In the High Court of Justice [2021] EWHC 679 (QB)

QB-2019-001716

Queen's Bench Division

Master McCloud

Between

MISS SARAH JANE THOMPSON

Claimant

-v-

NSL LIMITED

Defendant

MR MARCUS GRANT, instructed by Bond Turner, for the Claimant

MS ANNA SYMINGTON, instructed by DAC Beachcroft, for the Defendant

Judgment

1. This is the claimant's application to revise parts of a budget originally approved by a District Judge in the county court. The application was made some time ago but listing delays have meant that between the application to revise and now, the costs incurred are significant but that is not due to particular delay by the Claimant in making the application (subject to the Defendant's argument that the budget ought to have been revised or at least the matter dealt with in some way at the hearing before the district judge).
2. The Defendant does not seek a corresponding budget variation but has declined to indicate whether the costs in fact incurred by it have exceeded the approved county court budget. This is a QOCS case and it is said by the Claimant that the refusal is tactical since the Defendant is unlikely to recover its costs from the Claimant in any event, and in effect the modest unrevised costs in the approved defendant's budget are tactically placed before me so as not to appear to make concessions as to the need for additional sums in their opponent's budget at all.

Claimant's position on 'significant developments'

3. The underlying claim is a personal injury claim which started life in the county court valued at about £150,000 but is now valued at about £3.9m and was transferred to this court. As far as the Claimant is concerned £150,000 was an indicator of value and complexity at the time the budget was filed and served and the deadline under the CPR for doing so was reached but that after drafting and submitting the budget, matters changed.

4. After service and filing of the budget the Claimant received medical expert evidence in the period of less than a month between the deadline for provision of the budget and the budgeting hearing before the District Judge, which caused the Claimant to be aware that the value of the claim would need to increase to somewhere in the region of £3.9m.

5. The increased value of the claim was known by the court and parties by the time of the county court budgeting hearing, at which after certain directions, the case was transferred to this court no doubt partly as a result of that value change. However the application today (made soon after the transfer to the High Court took place) is for upwards revision based not so much on value alone but on the argument that the case has turned out to be in certain key respects more complex and more demanding of legal time and cost than was reasonably anticipated when the budget was drafted, now that the case has developed in the period following the initial realisation that the value had increased, and indeed that it was not really feasible to seek to revise the budget before the District Judge in part because the impact of the new medical evidence, other than on value, was not yet clear.

6. Mr Grant for the claimant took me to the relevant test which currently appears in CPR 3.15A which states "(1) A party ("the revising party") must revise its budgeted costs upwards or downwards if significant developments in the litigation warrant such revisions."

7. The rules provide no particular guidance and I was referred to a note in the White Book 2020 to the effect that a significant development is any event circumstance or step which is of such a size and nature as to go beyond the circumstances which were taken into account expressly or impliedly in the budget previously approved. The note suggests that a development is taken into account impliedly if it was or should have been (reasonably) anticipated by the applicant.

8. I was taken to BDW Trading v Lantoom Ltd [2020] EWHC Civ. 2744 (TCC) in which it was said by Mr Justice Kerr that the amendment to create rule 3.15A did not change the thrust of the previous case law under rule 3.7 (the predecessor to that rule) and that once the 'threshold' of a significant development is met the court is entitled to acknowledge that may have knock-on developments to subsequent phases in the case.

9. I was also referred to Al-Najar v The Cumberland Hotel (London) Limited [2018] EWHC Civ. 3532 (QB) a decision of my brother Judge Richard Davison, QB Master. One aspect particularly relied on by the Claimant was Judge Davison's indication that as a matter of policy the bar for what constitutes a significant development should not be set too high because otherwise parties would always err on the side of caution by making over-generous assessments of what was to be anticipated. Judge Davison also cross-referred to a decision of Judge Marsh, Ch.D. Master, which was a careful and useful decision by him in Sharp v

Blank and Others [2017] 3390 (Ch.D.) in which it was said that it is obvious that a mistake or failure to appreciate what litigation actually entails will not amount to a significant development, since a development connoted a change to the status quo that had happened *'since the budget was prepared'*.

