

Important judgment on revising costs budgets in the Lloyds/HBOS litigation

22/12/2017 (Commercial)

Chief Master Marsh has handed down an important judgment in the Lloyds/HBOS litigation concerning the operation of the costs management regime and the interpretation of the relevant CPR provisions.

In the Lloyds/HBOS litigation, the trial of which commenced in October 2017 and is ongoing, approximately 5,800 Claimants are making a large number of allegations against 5 former directors of Lloyds TSB in relation to Lloyds' acquisition of HBOS in January 2009.

The total value of the claim is said to be approximately £600 million and therefore the default position was that the costs management regime did not apply. However, at an earlier stage of the proceedings, the Claimants applied for a direction that a costs management order should be made in particular because they argued that such an order would give them clarity as to the amount of ATE cover which they needed to obtain. The parties accordingly exchanged costs budgets and in April 2017 they reached agreement as to their respective estimated costs. However, a number of significant developments in the litigation subsequently occurred (including a substantial lengthening of the trial) and the Defendants therefore made an application in accordance with PD 3E paragraph 7.6 to revise their costs budget.

By the time the Defendants made their application, they had already incurred a substantial part of the revised costs. The Claimants opposed the application on a number of grounds, including that the Court did not have jurisdiction to approve revisions to costs budgets retrospectively. The Claimants argued that costs management is a wholly prospective exercise and that this had been made clear by the recent amendments to CPR 3.12 to 3.18 and in Practice Direction 3E. In support of their application, the Defendants contended that retrospective amendments to costs budgets are in fact permissible under the CPR and that the earlier decision of Warby J in *Yeo v Times Newspapers Limited* [2015] EWHC 2132 (QB) is no longer good law in light of the amendments to the CPR.

Chief Master Marsh acceded to the Defendants' application, holding that their interpretation of the CPR provisions as amended was correct having regard to the principles underlying the costs management regime and how the regime works in practice. He held that where an application to revise a costs budget is made, the date of the last agreed or approved budget is to be used as the "base reference point" and any costs incurred thereafter on account of significant developments are to be placed in the "estimated costs" column of the revised Precedent H and fall within the jurisdiction of the Court. Chief Master Marsh also dismissed the Claimants' arguments that (1) the application had been made unreasonably late and (2) the application was oppressive in circumstances where the Claimants themselves had chosen not to make an application to revise their budget on account of the significant developments.

The judgment is [here](#).

BRICK COURT CHAMBERS

BARRISTERS

Tony Singla appeared for the Defendants, instructed by Herbert Smith Freehills.

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