Case No: A06YM353
SCCO Ref: PN1706607

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building, Royal Courts of Justice,
Strand, WC2A 2LL

Date: 29/10/2018

Before :

MASTER NAGALINGAM

- -

Between :

Mr Kieran Vertannes	**Claimant**
- and -	
United Lincolnshire Hospitals NHS Trust	**Defendant**

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Mr Roger Mallalieu (instructed by **Eatons Solicitors**) for the **Claimant**
Mr Robin Dunne (instructed by **Acumension Limited**) for the **Defendant**

Hearing dates: 14/06/2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MASTER NAGALINGAM

Master Nagalingam :

1. Following a detailed assessment of the preliminary issues in this matter, I reserved judgment in relation to Preliminary Point 2. Within the Defendant's points of dispute, Preliminary Point 2 is entitled "Costs Management" and takes issue with the format of the bill of costs.

2. The bill of costs is compliant with CPD 47, paragraph 5.8(7), having been split to separate costs incurred pre and post April 2013.

3. However, and notwithstanding this case was subject to a costs management order dated 9 April 2015, the bill narrative at page 18 states:

   "*CPD 47.5.8 (8) – The Claimant is aware of the requirements under CPD 47.5.8 (8). However, it is considered that there is no approved budget and therefore that CPD 47.5.8 (8) does not apply in this matter. An initial costs budget was approved on 11.04.2015. However, due to the considerable developments in the case, it was subsequently accepted by the Court that updated costs budgets were necessary on more than one occasion. Updated costs budgets were dully [sic] prepared and served pursuant to Court Order. However, the revised budgets did not reach the stage of a Costs Management Hearing and were never approved. As the revised budgets were ordered by the Court it is considered that the initial approved budget of 11.04.2015 is deemed to be superseded and that there is no approved budget in this case or in any event, it is a circumstance which allows the court to assess the costs without being constrained by the outdated original budget*".

4. It is not necessary for me to reproduce the full text of Preliminary Point 2 of the points of dispute. In essence, the Defendant's position is that a costs management order is in place and so a phased bill should have been drafted.

5. Prior to summarising the submissions of both Counsel, I observe three paragraphs in the Claimant's replies (which I have numbered below) that effectively set out the Claimant's position in light of the objection raised:

   (1) "*The Claimant is aware of CPD 47.6, para 5.8 (8) and CPR 47.6.1.c. However, the Claimant's stance is that these in light of the circumstances of this case and the orders referred to above, the CPR 47 PD 5.6(8) and 47.5(1)(c) no longer apply*." I have taken the references to "CPR 47 PD 5.6(8) and 47.5(1)(c)" to mean CPR 47 PD 5.8(8) and CPR rule 47.6(1)(c).

   (2) "*Further or alternatively that in light of the matter set out, this is a case where it is appropriate for the Court to order that the detailed assessment proceed on the basis that CPR 47 PD 5.6(8) and CPR 47.6.1(c) shall not apply to the Bill and assessment of this case*." I have taken the reference to "CPR 47 PD 5.6(8)" to mean CPR 47 PD 5.8(8).

   (3) "*Further, or in the alternative, the Claimant will contend, as necessary, that to the extent that the original CMO is held to continue to apply in principle, the facts and circumstances of this case as set out above and in the narrative to the Bill are clearly such as that the Court should conclude that there are good reasons to depart from the original CMO*."

6. Having set out my understanding of Preliminary Point 2 of the Defendant's points of dispute, the Claimant's points in reply and relevant text of the bill narrative I invited submissions from Mr Dunne and Mr Mallalieu which I summarise below:

Submissions of Mr Dunne

7. With reference to page 18 of the bill narrative Mr Dunne suggests that in essence the Claimant is arguing that the costs management order dated 9 April 2015 has lost relevance because of events that took place after the costs management order was made.