10. It will be obvious that the reference by Judge Marsh to the development being 'since the budget was prepared' is relevant on the particular facts of this case where, as noted, expert evidence arrived with the claimant's representatives in the relatively short period between the date of preparation and service/filing of the budget for the District Judge and the date when the budgeting hearing took place.

11. I had a witness statement from the Claimant's solicitor and also a statement from the solicitor for the Defendant. From submissions and the evidence from the claimant's side some relevant points are as follows: in May 2016 about 1 year after the accident the defendant agreed to fund an immediate needs assessment. That assessment recommended a number of relatively costly steps by way of neurorehabilitation, but the defendant declined to fund those because it said it had concerns over causation in the claim. The claimant it appears then sought to obtain as much NHS treatment as possible instead of that recommended in the INA. The case was described to me as having appeared as as a possible or probable case of mild traumatic brain injury and vestibular concussion and symptoms which 'mushroomed' into a neuropsychiatric condition whereby the claimant became seriously disabled and needed assistance from the State in her day to day care.

12. As at the end of the Limitation Period the parties had available a neuropsychological report and an orthopaedic report relating to soft tissue injuries. It was clearly a neuropsychological case for the most part and as at 2017 the prognosis was good and it was thought she would make a good recovery. The claim was issued in the county court and limited to £150,000. However the particulars of claim did indicate that neurological, neuropsychiatric and audiovestibular evidence was to be commissioned which was not then to hand. The difficulty said to have been faced by the claimant was in obtaining a neuropsychiatric opinion. In autumn 2018 an audiovestibular report was obtained which among other things provisionally diagnosed 'PPPD' which is a persistent postural disorder of a functional neurological kind which would hinge on the view of the neuropsychiatric evidence yet to be obtained.

13. As at the end of 2018 the Brighton County Court put the parties on notice of a CCMC to take place at the end of February 2019. Evidence in the form of a supplemental letter written at the Defendants' request clarifying the chronology of events, states that as at 4 October 2018 they obtained a quote from a care report, at a known fixed cost which was included in the budget as incurred once the care expert was instructed (but the report not yet at that stage written). The care report was sought on an urgent basis so that it could if possible be placed before the court at the CCMC. That report, and the report of the neuropsychiatrist were not yet available as at January 2019 (he had seen the claimant in December 2018) when the materials for the CCMC came to be put together as the date for budgets was on the horizon. The documents were finalised on what was available, namely the audiovestibular report, orthopaedic report, 2017 neuropsychology report and a report from 2018 from a neurologist who diagnosed probable mild traumatic brain injury and opined that prognosis would largely depend on the psychiatric evidence. It was I think therefore reasonably clear that things

could change, in other words the nature of the case could change depending on the neuropsychiatric evidence (and connectedly the care report) not yet received.

14. The costs bundles were prepared and the costs budget served on 1 February 2019 based on the case as it was put in the light of the expert evidence then to hand. At that point neither the care report nor the neuropsychiatric report had been received. Those arrived on the 4th of February 2019 (the care report not yet even then being in final form since it then had to be updated in the light of the neuropsychiatric report which was received by the solicitors on 4th Feb). The final care report was received on 11 February 2019.

15. In the light of the then medical expert and care evidence just received counsel Mr Grant was instructed to and did plead a revised schedule of loss which was signed on 12 February and which significantly increased the value of the claim in the light of that new expert material. That was pleaded at £3.9m and counsel indicated that this was a result of a very guarded prognosis from the neuropsychiatrist and that it was probable the claimant would not be able to return to a job in the Prison Service and would need significant care.

16. As at the time of preparation of the budget the claimant's solicitor was aware it was likely to be a case valued higher than £150,000 but it was argued the true value could not be appreciated until the care and neuropsychiatry reports were available and that expert input from counsel was obtained to evaluate the case and plead a revised schedule.

