



Three-Point IP Update from Stephenson Harwood

# EMPLOYEE FINANCIAL POSITION TO BE CONSIDERED AT COST AWARD STAGE

***In this update, we cover the High Court decision of Mr Justice Richards in David Parsons v Convatec Limited [2026] EWHC 325 (Pat) dated 16 February 2026, which relates to recoverable costs in employee inventor compensation claims.***

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## FACTS

Dr Parsons is seeking compensation under s40 Patents Act 1977 for inventions which were used by his former employer, Convatec, in its commercially successful wound dressings. Dr Parsons' claim is said to potentially be worth as much as £366 million.

The parties had agreed the litigation should be subject to cost budgeting. Dr Parsons argued s106 Patents Act 1977 applies to the cost budgeting exercise, pursuant to which, Convatec's approved budget should be substantially reduced in light of his financial position. Convatec argued that s106 has no role at the budgeting stage.

S.106(1) requires the court when "*determining whether to award costs or expenses ... and what costs or expenses to award*" to have regard to "*all the relevant circumstances, including the financial position of the parties*". S.106(2) permits the Patents Court to tailor costs orders by reference to a party's financial position (including ordering that awards are settled by a lump sum or appropriate scaling).

## DECISION

S106 Patent Act 1977 does not apply at the costs budgeting stage. Approving a costs budget is not "*determining ... what costs or expenses to award*" within s106(1).

The purpose of s106 is to allow a party's financial position to be weighed when deciding whether to award costs and if an award is to be made, what amount (typically post-trial).

Rather, the cost budgeting exercise is a prospective assessment of future costs for each phase of the litigation and is driven by principles of reasonableness and proportionality.

## IMPACT

There is a fundamental disparity in the financial position of the parties involved in s40 Patents Act 1977 employee compensation claims. It would be reassuring to an employee making a s40 claim if the court had agreed with Dr Parsons that s106 applied. Reducing a party's approved costs budget would mitigate the risk of a potentially significant adverse costs award *before* the costs of disclosure, evidence and trial are incurred.

This judgment clarifies, however, that cost budgets remain governed by reasonableness and proportionality; and once agreed or approved, can only be departed from when there is "good reason" (CPR 3.18(b)). The costs and disbursements that are reasonable and proportionate for an employer to incur in a s40 claim are the same regardless of the financial position of the employee.

Employees looking to mitigate any 'David v Goliath' concerns should not be disincentivised from making s40 claims. Financial disparity can be addressed through appropriate case management. Where costs are driven up by a well-resourced employer, tactically conducting expensive litigation, this can be addressed on grounds of reasonableness and proportionality, if not on the grounds of s106, which can still be deployed or relied upon at the stage of determination of a costs award. The Shorter Trial Scheme and IPEC may also be appropriate for litigants due to the caps on recoverable costs for disputes heard in these forums.