8. Mr Dunne referred me to CPD 5.8(8) to Rule 47 which provides that:

"*Where a costs management order has been made, the costs are to be assessed on the standard basis and the receiving party's budget has been agreed by the paying party or approved by the court, the bill must be divided into separate parts so as to distinguish between the costs shown as incurred in the last agreed or approved budget and the cost shown as estimated*".

9. Mr Dunne posed and offered the following three questions and answers:

9.1 Has a costs management order been made? Yes. There can be no doubt about that.

9.2 Is this an assessment on the standard basis? Yes.

9.3 Has the receiving party's budget been agreed by the paying party or approved by the court? Yes, it has been approved by the court.

10. Mr Dunne argues it follows that the practice direction has been triggered, and the use of the word "must" within the practice direction provides no discretion for departure.

11. Mr Dunne then sought to analyse the question of whether or not the later orders set aside the costs management order dated 9 April 2015?

12. Mr Dunne referred me to paragraphs 7 and 8 of the order of District Judge Capon dated 4 April 2016 (which followed applications by both parties which resulted in further permissions and an alteration to the previous timetable) which states:

"*7. The parties, if so advised, to file and serve any amended budgets by 4.00pm on the 1st April 2016.*

8. There be a Costs Case Management Hearing to consider the revised budgets on the first available date after the 15th April 2016, time estimate 2 hours and reserved to D.J. Capon. Not by telephone."

13. Mr Dunne submits that this order does not and cannot set aside the costs management order dated 9 April 2015.

14. Mr Dunne then referred to paragraph 3 of the order of District Judge Capon dated 5 September 2016 (which followed applications by both parties which resulted in further permissions and an alteration to the previous timetable) which states:

"3. The Costs Case Management Hearing and the question of the costs reserved of the Hearing of 4 March 2016 be adjourned to the first available date after 19 September 2016, time estimate 2 hours, reserved to District Judge Capon.

a) The hearing be in person.

b) Parties to file dates of Counsel's availability by 12 September 2016.

c) Parties to file and exchange short skeleton arguments on the question of the costs of the hearing of 4 March 2016, limited to no more than 4 sides of A4, 2 clear days before the Hearing by e-mail.

d) The parties shall seek to agree the costs budgets.

e) The Claimant shall draft the following documents as soon as practicable (and to submit these to all other parties for comment, with a view to the contents being agreed at least 10 working days before the costs case management conference):

i. case summary incorporating a statement of issues;

ii. chronology;

All parties must cooperate with the process to enable the Claimant to comply with the direction for the preparation and filing of the hearing bundle."

15. Again, Mr Dunne submits that this order does not and cannot set aside the costs management order dated 9 April 2015.

16. Mr Dunne argues that these orders cannot set aside or displace a costs management order which is already in existence. These later orders only envisage variations to the budget. However, Mr Dunne does acknowledge that it is open to the Claimant to later rely on these orders when seeking to argue good reason to depart from the budget.

17. Mr Dunne argues that a detailed assessment hearing under CPR rule 3.18 cannot take place with the bill of costs in its current format. To articulate this point, Mr Dunne recited CPR rule 3.18 which for the sake of completeness I set out below:

3.18

In any case where a costs management order has been made, when assessing costs on the standard basis, the court will-

a) have regard to the receiving party's last approved or agreed budgeted costs for each phase of the proceedings;

b) not depart from such approved or agreed budgeted costs unless satisfied that there is good reason to do so; and

c) take into account any comments made pursuant to rule 3.15(4) or paragraph 7.4 of Practice Direction 3E and recorded on the face of the order.

(Attention is drawn to rules 44.3(2)(a) and 44.3(5), which concern proportionality of costs).

18. Mr Dunne suggests that it is impossible for the court to give effect to CPR rule 3.18 where the bill of costs has not been broken down by phase. The bill cannot be assessed under CPR rule 3.18. As a matter of law and practice the bill has to be re-drafted.