17. The claimant in the original budget assumptions for example indicated she had already discharged much of her disclosure obligations since she had disclosed 5 lever arch files and some follow up disclosure requests were assumed, and that a likely 4 day trial in the county court with say 8 files would be needed at trial. That was the position as described to me as at the point the costs budget was signed off and served. It was said therefore that the significant developments in this case were:

i. Significant delay to the eventual trial date. At the time of the budget it was assumed the trial in the county court would take place in about 20 months from the CCMC whereas now, after transfer up, the likely period is more like 37 months. Even at the date when the revised schedule was drafted on 11 February, the draft order foresaw that a trial would take place on the first open date after 1 April 2020. That was said to be important since what in fact happened in Brighton at the CCMC was that the court had to take into account that the Defendant had encountered difficulty securing an appointment with their neuropsychiatrist who could not provide an appointment and report until 21 months after the date of the CCMC and the claimant had been unaware of that difficulty at the time of preparing the budget. This meant that a further round of medical experts had not been foreseen when drafting the budget.

   Permission was given by the District Judge 'on the day' at the CCMC for the Claimant to serve final versions of reports by December 2020, so as to enable the Claimant to have up to date evidence in parity with the Defendant. However it was said that the Claimant could not realistically say in the hearing ('on the hoof' in effect) what the additional work by the experts would cost and could not in the hearing realistically contact experts and get quotes for further reports. The simple fact of delay therefore was increased expert cost not previously envisaged.

ii. At the time the budget was prepared it was envisaged that disclosure would be not much more, ultimately, than 5 lever arch files and the total documents for trial would amount to about 8 lever arch files. In fact disclosure had by the hearing before me grown to 20 files and there had been significant requests for disclosure from the Defendant to which the claimant had acceded given the value of the claim. This being a functional neurological case, counsel indicated that the Defendant was for example seeking disclosure about any salient matters relating to the previous life stressors of the Claimant which might undermine the Claimant's case, and I was shown a letter by which it was said by the solicitors for the Claimant that the level of disclosure requests was becoming oppressive. There were requests for example for details of all job applications and documents relating to them, about approximately 70 job applications the claimant had made, also help had been sought for the claimant from organisations such as Headway, housing records, details of an assault in which she was the victim, transcripts of the police interviews, and quite separately she had been an ear witness to the murder of a neighbour in the past and there were disclosure inquiries from the Defendant about that to explore her life stressors. The relevance of course is that where a functional neurological disorder is alleged the Defendant is entitled to point to alternative aetiology of the condition. So, more extensive disclosure than foreseen was said to be another significant development.

iii. Ms Khatun in her statement also gave evidence as to why in the case of this Claimant the lawyers' time was longer than it might usually be. In short the Claimant has a short working memory, and reasonable adjustments such as short meetings, speaking clearly and repeating things etc. That was not a new or significant development but the knock on effect of that was that the extensive documentation and additional expert reports took even longer and consumed more expense than expected at the time the budget was drawn. The extra disclosure also meant that the second set of expert reports were more expensive than the original ones, again, due to the volume of documents. The experts of the sort in this case were inherently costly because for example audiovestibular testing requires equipment and are long, neurospsychology and neuropsychiatry reports are long and the more the case started to 'tilt' towards neuropsychology/psychiatry the more costly that became because of the need to consider all relevant life events.

18. The fact that by January 2019 when the Defendant had been given a statement from the Claimant setting out her difficulties, the Defendant was only given a budget for about £15,000 profit costs by the District Judge (which, as the case now stands is barely 19% of the Defendant's counsel's expected trial fees) and that was said by Mr Grant to be indicative of the appearance of the case in early 2019 as not being one which was especially heavy on disclosure, even from the Defendant's perspective but which as at today, given the size of the proposed counsel's trial fees for the Defendant, was evidently being seen as significant and complex even by them. (The District Judge had not budgeted for trial preparation and trial and hence the budget for those phases is indicative of what both sides regard as appropriate now, and I have already budgeted those phases on the current facts).

19. The budget revision application was made in September 2019, but at that point the hearing before me was (I am not sure why) only listed as a CMC in October 2019, and hence an additional date was set for budgeting purposes including budget revisions and budgeting of the phases not dealt with by the District Judge.

20. By the date of this hearing (of the variation application) the approved budget has been exceeded significantly. The Defendant was criticised by Mr Grant for its refusal to disclose the current incurred costs position on its side, as being likely to make my job harder, since the fees for (eg) the audiovestibular expert in the Defendant's budget of £3160 were surely, it was said, not realistic given the work the expert must have had to do in the light of the current state of the case. Likewise it was not realistic to suggest that a grade B fee earner could have digested 20 lever arch files in just 16 hours.

