

Protecting Future Costs in Litigation – Introduction of the New Precedent T Form and Procedure from 1 October 2020



The Court's procedure on costs budgeting is to undergo a further shake-up, with the introduction from 1 October 2020 of new rules for varying costs budgets through the use of the new "Precedent T" procedure.

Since the pivotal decision in *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, parties in litigation who have legal representation are required to complete and file at Court a "costs budget" -commonly known as "Precedent H"- for the costs they expect to incur over the course of that litigation. This includes both incurred costs and also (for the most part) expected or 'future costs' for each stage of the litigation through to and including the trial.

The parties' respective Precedent H cost budgets are then filed at Court and served on each other, (the timing for which is stipulated by a court order). The costs budgets should then be dealt with at the first Costs and Case Management Conference ("CCMC"). Here the Judge will hear the parties' representatives explain and justify their respective budgets, as well as any objections from the opposing party. The Judge will then rule on each party's Precedent H costs budget and stipulate the maximum costs the respective parties can recover for each stage of the litigation and with that, the litigation overall.

The changes coming in from 1 October 2020 with the Precedent T however, concerns revisions to the parties' costs budget *after* their approval at the first CCMC.

Presently under Paragraph 7.6 of Practice Direction 3E to Civil Procedure Rules ("CPR") Part 3, the parties are



able to revise their approved budgets in respect of future costs by agreement between themselves. The Court need only be involved where the parties cannot agree to a budget revision. Come 1 October 2020 however, Paragraph 7.6 of Practice Direction 3E to CPR Part 3, will be changed, so as to remove the parties' ability to agree revisions to costs budgets between themselves.

Under what will become the new CPR 3.15A, if at any time a party needs to vary their costs budget in respect of their approved future costs in the litigation, they will need to complete the new "Precedent T" and comply with the procedure, as currently at [paragraph 4 of Civil Procedure \(Amendment No. 3\) Rules 2020](#).

In short, the party seeking to revise their costs budget, will from 1 October 2020, need to complete, file and serve a Precedent T Form at Court and on their opponent. The Court will then consider the Precedent T and decide ('on the papers' / without a hearing if possible) whether or not to allow the proposed revision to the costs budget (taking account of any objections from the opponent). If the Court requires further submissions from the parties, they will have the power to list a further Costs Management Conference. In practice, this could amount to a re-run of the costs budget approval process at the first CCMC which in itself, will not have been inexpensive.

How we can help

If you have concerns over your approved costs budgets or have any queries as regards the costs budgeting process in commercial litigation generally, please contact [William Angas](#) and [Ben Ashworth](#).



[Will Angas](#)

Partner



[Ben Ashworth](#)

Partner