Submissions of Mr Mallalieu

19. The Claimant does not dispute that a costs management order has been made. Further, Mr Mallalieu suggests that Mr Dunne is quite right to refer to the orders of 4 April 2016 and 5 September 2016, and quite right to say they don't set aside the costs management order.

20. Mr Mallalieu recognised the three limbs to the replies (referred to in my summary of the arguments above) and invited me to consider those in the following terms:

(1) The intention of the orders of 4 April 2016 and 5 September 2016 was to recognise that the budgets of both parties needed to be re-cast. The court can and should recognise that intention.

(2) Mr Mallalieu says that if he is wrong about that and the costs management order dated 9 April 2015 is not superseded by the subsequent orders of 4 April 2016 and 5 September 2016 then the matter does not end there. I do not have to follow the path Mr Dunne invites me to because this is reliant on me following paragraph 5.8(8) of the costs practice direction to CPR rule 47. Mr Mallalieu suggests that the practice direction is the handmaid of how the bill should be drafted. He suggests that the court can use its inherent powers under CPR rule 1.1 to further the overriding objective to depart from the rigour of a practice direction which is intended to cater for the generality of cases.

(3) If I am not with the Claimant on 1 and 2 above, Mr Mallalieu submits that I should observe that good reason to depart is very likely to be achieved therefore the preparation of a new bill would serve no purpose.

21. Mr Mallalieu elaborated on these three limbs as follows:

(1) Intention of the orders dated 4 April 2016 and 5 September 2016

22. Mr Mallalieu states that this is a case where a number of hearings and applications supervened and prevented costs management from being dealt with, including at CCMCs.

23. A CCMC to deal with costs had been listed to take place on 10 February 2017. However, as a result of a round table meeting (which later became a mediation) settlement was achieved before the next listed CCMC took place.

24. Mr Mallalieu advised me that there were five occasions when the Claimant revised their budget and two when the Defendant revised their budget. On all of these occasions the revised budgets were exchanged but could not be agreed.

25. Mr Mallalieu submits that it is quite clear from reference to the re-cast budgets that across all phases there had been significant changes that effected costs across the board. By way of example:

    - Part 18 questions of Mr Dahar had not been anticipated.

    - The need for additional experts.

    - Additional work in settlement, for example the work done to support a mediation as opposed to a joint settlement meeting.

    - A number of applications relating to disclosure and witness evidence.

26. Mr Mallalieu suggested that the case managing court was working on the basis that a very substantial recasting of the parties' budgets would take place. He reminds me that further CCMCs had been listed so a fresh budgeting process could be undertaken.

27. Mr Mallalieu argues that the 'intended effect' of the orders of April and September 2015 was that the costs management order dated 9 April 2015 no longer stood and a fresh budgeting exercise was required. This means that for the purpose of the detailed assessment hearing there is no effective costs management order to which CPR rule 3.18 can be applied.

(2) The overriding objective

28. If Mr Mallalieu is wrong about that he says there is no useful benefit to be gained in drawing a bill which reflects phases from April 2015 for a case that settled 2 years later and supervened by substantial developments.

29. There would be no utility in that approach and it would offend the overriding objective for no good purpose.

30. Mr Mallalieu knows of no authority he can refer me to support his proposition but invites me to use my general case management powers under CPR rule 3.1(2) (k) and (m) as well as inviting to me consider my obligations to further the overriding objective of dealing with cases justly and at proportionate cost.

31. Mr Mallalieu suggests that the course that the Defendant invites me to take would not lead to a just and proportionate outcome, and that the practice directions can be departed from if just and proportionate to do so. He argues such a departure is appropriate in these circumstances because the index matter is a wholesale different case by April 2017 to the one it was in April 2015 (when the costs management order was made).

(3) No utility in re-drafting the bill of costs

32. As a final fall-back position, Mr Mallalieu submits that if he is wrong about (1) and (2) above, then there are good reasons to depart from the original costs management order to the extent that there would be no utility in re-drafting the bill in phases.