21. In the decision of Judge Davison (mentioned above) the policy point was that one must not set the bar too high for a revision to be permitted lest the effect be over-estimated budgets so as to err on the side of caution. In that case there were about 3250 disclosure documents, about double what had been expected. He accepted that that was a development of significance and that it was not an answer to say (see para. 9) that disclosure on that scale 'could' have been foreseen. That would be to encourage bloated budgets. Similarly it was said to be unreasonable in this case to expect a claimant to effectively inflate a budget by not projecting ahead for large levels of disclosure merely because the case in a general sense was a case involving possibly psychological issues. There was confidence from the relevant expert at the outset that the prognosis was good, but that had changed with receipt of the subsequent care and neuropsychiatry reports.

22. I should not therefore set the bar too high and allow the Defendant to use a 'retrospectoscope' expecting the Claimant to have treated the case as larger and more extensive than she reasonably appeared it to be at the time. Notably for example the figures for the trial costs on the Defendant's side which were not budgeted by the District Judge had been estimated by the Defendant to amount for junior counsel to £16,000 despite the new value of the case being known before the District Judge, yet now they were put forward in terms of leading counsel at £80,000. That was a suitable comparator with the Claimant's outlook on the case, and an indicator of the reality that the case had become more extensive than before.

23. Mr Grant took me back to the case of BDW Trading above. Disclosure there had been under-budgeted. The assumption was for 50,000 documents whereas the eventual figure was around 250,000. A party could have front loaded the budget but the court was satisfied that was a significant development. The judgment in that case indicated at para. 34 that there were knock-on effects, on subsequent phases, of the disclosure exercise being five times larger and that its impact was already captured adequately in the later phases of the budget already approved (see para. 45 also).

24. If I am therefore satisfied that the significant development test is met then I should revise the phases, it was argued. A party, in the light of my judgment in the *Mitchell* case and on appeal, and in the *Denton* case, had to put in its budget on time and not place itself in the position of delaying doing so, or doing so on time but then facing the need for relief if it filed and served a greatly revised budget shortly before a CCMC and before the true impact of the developments which had just occurred could be appreciated and had bedded down. It was better that a party in that situation made a considered set of revisions and an application to revise a budget after taking stock.

25. It was accepted that if I did proceed to revise the budget, the process would be fairly rough and ready and that some figures would have to be reduced for the budgeting process to

keep them proportionate as costs potentially recoverable from the Defendant. Submissions were made as to the figures sought and I shall return to that below after dealing with the threshold test as to whether a budget revision should be allowed.

Defendant's position on 'significant developments'

26. The revisions sought (subject to concessions made by the Claimant) were in excess of an extra £200,000. Much emphasis was put on the drafting of the budget but it had been open to the Claimant to have re-drafted it before the CCMC. In effect I was being asked to go behind the District Judge's approved budget on the basis that there were significant developments between the filing of the budget in the county court and the date of the CCMC there. I was asked to consider what was known and what had been in the court's mind at the date of the budgeting hearing. The court had been appraised of developments.

27. What did the Claimant know at the time of the hearing? The Claimant's own statement from 2018, said Ms Symington, gave considerable detail about the injuries and impact. For example that she had lost her career. At para. 51 for example she discussed lost memory, and later her musculoskeletal injuries, impact on lifestyle, that she was on benefits and had applied for over 70 jobs. She referred to having a support worker, and in a nutshell it was said by the Defendant that the claim was clearly significant and the evidence of the neuropsychiatrist made not a lot of difference to the case.

28. There was at the CCMC the revised schedule of loss which was for £3.9m and very detailed. It was before the District judge at the CCMC. There had also been a case summary filed before that hearing, and hence known to the District Judge. The Defendant had put the Claimant on notice that there would be a long wait for their own experts. The court gave permission for those reports despite the delays, at the time of budgeting, and gave the Claimant permission to update theirs later. Yet at no point in the budgeting hearing did the Claimant apply to vary the budget or ask for a recital that the budget could be updated at a later date, or propose figures on an estimated basis at the hearing, or apply to come back to the District Judge.

