

**Civil Justice Council  
Consultation on Costs**

**Response on Part 1 – Costs Budgeting**

This response is provided on behalf of the practitioner members of the Pensions Litigation Court Users Committee (see paragraph 3.10 of the Chancery Guide) which is now chaired by Mr Justice Trower and on which sit Chief Master Shuman, two members of the bar and two solicitors (all experienced pensions litigators<sup>1</sup>) and Yvonne Jacobs-Jones, the Chancery Lawyer who acts as liaison between the PLCUC and the Business and Property Courts.

We have been petitioning the Civil Procedure Rules Committee for some time in support of the outcome that costs budgeting only applies in relation to pension cases when directed by the court. We set out below a letter written on 14 July 2022 to Master Dagnall who has recently suggested that we respond to the public consultation.

For the reasons set out in our letter (copied below) our short answers to questions 1.1 to 1.5 are as follows:

**1.1 Is costs budgeting useful?**

**No**

**1.2 What if any changes should be made to the existing costs budgeting regime? }**

**1.3 Should costs budgeting be abandoned? }**

**1.4 If costs budgeting is retained, should it be on a “default on” or “default off” basis? }**

**In answer to questions 1.2, 1.3 & 1.4, costs budgeting should not apply in the High Court unless the parties opt in to costs budgeting and the Judge approves.**

**1.5 For cases that continue within the costs budgeting regime, are there any high-level changes to the procedural requirements or general approach that should be made?**

**As above, if costs budgeting is to be retained it should be opt- in with the court’s approval rather than mandatory.**

Our reasons for these views are apparent from the above letter we sent to Master Dagnall in July a copy of which I set out below

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<sup>1</sup> The practitioner members are Keith Rowley KC, Mark Blyth (head of department at Linklaters), Victoria Leigh (head of department at Squire Patton Boggs) and David E. Grant KC.

Please do not hesitate to make contact in relation to the above response

David E. Grant KC

For and on behalf of the Pensions Litigation Court Users Committee

13 October 2022

Appendix: copy of letter sent to Master Dagnall

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14 July 2022

Master Dagnall  
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Yvonne Jacobs-Jones

By email via [Yvonne.Jacobs-Jones1@Justice.gov.uk](mailto:Yvonne.Jacobs-Jones1@Justice.gov.uk)  
cc Mr Justice Trower

Dear Master

Further note on proposed changes to PD 3F paragraph 5 (costs capping in trusts cases)

I am writing once more for the attention of the Civil Procedure Rules Committee (“CPRC”) in my capacity as secretary of the Pensions Litigation Court Users Committee (“PLCUC”)<sup>2</sup>. I refer to my previous letter of 8 November 2021 (enclosed for convenience) which I understand you have considered. In that letter the PLCUC identified several reasons in support of a relatively minor amendment to paragraph 5.4 of PD 3F, so that it was only necessary to provide a budget of the costs likely to be incurred “where directed by the Court”. The reasons in support of this were:

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<sup>2</sup> See §3.9 of the Chancery Guide.

- If followed, the current wording leads to unnecessary expense.
- As it happens, however, the wording is often if not invariably ignored.
- A prescribed regime for applying for costs out of the fund is unnecessary in pensions cases where costs are invariably agreed as between employer, trustee and representative beneficiary whether borne directly by the employer or indirectly, via an order out of the fund (as would be the case in private trust matters).

I have been forwarded your email of response of 21 February 2022 at 15:40 hrs to Yvonne Jacobs-Jones, the Chancery Lawyer who sits on the PLCUC, in which you stated the following:

*I am unsure as to what may be the CPRC's views with regard to alterations to any costs budgeting rules, and in particular at this moment in time, but it would be helpful on any basis if your committee could (i) give an idea of what sort of costs are involved in the preparation of these budgets (assuming a full Precedent H, although a useful comparison might be the preparation of a first page of a Precedent H only) (ii) confirm whether this rule is generally ignored in practice, and if so, what Chancery Masters tend to do (if anything) about it (iii) say whether just filing a first page Precedent H might be thought to be a possible compromise solution (iv) as to with whom it would seem appropriate for us/the CPRC to consult regarding this topic.*

The PLCUC discussed your response two days later at its first meeting of 2022. Because no one on the PLCUC has actually prepared a budget in a pensions case there is an absence of evidence as to what the costs involved would be although the consensus is that the costs are, or would be, significant – certainly well into the thousands of pounds and potentially tens of thousands (plus vat).

Following that meeting, Chief Master Shuman asked Deputy Master Teverson (as he now is) for his views on the points you raised in light of his experience of cost capping in trusts and – as is particularly relevant for the PLCUC’s purposes - pensions cases.

As you are doubtless aware, Paul Teverson was appointed a deputy Master in 2000 and was a full time Master from 2005-2021. From 2016 he was a member of the PLCUC and the designated Pensions Master to whom pensions cases could be specifically assigned by an

application to the Chief Master: see the text still contained at the time of writing in §15.12 of the Chancery Guide<sup>3</sup>).

In his response, Deputy Master Teverson advocated a more radical approach to Section II of PD 3F in the case of trusts cases generally. In non-hostile claims (the vast majority of pensions disputes) there is consensus between the parties as my previous letter explains. Deputy Master Teverson contrasted this position with hostile trust, estate or probate proceedings where litigants (whether beneficiaries or persons asserting an interest in the fund) usually aim to recover costs either from a beneficiary opponent personally or from that beneficiary's share of the fund. Recovery of their costs out of the trust fund is often only a fall-back position if the litigants lose in whole or in part. They do not want to predict that at the outset. The litigation risk is that the losing party ends up losing their share of the trust fund or estate as a result of a costs order against them or attached to their share of the fund. Section II does not prevent that risk.

Section II requires notice and a budget at the outset of the claim or defence. This does not fit with the litigation aim of beneficiaries in hostile trust litigation. It does not fit with the position of trustees, especially professional trustees who, absent improper conduct will be entitled to rely on their indemnity and CPR 46.3 (limitations on the court's power to award costs in favour of trustee or personal representative).

Notwithstanding the above, Deputy Master Teverson acknowledged that, in exceptional cases, costs capping may be required to protect a trust fund. This may be at any stage of the proceedings. The approach in paragraph 1.2 of Section I of PD 3F is sensible and should be applied to trust proceedings. The additional provisions in Section II are unnecessary additions. They do not fit with the realities of trust and pension litigation. Nor do they fit with the court's discretion in Part 8 claims to apply costs budgeting when managing the claim post-issue.

While I appreciate that the CPRC may well want to consult more widely, the above logic borne of the considerable experience of one Chancery Master supports the removal of Section II in its entirety. If this is not deemed desirable or appropriate, the PLCUC would support as a fall back the more modest revision previously advocated and set out above in my letter of 8

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<sup>3</sup> A new Guide is to be published shortly.

November 2021. As matters stand we see no benefit to the mandatory provisions in Section II of PD 3F.

I hope the above helps the CPRC consider further the PLCUC's proposal.

As before, please do not hesitate to contact me with any queries you may have arising out of the above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D E Grant', is centered on the page.

David E. Grant QC

For and on behalf of the Pensions Litigation Court Users Committee

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