



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1569/5/7/22

BETWEEN:

INSTAPLANTA (YORKSHIRE) LIMITED

Claimant

- v -

LEEDS CITY COUNCIL

Defendant

REASONED ORDER (COSTS)

UPON the Tribunal, by order of 7 March 2023, ordering the parties to provide cost budgets to the Tribunal for approval (the “Directions Order”)

AND UPON the parties filing cost budgets at the Tribunal on 17 March 2023

AND UPON the Tribunal, by letter of 13 April 2023, requesting that the parties provide certain clarifications regarding those budgets

AND UPON the Claimant and Defendant responding to the Tribunal’s queries on the 24 April 2023

AND UPON the Claimant filing a revised cost budget on 24 April 2023

IT IS ORDERED THAT:

1. The parties' costs budgets are hereby approved, except the budgets for the phases covering: the second case management conference, the security for costs application, the expert reports, and trial preparation. The Court approves the budgets for those items in the sums set out in the Annex hereto.

REASONS

1. By the Directions Order, I directed the parties to provide costs budgets, by phase, for this litigation. The order provided, at paragraph 7:

“After the budgets have been agreed and/or approved by the Tribunal:

- (a) Each party is to notify the other and the Tribunal promptly if its own budget for any phase is likely to be exceeded.
 - (b) There is to be a (rebuttable) presumption that, if costs are awarded on the standard basis, costs in excess of the approved budget (taking account of any revisions approved by the Tribunal) will not be recoverable.”
2. The parties provided their budgets to the Tribunal in accordance with the order, which required them to consult and provide comments on each other's budget. The Tribunal wrote to the parties on 13 April 2023, raising a number of questions, which the parties responded to on 24 April 2023. Neither party indicated an intention to reduce their budgets in response to the Tribunal's questions, and indeed the Claimant has increased its budget for experts by £25,000 as a result of what is said to be correction of a clerical error. The most recent budget of the Claimant is dated 24 April 2023 and the most recent budget of the Defendant is dated 3 March 2023.
3. There remain a number of areas in these budgets where I have concerns about the level of proposed costs. As is often the case with costs budgeting, it is difficult to anticipate all the circumstances which might prevail, and therefore some care needs to be taken in setting limits on costs which may turn out to be unrealistic. However, the regime set out in the Directions Order does not prevent any party from incurring costs. It merely affects a party's prospects of recovering costs if the party incurring them is ultimately successful, by displacing the usual rules as to costs with a new presumption that the costs above the approved budget level will not be recoverable. That new presumption is a rebuttable one.

4. I am therefore going to set a limit on the costs which I consider each party should be budgeting for certain phases of the litigation. These limits will apply to both parties, in order to ensure there is no inequality of resource. I am conscious that the parties are resourcing the matter differently, with the Defendant carrying out significant work in house and relying on a counsel team for external support, and the Claimant instructing external solicitors and counsel. It seems to me that these decisions should be costs neutral, in the sense that each party should be trying to achieve the most cost effective outcome through the resourcing solution they have chosen.

Application for security for costs/second case management conference

5. The Claimant has budgeted £39,125 for dealing with the Defendant's application for security for costs and the Defendant has budgeted £41,542 for that application. There is a half day case management conference ("CMC") scheduled for 30 May 2023, although it remains a matter for the Tribunal, having seen the application and response, to determine whether a hearing is necessary. There are separate budgets for both Claimant (£24,425) and Defendant (£38,220) to cover the second CMC. The figures budgeted for this hearing seem excessive, and the costs of the security for costs application even more so, given the level of budget already provided for the second CMC. The Defendant's budgets involve senior and junior counsel, which is not necessary for either the application or the CMC generally. Both parties note that the application is an important one, given its potential consequences, but that does not mean it is proportionate to spend the amount suggested. I do recognise that the Defendant is likely to incur more costs, as the applicant in the security for costs application.
6. I therefore limit the budget for the phase dealing with the security for costs application to £15,000 for the Claimant and £20,000 for the Defendant. This excludes any hearing of the application, if that proves necessary, which is dealt with in the budget for the CMC phase below.
7. I limit the budget for the phase that represents the second CMC (as distinct from the first CMC, which costs have already been incurred) to £15,000. This includes preparation time for items other than the security for costs application, as well as attending the virtual hearing itself.

Expert reports

8. The parties have permission to call an expert in economics each. The Claimant's budget for the costs of the expert is £80,000, with £5,000 already incurred. There are estimated costs of solicitors and counsel amounting to £49,125, with a further £6,500 already incurred.
9. The Defendant's budget for the costs of the expert is £197,500. There are estimated costs of solicitors and counsel amounting to £44,284, with a further £3,039 already incurred.
10. The Defendant seeks to justify this level of expenditure by reference to the novelty of the market definition required. That may be so, but the amount of the claim in these proceedings is only in the region of £1,100,000. It seems entirely disproportionate to the amount at issue to spend over £200,000 on the expert process.
11. I will limit the budget for both parties for this phase to £125,000.

Trial preparation

12. The Claimant has budgeted £170,600 for trial preparation (which is more than three times the budgeted costs of the five day trial itself). The Defendant has budgeted £233,200 for trial preparation (which is more than twice the budgeted costs of the trial).
13. The Claimant seems to be budgeting for a considerable amount of solicitors' time in trial preparation (£100,600, compared with a £70,000 brief fee). The Defendant's budget seems to contemplate several counsel preparing for ten days before the trial.
14. In my view, both budgets are excessive and are disproportionate. It seems to me that a five day trial might require preparation of a similar period of time beforehand, and I will allow an uplift of one third on top of that. I will therefore limit the budget for both parties for this phase at 133% of the budgeted figures for trial for each party, being:

- (a) £68,362 for the Claimant, with an additional £7,500 to reflect the additional work required and expenses to be incurred by the Claimant for the preparation of trial bundles.
- (b) £146,034 for the Defendant.

Application

- 15. In relation to each of these budget phases (application for security for costs/second CMC, expert costs and trial preparation), the budgets set by the parties are to be adjusted to the amounts I have specified.
- 16. I remain concerned about the overall level of costs and in particular large sums which have been budgeted for by the parties for disclosure and witness statement preparation. I suspect these budgets contain a fair degree of contingency and are more generous than they need to be. However, it is difficult to form a view on the proportionality of these costs without further intervention and there comes a point where that is likely to add to overall costs, not reduce them. This approach does not however amount to endorsement of those other costs. If and when there are costs claimed by either party, there will be a need for proper justification of those costs actually incurred.
- 17. The position set out in paragraph 7 of the Directions Order will therefore apply to the costs for all budget phases in the most recent versions of each party's budget:
 - (a) at the level adjusted by this order, or
 - (b) or if left unadjusted by this order, then as set out in the most recent budget.
- 18. Any amounts expended over the budget phase amount will be subject to a rebuttable presumption that they are not recoverable, unless increases have been notified to and agreed by the Tribunal beforehand.

Ben Tidswell
Chair of the Competition Appeal Tribunal

Made: 11 May 2023
Drawn: 11 May 2023

Annex

Costs phase	Approved figure
Security for costs application	£15,000 for the Claimant £20,000 for the Defendant
Second case management conference	£15,000 for each of the parties
Expert reports	£125,000 for each of the parties
Trial preparation	£75,862 for the Claimant £146,034 for the Defendant