29. As to disclosure it was not helpful to refer to '20 lever arch files' since those could contain for example the extensive expert reports and so on and not be a useful figure. This was not a case which in many respects went beyond normal disclosure in such cases, save perhaps the fact that disclosure was sought and given in relation to the assault on the Claimant and in relation to the fact that the claimant had been an ear witness in a murder case. Hence the disclosure had been, mostly, predictable.

30. Returning to what the Claimant reasonably should have expected, and framing the point as being one to be looked at on the date of the hearing, the budget assumptions before the District Judge foresaw extensive disclosure and disclosure requests which would be reviewed by the experts. That was before the District Judge, and it was also stated that benefits records would be needed. There were no surprises and nothing had changed as at the hearing before me from what was anticipated as at the time of the budgeting hearing. It was suggested that this was a case of dissatisfaction with the budget approved by the District Judge. The updated medical appointments were known to be needed at the hearing, and the disclosure was anticipated at the time per the budget assumptions, and the revised claim value was known.

31. Furthermore it was said that it is common for parties to produce revised budgets at a CCMC which are not the same as those exchanged. Why therefore did the Claimant not revise her budget in the period between drafting and filing and the hearing? The correct procedure should have been to apply to revise the budget at the CCMC before the District Judge.

32. I interjected to check with the parties what the rules were as to budget revisions as at the time of the CCMC before the District Judge. The rules then required revision to the budget to be made if there was a significant development, as is still the case in the amended rules now in force. The express requirement now in the rules that an application must be made 'promptly' was added subsequently to the CCMC in a rule amendment not then applicable, and it appeared from guidance in Blackstones civil practice that the revision had to be done 'before conclusion of the claim'. Neither side however argued that the change made a difference in this case.

Decision

33. This case differs from previous decisions in the available case law, in that it is said the significant developments in this case took place in the period between the last date for submitting the proposed budgets (a deadline which was complied with) and the date of the budgeting hearing which was later in the same month. Hence we see in the case law some inconsistency about whether the significant development in the case must be one not reasonably anticipated at the date of the budget, or whether the operative date is the date of the budgeting hearing. That is unsurprising in that the point has not been one under consideration.

34. Was there a significant development which was not one which ought to have been reasonably anticipated before it happened? I think first a point needs to be made about the concept of 'a development'. The term perhaps unfortunately might be taken to mean that one has to point to a specific event, at (in principle) a specific date so as to establish a 'development', and counsel for the Claimant did seek to point for example to the receipt of the Care and Neuropsychiatric reports on a date after the drafting of the budget, and to the fact that at the hearing the timetable for experts from the Defendant was set at a lengthy duration which could not have been anticipated when drafting the budget.

35. However there will be cases, and I think this is in part one of those, where the nature of the claim evolves and a time comes when it is reasonably appreciated that it is a different type of beast from the claim which was initially pursued, and that one may not be able to point to one specific event which led to that so much as a collection of factors. A change of value may not alone be enough. If a solicitor was to be expected to 'jump' at the earliest possible date when some development takes place but before it is reasonably clear what the effect will be, then one would see inflated, precautionary budgets of the sort which Master Davison I think rightly saw as something to be avoided. I agree with his general point that setting the bar too high in budget variation cases could as a matter of policy be undesirable.

36. In this case I do not think it can fairly be said that the solicitors for the Claimant ought reasonably to have foreseen the fact that the value of the claim would increase as much as it did, after the budget was drafted, to £3.9m from an initial value of £150,000: rather they could reasonably be expected to anticipate that such was possible but to an unknown extent, depending on the expert evidence later to be obtained the content of which was not

known. Mere possibility I think would be to set the bar too high and to encourage inflated, precautionary budgets. In this the content of the expert reports in care and neuropsychiatry set in motion, first, an immediate need (but after the date of the budget) to re-plead and increase the value of the claim, and second, a less immediate process by which the impact of the expert evidence on the nature of the case would become apparent in a relatively short period of time as the matter was considered, but not immediately. I accept also that, though less significant, the unexpected fact that the defendant's experts would not be able to report for a very considerably longer period than expected was also a significant development.

37. In terms of the point in time at which a significant development takes place, in my judgment if a development requiring a revised budget takes place before the date by which the budget has to be filed and served then it must be taken into account in the budget. There may be cases where the development takes place or is realised so closely before the budget deadline as to need an application for an extension of time which one would expect to be agreed and/or granted if reasonably required.