Counter submissions of Mr Dunne

33. With regards to Mr Mallalieu's 'intention of the order' argument, Mr Dunne submits that it was open for the Claimant to apply for the costs management order to be set aside during the life of the claim but the Claimant made no such application.

34. Mr Dunne suggests that it cannot be right to equate the court saying the parties may review their budgets as meaning that the existing costs management order is set aside.

35. On behalf of the Defendant, Mr Dunne advises that there is no wish to delay the detailed assessment process or incur any more costs than necessary. However, this is a practical point to allow an effective assessment of the bill of costs where the costs cannot be agreed.

36. Mr Dunne speculated that had the author of the rules and associated practice directions wanted to include a provision that a proposed revision to a budget equated to an existing costs management order being set aside, it would have legislated as such.

37. With regards to Mr Mallalieu's fall back submissions as to good reason, Mr Dunne argues that good reason cannot be considered generally or in the round.

38. Mr Dunne rhetorically asks why is the practice direction there? It is to enable the court to give effect to CPR rule 3.18. The court cannot give effect to the rule without the practice direction. The practice direction does not sit in isolation. It sits with CPR rule 3.18. CPR rules 1.1 and 3.1 do not permit the court to sweep aside rule 3.18.

Judgment

(1) Intention of the orders dated 4 April 2016 and 5 September 2016

39. The Claimant's primary position is as set out in the bill narrative:

"*As the revised budgets were ordered by the Court it is considered that the initial approved budget of 11.04.2015 is deemed to be superseded and that there is no approved budget in this case or in any event, it is a circumstance which allows the court to assess the costs without being constrained by the outdated original budget*."

40. The Claimant chooses to use the expression "*initial approved budget of 11.04.2015*" (the order was in fact made on 9 April 2015). What is an inescapable reality though is that a 'costs management order' was made on 9 April 2015. Notwithstanding the approach invited in the bill narrative, the replies and by Mr Mallalieu in submissions, the fact is there is simply no mechanism by which a costs management order can be "deemed to be superseded".

41. Firstly, for something to be superseded then something else must take its place. Whilst I acknowledge that revised budgets were exchanged and filed, at no time was the original costs management order replaced. What the Claimant is perhaps reticent to argue is that the costs management order dated 9 April 2015 is deemed to be set aside. Any reticence in that regard would be well placed given that a costs management order simply could not be set aside or amended without a formal order in such terms.

42. A court has two defined circumstances in which the impact or effect of a costs management order may be altered.

43. The first is found at paragraph 7.6 of Costs Practice Direction 3E to CPR Rule 3, which states:

"*7.6 Each party shall revise its budget in respect of future costs upwards or downwards, if significant developments in the litigation warrant such revisions. Such amended budgets shall be submitted to the other parties for agreement. In default of agreement, the amended budgets shall be submitted to the court, together with a note of (a) the changes made and the reasons for those changes and (b) the objections of any other party. The court may approve, vary or disapprove the revisions, having regard to any significant developments which have occurred since the date when the previous budget was approved or agreed.* "

44. The second is found at CPR rule 3.18(b) which states:

"*3.18 In any case where a costs management order has been made, when assessing costs on the standard basis, the court will- not depart from such approved or agreed budgeted costs unless satisfied there is a good reason to do so*."

45. One cannot ignore the distinction in the rules to have regard to "*significant developments*" during the litigation which justify revision to a budget, as opposed to retrospectively considering if there is "*good reason*" to depart from a budget once the budget has been set.

46. Whether by accident or design, Mr Mallalieu repeatedly referred to "*substantial developments*" as opposed to "*significant*" developments in the litigation. The bill narrative itself refers to "*considerable developments*". An assessing court cannot of course retrospectively revise the Claimant's budget, nor is the assessing court seized of the question of what significant developments, if any, arose during the course of the index litigation. The role of an assessing court is to consider, where argued, if there is good reason to depart from a budget.

