

Adjusting budgeted costs (RNB v London Borough of Newham)

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Dispute Resolution analysis: Will courts intervening in budgeted costs become the norm? Shail Patel, barrister at 4 New Square, unpicks the curious reasoning behind the decision for the courts to be able to adjust budgeted costs and says if the decision survives an appeal it would make interference with budgeted costs the rule rather than the exception.

Original news

RNB v London Borough of Newham [\[2017\] Lexis Citation 269](#)

The claimant had suffered abuse as a teenager perpetrated by an employee of the defendant local authority when a resident in a home which it then operated. In October 2015, proceedings were issued. In July 2016, the claimant's costs budget was filed and served (Precedent H hourly rates stated). In August 2016, at a costs case management conference, a costs management order was made, whereby the claimant's costs budget was agreed under [CPR 3.17](#) in the sum of approximately £140,000. In January 2017, by way of consent order, the case was settled on terms that the claimant would receive damages of £250,000, plus costs to be assessed if not agreed. The claimant thereafter sought costs at approximately £120,000. In June 2017, at a detailed assessment costs hearing, the hourly rates for the claimant's incurred costs were reduced. In those circumstances, the court reserved decision on whether those reduced rates should also apply to the claimant's budgeted costs.

What is the significance of this case?

This is one of the first decisions on when the 'good reason' test ([CPR 3.18\(b\)](#)) can be satisfied so as to permit a costs judge to depart from an approved or agreed budget.

The question in this case concerned a reduction in hourly rates and, in particular, whether the reduction in hourly rates for incurred costs amounted to a good reason to revise down the budgeted costs to reflect the new rates.

The answer, according to Deputy Master Campbell, was in the affirmative and he reduced the budgeted costs accordingly.

A reduction in hourly rates of incurred costs in a detailed assessment is the norm. If this decision is followed, it is of wide-ranging importance. It would make interference with budgeted costs the rule rather than the exception.

How does this case fit in with other developments in this area of the law?

The decision follows on from *Harrison v University Hospitals Coventry and Warwickshire Hospital NHS Trust* [\[2017\] EWCA Civ 792](#), [2017] 3 Costs LR 424 where the Court of Appeal held that a costs judge was precluded from reducing costs falling within the budget unless there was 'good reason'.

The budget was not merely a cap—it negated the need for any further assessment of the budgeted costs absent 'good reason'.

While the court in *RNB v London Borough of Newham* cited and relied upon *Harrison*, the outcome does not sit comfortably with the Court of Appeal's approach. *Harrison* brings clarity and should shorten or avoid the need for detailed assessment altogether in most cases. In light of *RNB*, a paying party can (it would seem) open up budgeted costs, at least on hourly rates, in most cases.

How helpful is this judgment in clarifying the law in this area?

The decision is controversial. It relies on a curious piece of reasoning. It is clear from the rules that, when budgeting, the court is not concerned with fixing or approving hourly rates (PD3E para 7.3). Nor indeed does the court 'reduce' time spent as such.

The court is simply approving a reasonable and proportionate sum of money for a phase. Deputy Master Campbell dismissed that point on the basis that, in practice, courts did comment on hourly rates when budgeting. However, the final decision was justified on the basis that, otherwise, paying parties would never get a chance to challenge hourly rates in budgeted costs.

It is unclear whether this will survive an appeal. The alternative basis for the decision, that the budgeted costs could be reduced on the grounds of proportionality (which is permitted by *Harrison*), may make an appeal unlikely in this case. Nevertheless, challenges to the principle are sure to follow as paying parties invoke it.

What are the practical implications of the judgment?

Paying parties will be challenging hourly rates in budgeted costs wherever there is scope for reducing them generally on assessment (which is almost always the case). This will, of course, only work if the budgeting judge has not, in some way, approved them. Thus the fight will move to the budgeting phase, where expectant receiving parties would be well advised to have the hourly rates blessed by the court if possible, or indeed agreed.

Interviewed by Stephanie Boyer.

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