38. But what of the position where, as I accept, significant developments take place after the budget is filed and served and before the CCMC, and where the CCMC is held quite swiftly after that date (in this case, the same month and only a couple of weeks after the revised draft schedule of loss was produced in the light of the new expert evidence)?

39. In my judgment best practice if possible would be for the party needing a revision (where the significant development threshold is crossed after after service of the budget and after the deadline has passed) to competently draft a revised budget, with access to the necessary costing expertise, and to provide it in proposed form first (as the rules currently require before an application is made to the court) to the other side with a view to agreement. That takes time to do properly especially where a change is a very significant one: it is unhelpful to do it less than competently. If it is not agreed – and the other party has been given a fair time to consider it – only then should application be made to revise the budget (and that, as the rules now say, must be done promptly once it is needed).

40. In this instance in my judgment to do that in this case would not have been reasonably practicable in part simply because of the shortage of time from the point where expert counsel had considered the apparent impact (drafting the revised schedule on 11 February) and in part because this was not merely a case of increased value but a case where the actual practical impact was something still 'bedding in' even at the date of the CCMC.

41. An application here was made after transfer to the High Court but in my judgment was made without undue delay. The delay in holding this hearing since that application was made is no fault of the Claimant. Furthermore I think that it would have been unwise, even if theoretically possible, for claimant's counsel to guess at suitable figures on the day at the County Court CCMC in the light either of the unexpected delays in the defendant's experts or in the light of the then relatively recently received expert evidence (even though in the latter case it was at least known that the value of the claim and its complexity was increasing).

42. The situation in this case is presumably relatively rare: significant developments increasing value enormously and having an impact on complexity in a short period between budget and

CCMC are likely not to be common, and I suggest that if this happens parties can only do their best in their professional judgment, keeping the relevant court informed, and that requiring something too close to perfection would turn the budget revision rules into a snare for the unwary.

43. Perhaps it would have been ideal to inform the District judge that it was likely a revision would be sought later, if indeed that was not done, but that does not in my view suffice to defeat this application: the probable response from a judge in that situation would have been to note the point and say it was a bridge to cross in the event that an application was made, and I am now the judge on the bridge.

44. None of this is by way of discouragement to parties to try to vary a budget if it is feasible just before CCMC to avoid a later variation, by agreement, or to deal with modest points of variation 'on the hoof' if the judge is willing and able but in a case where the nature of the claim changed along with its value, as here, justifying transfer up to the High Court, that would have been too much to expect either from parties or judge.

45. It is far better in my judgment that a 'proper job' of budgeting is done on the basis of properly drafted and served budgets at a CCMC with clear assumptions served in time for the strict CPR deadline (see my and the Court of Appeal's judgment in the *Mitchell* case), and that if an intervening event or general evolution of the case means that the budget then before the court may in fact have to be revised later, then unless it is possible (competently) to revise and consider a new budget either budgeting should be deferred or it should be proceeded with but subject to a likely revision later.

46. In my judgment the Claimant's side acted reasonably in making this application when it did, and the developments which had taken place prior to the CCMC likely made it fairly obvious that one or other side would be likely to consider a revision thereafter, promptly. I must proceed on the basis that the District Judge budgeted on the stated assumptions for the phases which were budgeted, and in the case of the impact of the new expert reports and the delays to Defendant's reports those were not 'built in' to the budget assumptions. I think the Claimant's case is weaker on the disclosure point since quite extensive disclosure was an assumption on the face of the budget. However it is probable that even relative to the assumptions, the actual level of disclosure will have been and will continue to be affected by the two developments which I accept as being significant on the shape of the case. Likewise I accept that where a case becomes not only higher in value but more complex as this case has done, and where the basis of claim now reasonably has the knock on effect of entitling the defendant to probe all life stressors quite extensively, that is also a knock-on effect on disclosure which was not incorporated within the assumptions and that increased disclosure knocks-on to expert costs.

47. The general complexity of the case having increased I think does have some impact also on the likely cost of evidence and ADR in part because there is more value to settle in terms of schedules of loss but also because the negotiation and advice must be more nuanced and is likely to be more time consuming.