47. In the normal course of events a revised budget is subject to scrutiny by the case managing court who, with the benefit of objections where filed, will have regard to any significant developments which have occurred since the date when the previous budget was approved or agreed, and thereafter approve, vary or disapprove the revisions.

48. The opportunity for such scrutiny never arose during the course of the litigation prior to settlement. However, regardless of what the Claimant may say with respect to substantial or considerable developments, or indeed significant developments, the assessing court cannot second guess what the case managing court would have done. That is an exercise which would have been undertaken on a phase by phase basis, and with no guarantee that the case managing court would have agreed that revisions to the budgets were necessary at all.

49. The starting point to the question of whether or not the costs management order dated 9 April 2015 was superseded, set aside or otherwise is the actual text of the relevant orders made post 9 April 2015.

50. The initial budget prepared on behalf of the Claimant already took into account that the Defendant had admitted breach of duty. In its defence the Defendant admitted that its breach of duty caused the injuries complained of but the Claimant was put to proof as to the nature and extent of those injuries. The Defendant also indicated an intention to obtain its own medical evidence and serve a counter schedule of loss.

51. At a hearing on 4 March 2016 the Defendant withdrew an application for a Part 18 response from the Claimant (the request having been complied with) and the Claimant's application for permission to rely on evidence from a consultant colorectal surgeon was refused. However, permission was given for both parties to rely upon evidence from a consultant clinical psychologist (both parties) or psychiatrist (Defendant). Permission was also given for the production of addendum reports arising solely from any further disclosure.

52. Paragraphs 7 to 11 of the order of 4 March 2016 state:

"*7. The parties, if so advised, to file and serve any amended budgets by 4.00pm on the 1st April 2016.*

8. There be a Costs Case Management Hearing to consider the revised budgets on the first available date after 15th April 2016, time estimate 2 hours and reserved to D.J. Capon. Not by telephone.

9. The parties to serve details of opposition to any phase of the other side's budget and what would be an appropriate figure for the costs thereof not less than 4 clear working days in advance of that hearing in default of which it is deemed the amended phase is agreed.

10. The Claimants solicitors to file and serve a bundle for the C.C.M.H, not less than 3 clear working days before the hearing to include the parties' previous budgets; Court Orders; any revised budgets and the parties' respective points of dispute in relation to the revised budgets."

53. There are no provisions in the order dated 4 March 2016 which supersede or set aside the costs management order dated 9 April 2015. Whilst I accept that directions were given which allocated court time to deal with revised budgets, that was on the presumption that revised budgets would be filed and the revisions thereafter agreed (in default of which the court's approval would be sought). Unless and until revised budgets were filed, as well as permitting time for objection or agreement (and the court's intervention in default of agreement), the costs management order dated 9 April 2015 remained in place and operative. In the event, revised costs budgets were exchanged. However, revisions to the Claimant's budget were not agreed and the court did not have time to intervene (by way of a costs case management hearing) before the case settled.

54. For a costs management order to be superseded, a new costs management order must take its place. That was not the outcome of the order of 4 March 2016.

55. Further, for a costs management order to be set aside that must be in explicit terms. An order cannot be 'deemed' to be set aside by inference.

56. The second order the Defendant relies on is that dated 5 September 2016, which followed further applications by both the Claimant and the Defendant. The Claimant's application was resolved by consent, with the Defendant providing undertakings in relation to disclosure and supporting witness evidence. The costs case management hearing which was due to take place was then adjourned with the following directions within paragraph 3 of the order related to costs budgets:

"*d. The parties shall seek to agree the costs budgets.*

f. …a paginated bundle containing…

(v) All previous existing Precedent H Forms filed by each party (including previously agreed/approved Budgets);

(vi) Completed Budget Discussion Reports in Precedent R for each party's budget. In default any budget or phase not so challenged shall be deemed to be agreed."

