the same, which in turn would inform submissions at and the determination of a security for costs application. In the event D2 delayed for months in preparing and lodging its application for security and further delayed in serving the application once issued. D2's failure to engage in budget discussions and failure to serve and file a Precedent R report are also relevant and significant factors when considering all the circumstances. So too are the late application for relief, the very late supplemental bundle containing D2's application, and the even later instruction of counsel and filing of a draft order for security for costs.

38 Four further matters are also relevant. First, D2's costs budget is not in the required form, at least in relation to CCMC costs. Secondly, Mr Hussain's recent witness statements (26.4.20 and 27.4.20) are also non-compliant in that they adopt an out of date version of the statement of truth. Thirdly, Ms Dzameh had to explain the extreme lateness of her skeleton argument and had no alternative but to report that she received her instructions very late. Fourthly, far from setting a tripwire for D2, C alerted D2 to the fact of the 8.4.20 deadline for costs budgeting. A further 6 days passed before a budget was served on C. Placed in context, Mr Hussain's explanation that "*the incorrect date [had been] diarised in my calendar*" leaves a lot unexplained.

39 This review of all the circumstances and D2's conduct over the course of this litigation is revealing and demonstrates inefficient conduct of the litigation and ignorance of

procedural requirements as well as disregard for the rules, practice directions and orders.

40 I agree with and accept Mr Budworth's submissions. I reject the proposition advanced by Mr Hussain and Ms Dzameh that neither the court nor the other parties have been inconvenienced or put to additional cost by D2. I also reject the proposition that there has been no relevant impact on the court and other court users. It is obvious from the need to engage in detail with the history of this litigation in the context of D2's application under CPR 3.9 and/or CPR 3.14 that D2's various defaults, including in particular in relation to costs budgeting, have affected the other parties (at least C), the court, and, consequently, other court users.

41 I remind myself that in the exercise of the present discretion, whether under CPR 3.9 or CPR 3.14, the court must seek to give effect to the overriding objective. That is to further the aim of enabling the court to deal justly with the case and at proportionate cost. Detailed considerations include those set out at CPR 1.1(2). There sub-paragraph (a) refers to ensuring that parties are on an equal footing and (f) refers to enforcing compliance with rules, practice directions and orders. Refusing to give relief does not impact on (a) because D2 itself will not suffer directly if and to the extent that the breach is the responsibility of the legal representative. Further, granting relief in a serious case where the explanation is inadequate and the circumstances are not favourable to the defaulting applicant would not be compatible with CPR 1.1(2)(f).

42 The discretion, as with any judicial discretion is to be exercised in a principled way. It is also important to keep in mind that the objective is not to decide whether or not to mete out a punishment but to decide whether or not the applicant has made out a proper case for being excused from the consequences of CPR 3.14. I do not understand the question to be binary in the sense that unless the case of the applicant warrants full relief no relief should be granted. The language of CPR 3.14 is entirely open : "*Unless the court otherwise orders*". Depending on the facts and circumstances, on a shading spectrum there may be scope for identifying a deserving off-white case which falls short of pure white case but is some distance from black or dark grey case; put another way mitigating and aggravating factors may also be relevant to the exercise of the discretion. Full relief may be over generous but no relief may be tantamount to an unwarranted punishment.

43 Thus, it may also be relevant to look at what is at stake. There is now a budget from D2 and that budget has been reviewed by C. D2's budget claims costs, including incurred costs, totalling some £110k and C offers £80k odd. £8k of the difference is a challenge to D2's counsel's trial fee and the remaining £22k is a challenge to D2's solicitor's time costs. During the CCMC hearing on 30.4.20 Ms Dzameh for D2 submitted that the budget was inaccurate in two respects. First, the balance of counsel's fee between trial preparation (£5k) and trial (£20k) was the wrong way round; and, secondly, the budget had been based on a 3 day trial and D2 accepts the other parties' time estimate of 5 days with the result that both the solicitor's time costs and the disbursement for counsel need upward revision. Allowing for ADR and present contingencies D2's budget excluding trial preparation and trial totals £72k odd and C's Precedent R offer totals almost £56k. Within all these figures all costs up to and

including the CCMC are treated by C as incurred and subject to challenge on assessment, thus C's true assessment of D2's standard costs is a sum somewhat less than £56k.

44 The objective expressed in CPR 3.9 is to deal justly with the application. The question under CPR 3.14 is whether, in the light of the failure to file a budget in breach of a requirement so to do, it is just to leave the budgeted costs, that is the standard costs, of the applicant limited to applicable court fees.

45 In my view it would be an unprincipled and unjust exercise of the discretion in this case to make an order granting full relief from the consequences of CPR 3.14. That would fly in the face of the overriding objective and the particular criteria considered on relief applications.

46 Would it be too severe a consequence to grant no relief at all?

47 I have considered a form of hybrid relief, which could be viewed as a stick and a carrot approach, by (1) refusing any relief in relation to all costs up to and including the PTR (to include ADR and the budgeted contingencies) in order to reflect the gravity of D2's conduct but (2) on condition that (a) a revised budget for D2's trial preparation and a trial based on the 5 day estimate and (b) Precedent R report on the other budgets are served and filed in very short order (less than 5 working days), allowing those budgets to go forward. In the end I have decided against so doing in part because of the additional burden it will place on C and the court, and the knock-on effect on other court users, but mainly because I consider both the attitude and the conduct apparent from the evidence and chronology in this case to be outstandingly bad.

48 In my view D2's conduct shows a persistent failure to engage with the obligation to provide a costs budget and a total failure to engage in discussion of or commentary on opposing parties' budgets. Even in relation to the lateness by several days before the 30.4.20 CCMC D2 failed or refused recognise the seriousness of the failure. Even now there is no Precedent R report prepared by D2. On top of all of that there is a catalogue of other procedural and deadline failures and an apparent lack of comprehension of the overriding objective and responsibilities as a litigant.

49 The result is, as provided for by CPR 3.14, that D2 is to be treated as having filed a budget comprising only the applicable court fees.