Revised budget

48. The current budget of £6,500 for disclosure (DJ's future budget costs for the phase) was sought to be increased to around £31,000 but counsel proposed a more realistic figure of £25,000 before me. Ms Symington argued that, assuming I was against her on the principle of revision, no more than £10,000 should be allowed. On this point I agree that the budget assumptions originally foresaw extensive disclosure and requests for documents. Where the new state of the case impacts is in my judgment mostly in relation to the greater level of inquiry into the life stressors on the Claimant and especially the material in relation to the assault and the murder. This is a larger case in disclosure terms than it was before. In my judgment an increase of the budget by £10,000, to £16,500 for the estimated costs part is appropriate.

49. Witness statements were budgeted at £8,000 (future costs) by the District Judge. It was said that an extra statement from the Claimant was needed which would deal with the developments in the extended period until trial and the time spent had increased from an expected 32 hours to around 53. It was accepted that the sum sought (an increase to £23,000 approximately) was not likely to be allowed and counsel proposed an increase of £10,000 which by implication would be £18,000. Ms Symington argued that the extra work was not very great and only a very limited increase would be appropriate (again, without prejudice to her main arguments against any revision), and she suggested no more than an extra £2,000. In this instance an additional £10,000 would be excessive for a single updating statement but I have to take into account the nature of the Claimant's difficulties and the time it takes to go over documents with her. I shall allow an increase of £10,000, to £18,000.

50. Experts were budgeted at £50,000 future costs. Mr Grant proposed that the current £4750 for counsel's fees should rise to £12,000, that solicitors' time costs should increase from £15,000 to £37,500 and that experts fees should rise from £30,250 to £75,000. That would be a total new budget figure for future costs of £124,500. He accepted that the sums sought on the application, which would have yielded a new budget for future costs of around £184,000 was not realistic inter partes. Ms Symington argued that a total of no more than an extra £40,000 was appropriate for the phase and that the sum would depend on the basis for my decision in terms of knock-on effects of whatever was found to be a significant development. In my judgment the increased disclosure (but not as great as was sought by the claimants) has impacted the time and costs of experts, as has the need for up to date reports and the simple fact that the case has taken longer than expected at time the case was budgeted due in part to unforeseen delays (unforeseen at date of first budget) in the Defendant's expert reports being obtained. Therefore I shall make an increase on that basis but reducing to a significant degree the weight I attach to the disclosure point, much of which was contained in the assumptions, as I have noted above. I shall allow an additional £70,000 which is based on increased expert fees for the most part, of around an extra £35,000 attributable in my judgment to the new developments, an increase as sought for counsel's fees in the sum of an extra £7,250 based on the greater extent of complexity and additional time arising from that, and the remainder being additional solicitor time. An additional £70,000 to make the budget £120,000 for future costs.

51. ADR was budgeted at £12,000. Mr Grant sought an increase to £16,000. Ms Symington argued that no increase was appropriate and that such developments as there had been did not point to an increase in this phase. In my judgment some increase is required, this is

simply a more complex, less certain and higher value claim than it was, and I shall allow £15,000.

52. Statements of case were budgeted at £8,500 which had included the increased court fee due to the increased value of the claim when it was before the District Judge. The sum sought before me was £13,500 (as against around £26,000 in the revision application). Ms Symington argued there should be no increase. In my judgment the costs of counsel drafting the revised damages schedule was a matter reasonably known at the budgeting hearing and could reasonably have been proposed along with anticipated time etc dealing with any counterschedule as at that date also. That would have been the preferable practice. However in line with my reasoning on the point of principle, that does not in my judgment automatically debar the Claimant from seeking a revision now because the significant development had taken place after the date of filing of the budget, which I have decided is the date at which one looks at the question of whether a development was reasonably to be anticipated. Ought I to decline to allow an increase, however as a matter of discretion based on the fact that in my judgment this was something which could have been dealt with informally before the District Judge despite being a recent development? I think that would be disproportionate given that most of the changes to this budget were not ones which could reasonably be dealt with and it is undesirable to encourage a piecemeal approach whereby one would raise some but not all aspects of a variation on an ad hoc basis. I shall allow £12,000 for the budget on statements of case.

MASTER VICTORIA MCCLOUD

2/2/21