

# When is an estimate a budget?

While using estimates to prepare budgets may seem logical, in reality it is attempting to fit a square peg in a round hole: **Jack Ridgway** explains why



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## IN BRIEF

- The difference between an estimate and a budget is not always clear to solicitors.
- It is important to note that an estimate is not a budget.
- Costs budgeting no longer allows a solicitor to kill two birds with one stone.
- Prudent litigators must ensure the two remain distinct.

Lord Justice Birss asked at the Association of Costs Lawyers London Conference in November: why is there a distinction between an estimate and a budget?

While it may appear logical to suggest that the regular estimates given to the client should form the basis of a party's budget, and therefore, are in essence one and the same, this logic fails to grapple with two key issues, namely:

- When an estimate is actually an estimate; and
- The differences between Precedent H and what the client wants.

## What is an estimate?

Providing your client with an estimate is one of the most basic tenets of the solicitor and client relationship.

Where possible, a solicitor is required to provide their client with an estimate of fees and disbursements. This should be provided at the earliest opportunity and may be to a certain stage in the litigation, a specific time, or to the conclusion of a claim. It should also be regularly updated if changes result in the same being no longer inadequate, and the client should be able to rely on an estimate

as a genuine indicator of their expected legal fees.

The power of an estimate is not only based on the information provided, but also the degree and reasonableness of the client's reliance on the same. The potential issue of an estimate becomes more apparent.

An estimate should be accurate; however, it is not a quotation, and may be exceeded. The amount to which it can be exceeded is dependent on a number of factors; however in *Harrison v Eversheds LLP* [2017] EWHC 2594 (QB), [2017] All ER (D) 08 (Nov), costs that were double the estimate were found to be unreasonable given the reliance placed by the client on the second estimate.

## Budget versus estimate

Unfortunately, when the court chose to replace costs estimates with budgets, they deprived the solicitor of the opportunity to kill two birds with one stone, instead creating two distinct stones.

It will be rather obvious to those who provide their client with an estimate and prepare a costs budget using the Precedent H form. A client's interest in their cost liability will be either to a specific point in the litigation, a specific date in the future (ie the next six months), or the costs to trial.

A client rarely has any interest in how much they may incur in a specific phase, in particular given that unlike the directions ordered, the Precedent H format does not follow a strict chronological order.

The first issue is that it cannot be readily discerned how much costs will be spent up to a specific point in the litigation. A schedule of loss and witness evidence may

be updated before expert evidence in one case, but after it in another. The Precedent H does not allow one to alter the order of phases. Phasing is helpful *inter partes* and at the detailed assessment stage, but it fails to answer a client's key question: 'How much will I owe my solicitor at X point?'

The second issue is that a solicitor must sign a statement of truth when serving a Precedent H which confirms that 'This budget is a fair and accurate statement of incurred and estimated costs which it would be reasonable and proportionate for my client to incur in this litigation'. The issue here is again twofold.

While proportionality may apply on an *inter partes* assessment, proportionality does not exist between solicitor and client. Therefore, a solicitor's estimate by its very nature may include items which are not proportionate.

When budgets were introduced, the rules of proportionality were changed, breaking the link between reasonableness and proportionality codified by *Lownds v Home Office* [2002] EWCA Civ 365, [2002] All ER (D) 329 (Mar). Since April 2013, costs can be reasonable but disproportionate. Therefore, a budget cannot reflect all of the costs a client is due to pay their solicitor.

## The issue of estimates & budgets

The importance of an estimate does not equate to the importance of a budget, nor do the costs in the budget reflect the true costs to the client.

These two issues are well exemplified in the recent case of *Guest Supplies International Ltd v Ince Gordon Dadds LLP* [2022] Lexis Citation 1460. The dispute arose between client and solicitor as to the fees payable, with a principal preliminary issue being that the costs should be limited to an initial estimate of £50,000.

However, the judge found (at [170]) that the initial estimate of £50,000 was 'so heavily qualified as to be effectively meaningless'.

It was also noted that (at [5]) that the incurred costs in the costs budget totalled just over £150,000 with VAT but that the client had already received invoices totalling £174,711.40 with VAT.

While using estimates to prepare budgets may seem logical, in reality it would be attempting to fit a square peg in a round hole. The prudent litigator will ensure that their budgets and estimates remain distinct so as to avoid the risk of the client placing a reliance on an estimate that does not reflect the charges they are going to incur. **NLJ**

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