

GSK PROJECT MANAGEMENT LIMITED (IN LIQUIDATION)

-v-

QPR HOLDINGS LIMITED

Be it transfer deadline day or in Court, at the end of the day, it's all about the money money money...

The recent judgment of Mr Justice Stuart-Smith in the Technology and Construction Court in some way indicates the extent to which the Courts are now willing to help parties manage the costs of litigation, the Court advocating an intention to have a “*moderating influence on costs*”.

By way of a background, the Right Honourable Lord Justice Jackson's Cost Reforms were designed to make litigation costs more proportionate and predictable with a focus on proactive cost management. Since the introduction of the Reforms, one of the requirements has been that, in claims of less than £10m (and in other cases at the Judge's discretion) cost budgets must be produced by each party. The purpose is for both parties to confirm the costs that have already been incurred and provide an indication of anticipated future costs. If approved on review by the court, it provides comfort that each party can reasonably quantify the extent of their potential exposure at various stages of the process or in the event that they are unsuccessful (In litigation, generally costs follow an award i.e. the loser normally pays).

In *GSK Project Management Limited (in Liquidation) -v- QPR Holdings Limited*, Mr Justice Stuart-Smith was presented with a Claimant's proposed cost budget totalling £824,038 (allegedly £310,000 of costs had already been incurred). The total value of the Claimant's claim was only around £805,000.

The Claimant's Cost Budget and both parties' hourly rates are provided below:

Claimant's Cost Budget

Item	Incurred disbursements	Incurred time costs	Estimated disbursements	Estimated time costs	Total	Approved costs
Pre-action costs	£1,565	£41,502	£0	£0	£43,067	£13,500
Issue/SofCs	£131,801	£115,107	£6,000	£14,000	£266,908	£115,000
CMC	£50	£4,560	£6,790	£10,690	£22,090	£15,000
Disclosure	£583	£8,789	£5,000	£15,150	£29,522	£29,522
Witness Statements	£0	£0	£15,940	£59,500	£75,440	£25,100
Expert reports	£600	£2,050	£89,540	£22,500	£114,690	£85,000
PTR	£0	£0	£7,630	£14,290	£21,920	£12,000
Trial Preparation	£0	£0	£24,850	£43,375	£68,225	£37,500
Trial	£0	£0	£69,850	£27,675	£96,525	£65,000
ADR/Settlement	£830	£5,540	£8,540	£35,150	£50,060	£25,000
Mediation	£0	£0	£13,290	£21,300	£34,590	
Grand Total	£135,429	£177,549	£247,430	£263,630	£824,038	£422,622

Hourly Rates

	Claimant	Defendant
Partner/Grade A	£275/£300	£575/£600
Associate	£175/£200	£410/£450
Trainee	£115	£210
Costs Lawyer	£150	-
Litigation Support (QS)	£140	-
Counsel	£300	£250

In arriving at his decision, the Judge took into account the overall proportionality of the budget having regard to the value and complexity of the claim. Adopting such an approach it was obvious that a cost budget in excess of the total value of the claim for what was not necessarily an overly complicated action was disproportionate.

The Judge also considered the figures on a phase by phase basis, assessing the hours anticipated to be spent in the future (and by whom such hours were to be spent together with the relevant rates applicable thereto). He also took account of the hours already spent (and by whom such hours were spent and the costs this equated to).

The Judge was not convinced by the logic, rationale or justification (or lack thereof) for the Claimant's costs and deemed it to be an "exorbitant costs estimate" which was "grossly excessive". In his opinion the costs were overstated by almost 100% which equated to nearly £400,000. In determining that those costs were excessive, the Judge was entitled to

set a revised budget figure which would then amount to the Claimant's approved cost budget.

The Judge meticulously examined the number of hours spent and proposed to be spent by each of the parties' solicitors, barristers and experts and adjusted the Claimant's figures significantly downwards. Whilst the approved cost budget might still seem somewhat high, the Judge was of the opinion that it would be reasonable for the Claimant to incur costs to a total of £425,000.

In undertaking this exercise, the Judge also had regard to the hours that the Defendant had spent and estimated going forward during the litigation. However, whilst admittedly not comparing like for like, he was inclined to think that the Defendant's cost budget might in some way provide a useful "*indicator*". What he was certain of however, was that nothing justified the Claimant's solicitor spending three times as many hours on the case as the Defendant's solicitors.

Benefits of Alternative Dispute Resolution

Whilst it is not in any way surprising that the Judge thought costs in excess of what the actual claim amounted to were disproportionate, what is worthy of note is the figures that the Judge thought appropriate to allow in respect of alternative forms of dispute resolution. Given that there is now an average waiting time to get trial of 53.5 weeks and having regard to how much of the costs associated with litigation seem to be front loaded in getting to trial, commercial sense suggests that parties are well served in keeping ADR to the forefront of their minds. Recent statistics demonstrate that of the cases that go to mediation during litigation and/or alternative dispute resolution, 75% of the cases settle on the day of mediation with 11% settling shortly thereafter. When compared to the figures involved in getting to court and then going through it, settlement, ADR and mediation evidently offer a somewhat quicker, more attractive and cost effective alternative.