

# An educated guess

Antony Smith explains how to estimate effort and cost using project management techniques



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**L**itigation solicitors preparing case budgets as part of the cost management pilot scheme seem to view the exercise as worthwhile, but appear uneasy about their lack of expertise concerning project estimation and budgeting. Project estimation is rarely an easy task, even for seasoned project professionals. Preparing project budgets based on estimates requires confidence in the estimates, along with a thorough understanding of their cost implications.

Lawyers will need to prepare case budgets and acquire court approval for them in most multi-track cases where proceedings have been issued after 1 April 2013 (cases in the Admiralty and Commercial Courts will be exempted from the new cost management rules). The discipline of project management is replete with tools and techniques to assist with project estimation and cost budgeting. What follows is an introduction to project estimation and budgeting, from a project management point of view. The principles should be applicable when preparing litigation cost budgets.

## 1. Understanding project size

Estimates relating to resources, effort and costs will reflect project size. This sounds obvious, but until all project tasks have been listed and understood, it is extremely difficult to appreciate the size of the project ahead. So estimators should first concentrate on listing all project tasks before they try to start estimating.

## 2. Create appropriate task lists

In the costs management pilot, precedent Form HB lists litigation stage categories – such as ‘disclosure’, ‘witness statements’ and ‘experts’ reports’ – against which solicitors need to enter cost estimations as part of the case budget plan. Each of these categories can be broken down further, so that with reference to disclosure, for example, an immediate sub-listing might look something like:

- Advising client of disclosure obligations
- Gathering documents for own party’s disclosure
- Reviewing own party documents
- Creating disclosure list

...and so on. Keep identifying tasks required, and break them down into sub-tasks which are reasonably small yet meaningful. It is easier to appreciate the effort required to complete a smaller task than it is for a much larger one (see below).

## 3. Ensure estimates are done by those who will do the work

The fee-earners who actually do the work will know all about the time needed for preparation, research and general running around in order to set-up and complete a task. This ‘other’ effort, often unseen by those not directly involved in task execution, must be factored in.

## 4. Consider a team-based approach to estimating and costing

When managing complex projects, it is common to have estimates done by the delivery team – several heads are better than one. Also, people who

do the work or effort estimates may not necessarily be best placed to assign costs to those estimates. An obvious approach, therefore, may be for the litigation solicitor to produce the effort estimates, and a cost draftsman to produce the accompanying cost estimates.

## 5. Base estimates on data rather than judgement

Generally, estimating is best done when based on historical data of previous projects which are similar to that at hand. Lawyers are lucky here, as their practice management systems and / or case management systems should hold this kind of data. These will usually have a lot of detailed reports built-in as standard. In the absence of suitable standard reports, it should be relatively easy for IT departments (or the software supplier) to create reports based on criteria specified by those responsible for preparing case cost budgets. Following on from the points made above, when reviewing historical data, the starting point should be to identify and extract data which maps onto the tasks listed in the current task list.

Ideally, the historical data used should be from cases the lawyers responsible for preparing the current estimates have themselves worked on previously. In the absence of that, lawyers should mine historical data of similar cases worked on by others in their firm. My advice would be to try and avoid any industry benchmarks – the whole point is to estimate the

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effort and cost it will take you and your firm to complete the matter.

While it is true that there are often plenty of similarities between cases, it is equally true that, when looked at in detail, many cases have some unique attributes. So use the historic data as a means of developing and sanity checking your current estimates. Historic data is an absolutely vital tool, but it should not be relied upon blindly – past performance is not a cast-iron guarantee of future performance.

Project estimation is a significant topic, which has been the subject of many books and training courses. Ultimately, however, it is still more of an art than a precise science, regardless of industry sector. Rarely will an estimate given before work starts match precisely the actual effort and cost required to complete a project. The aim, therefore, should be to produce estimates which are realistic. To be able to do this, I suggest you and your firm should already be working on a standardised estimation procedure to be followed by all litigators in the firm, paying particular attention to the historic data held in your practice, and case management systems. You now have some time to test the validity and reliability of your procedures, before these are put to the real test during cost management conferences after 1 April next year.

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