



# Normanton CHAMBERS

EQUALITY | EXCELLENCE | EQUITY

## Shoshana Mitchell A Late Costs Budget: What do I do?

📅 Oct 2021

☎ 0300 0300 218

✉ Email Shoshana:

shoshana.mitchell@

normantonchambers.com or

clerks@normantonchambers.com



## A LATE COSTS BUDGET: WHAT DO I DO?

What happens if you file a late costs budget? Do you simply accept that the budget comprises only of the applicable court fees? The answer is, quite simply, no!

### PROACTIVE, NOT REACTIVE

It might sound obvious, but the best way to avoid the sanctions associated with a late costs budget is to be proactive; file the costs budget on time and make it a priority. It is often forgotten that the costs budget should be filed with the directions questionnaire for cases valued at under £50,000. In any other case, the budget must be filed no later than 21 days prior to any case management conference. These rules apply unless a court orders otherwise. If in doubt, file and serve the costs budget as early as possible.

### RELIEF FROM SANCTIONS

What happens if you do not heed the warnings and file a late costs budget? The first step is to make a prompt application for relief from sanctions. The court will consider the Denton Principles, namely (1) the seriousness and significance of the failure, (2) the reason why default occurred and (3) all the circumstances.

Generally, the courts have taken a robust view following the late filing of a costs budget. In Mitchell MP v News Group Newspapers Ltd [2013] EWCA Civ 1537, the Court made it clear that relief is unlikely where there had been a long delay and where there was no adequate excuse, such as overlooking the deadline due to an administrative error.

In Manchester Shipping Ltd v Balfour Shipping Ltd & Anor [2020] EWHC 164 (Comm), the Court highlighted that relief would depend on the background and the particular facts of the case. The application will, therefore, be subjective. In this case, the Claimant and Defendants established a timetable for the procedural steps, avoiding any deadlines in the Christmas holiday period, up to the Costs and Case Management Conference (CCMC). The Defendants assumed that as the pre-CCMC timetable made no provisions for the costs management steps, the Claimant had intended that costs management be dispensed with. The Defendants filed their budget on 8 January 2020, some 13 days

late. Despite the seriousness of the breach, the late budget had not delayed the filing of the bundle or impeded the CCMC. The default was inadvertent and borne out of a reliance on the timetable which was silent as to the costs budget. In all the circumstances, the Court considered it was appropriate to grant relief from sanctions. However, it was stressed that the application for relief from sanctions should be sought as soon as practicable.

### INCURRED COSTS

If the Court is unwilling to grant relief from sanctions, then the following case may prove useful. The case of Hardy v Skeels (2021) Stoke County Court involved a Claimant filing the costs budget one day late. His Honour Judge Rawlings held that the sanction of the budget only comprising of court fees applied to future rather than incurred costs. The Claimant was able to show that the parties in Mitchell had agreed that the sanction only applied to future costs and the Court of Appeal had proceeded on this basis. Therefore, following the late filing of a budget, it is worth arguing that the sanction applies only to future costs, and it does not impact incurred costs.

### OVERVIEW

In summary, what do you do if you file a late costs budget? First, promptly apply for relief from sanctions. Second, if relief from sanctions is not granted, then submit that the sanction should only apply to future costs.

SHOSHANA MITCHELL  
Normanton Chambers