57. The adjourned costs case management hearing was later subject to further adjournments such that the case settled without a further costs case management hearing taking place.

58. As with the order dated 4 March 2016 there are no provisions in the order 5 September 2016 which supersede or set aside the costs management order dated 9 April 2015. Whilst I again accept that directions were given which allocated court time to revisit costs budgets, unless and until revised budgets were filed (as well as notification of any objections or confirmed agreements) and the court's intervention in default of agreement, the costs management order dated 9 April 2015 remained in place and operative.

59. I reiterate that for a costs management order to be superseded, a new costs management order must take its place. That was not the outcome of the order of 5 September 2016. I further reiterate that for a costs management order to be set aside that must be in explicit terms. An order cannot be 'deemed' to be set aside by inference.

60. Accordingly, I find that the costs management order dated 9 April 2015 remained in place at all times since the making of that order and as a starting point, the Claimant's bill of costs should have been drafted in compliance with the requirements of CPD 5.8(8) to Rule 47.

61. The Claimant's bill of costs has not been drafted in compliance with the requirements of CPD 5.8(8) to Rule 47 and so I proceed to consider the Claimant's alternative arguments.

(2) The overriding objective

62. Mr Mallalieu suggests I may use my inherent powers under CPR rule 1.1 as a mechanism to depart from the rigour of a practice direction which he says is intended for the generality of cases.

63. CPR rule 1.1 sets out that the purpose of the civil procedure rules is to enable the court to deal with cases justly and at proportionate cost. The non-exhaustive guidance

provided at CPR rule 1.1(2) includes "(f) enforcing compliance with rules, practice directions and orders so far as is practicable."

64. Accordingly, the invitation to use the court's powers under CPR rule 1.1 does not sit comfortably or logically with Mr Mallalieu's interpretation of paragraph 5.8(8) of the costs practice direction to CPR rule 47 being the "handmaid of how the bill should be drafted", unless it would have been impracticable to have drafted the bill in phases.

65. In dealing with the other non-exhaustive factors under CPR rule 1.1(2) I observe as follows:

(a) I am satisfied that the parties are on an equal footing.

(c) (i) The bill of costs as currently drawn amounts to £949,449.34. A significant sum of money is therefore involved.

(ii) The recovery of substantial costs is important to the Claimant. The protection of the public purse is important to the Defendant.

(iii) The index action was inherently complex, as are the costs arguments arising out of the index action.

(iv) Each party is sufficiently financed to engage fully in the litigation process.

(e) Regardless of whether the Claimant's bill of costs is assessed in its current format or otherwise, a share of the court's resources will be required.

66. CPR rules 1.1(2) (b) and (d) require greater analysis in the context of the arguments advanced by the Defendant.

67. With respect to CPR rule 1.1(2)(b) the only expense which will be saved is to the Claimant by avoiding the cost of preparing a new bill of costs, and avoiding the consequences of a new bill of costs in terms of any subsequent amendments to the points of disputes and replies and / or preparation of supplementary points of dispute and replies.

68. CPR rule 1.1(2)(b) is not persuasive where saving expense is a relevant factor only because a party has fallen into error, in this case the decision to presume an order, being the costs management order dated 9 April 2015, had been superseded (or otherwise) such that the order could be disregarded.

69. It will undoubtedly incur expense to draft a new bill of costs but the fact of that expense does not excuse compliance with a rule, practice direction or order. In any event, given the substantial amount of costs being sought, the expense of preparing a compliant bill will be a proportionate exercise as compared with the amount of costs claimed.

70. Further, there is no justice at all in allowing the detailed assessment of a costs managed case to continue in the absence of a phased bill. A costs management order was made and remains in force. Events may have occurred in the litigation since the making of the costs management order but the order was never set aside or amended. Paragraph 5.8(8) of the costs practice direction to CPR rule 47 requires a receiving

party to divide their bill into separate parts so as to distinguish between the costs claimed for each phase of the last approved or agreed budget, and within each such part the bill must distinguish between the costs shown as incurred in the last approved or agreed budget and the costs shown as estimated. It would not have been impracticable to draft the bill as such and so CPR rule 1.1(2)(f) is engaged.

71. CPR rule 1.1(2)(d) requires the court to ensure cases are dealt with expeditiously and fairly. Fairness in this context demands that the index case is treated no differently from any other case subject to a costs management order.

72. In any case where a costs management order has been made it is not unusual for developments to occur which were unforeseen or unplanned. The fact of any such developments of itself does not render the costs management order redundant (or superseded). Nor does the fact that a party may have submitted multiple revised budgets since the costs management order was made.

73. I do not consider it unfair to the Claimant to require them to adhere to a costs management order and paragraph 5.8(8) of the costs practice direction to CPR rule 47 simply because the expected cost of the litigation increased due to "substantial" or "considerable" developments. If it is unfair to require a party to draw a bill in compliance with a costs management order and relevant practice direction in those circumstances, it would lead to an escape route from the costs controls that the costs budgeting regime was introduced to provide. One must also consider the fact that unexpected developments in costs managed case are often and routinely dealt with by separate orders for costs which sit outside of the budgeted costs, and are either summarily assessed or subject to detailed assessment outside of the budgeted costs. Indeed, such orders are a feature of the index case. Thus it does not automatically follow that even significant developments will lead to approval of budget revisions. Further, the risk of any unfairness in these circumstances is extinguished by the Claimant's ability to argue there is "*good reason*" to depart from the budgeted costs.

74. Whilst the drawing of a new bill will delay the opportunity for the agreement or assessment of costs, my concern is with the expeditious assessment of costs as opposed to how expeditiously a receiving party can put a bill before the court.

75. The bill of costs in its current format is substantial both in amount and detail. A bill of costs prepared in compliance with paragraph 5.8(8) of the costs practice direction to CPR rule 47 will also be substantial in amount and detail. Given the Claimant's obligation to comply with the practice direction in circumstances where a costs management order has been made and remains in force, and the court's obligation to have regard to the last approved or agreed budgeted costs, and not depart from the same without good reason, a fair and expeditious assessment of the Claimant's costs requires those costs be presented in a compliant bill of costs.

76. I reject the suggestion that I have the discretion to effectively disregard paragraph 5.8(8) of the costs practice direction to CPR rule 47. The Claimant's bill of costs should have been drafted in compliance with the same. Applying CPR rule 1.1 reinforces that conclusion.

(3) No utility in re-drafting the bill of costs

77. There is, on the face of it, good reason to depart from the budgeted costs set in the costs management order dated 9 April 2015. However, it does not follow that there is good reason to depart from the costs management order entirely.

78. Whilst there were clearly developments during the course of the litigation, the costs consequences of many of those developments were subject to separate orders where the costs were either summarily assessed costs or to be assessed if not agreed.

79. The Claimant has erroneously failed to draft their bill in compliance with paragraph 5.8(8) of the costs practice direction to CPR rule 47. The utility of the detailed assessment process, and the upholding of the costs budgeting regime, to include compliance with orders and the practice directions supplementing the civil procedure rules, is best served by any future assessment of the Claimant's costs in this matter being undertaken on the basis of a phased bill of costs.

Next Steps

80. It is entirely a matter for the parties if they wish to negotiate or recommence negotiations once a revised and compliant bill of costs has been prepared. If, on the basis of a revised and compliant bill of costs, a detailed assessment hearing is requested the Claimant is directed to ensure such request is marked clearly for consideration by Master Nagalingam.

81. The costs consequences of this judgment can be addressed at the conclusion of the detailed assessment hearing once re-listed, or by way of a short telephone hearing in the event that the main actions costs are compromised without re-listing the detailed assessment.