



Costs Management Pilot

by Nicholas Gould

Introduction

As many of you will already be aware, a costs management pilot scheme will be operating in the Technology and Construction Court (the "TCC") (together with the Mercantile Courts) from 1 October 2011 to 30 September 2012. The pilot is an extension of an earlier voluntary pilot that was run in the Birmingham TCC during 2009 and arises out of Lord Justice Jackson's civil litigation costs review.

The new pilot scheme will operate between 1 October 2011 and 30 September 2011 and will apply to proceedings when the first case management conference is heard on or after 1 October 2011.

How does the pilot work?

The pilot scheme has been implemented by Practice Direction 51G. This notes that the court will:

"manage the costs of litigation as well as the case itself, making use of case management conferences and costs management conferences..."

If the pilot applies, the parties will be obliged to file and exchange costs budget (in the form of a Precedent HB) at the same time as filing their Case Management Information Sheet. Reasonable allowances must be made within these costs budgets for:

- (1) intended activities: e.g. disclosure, preparation of witness statements, obtaining experts' reports, mediation or any other steps which are deemed appropriate to a particular case;
- (2) identifiable contingencies: e.g. specific disclosure application or resisting applications made or threatened by an opponent; and
- (3) disbursements including court fees, counsel's fees and any mediator or expert fees.

If at the Case Management Conference, the court decides to make a Costs Management Order it will, after making any appropriate revisions, record its approval of a party's budget and may order attendance at a subsequent costs management hearing in order to monitor expenditure. If an approved costs management budget later becomes inaccurate the party must produce a revised budget, giving reasons for any increase and the court may approve or disapprove the changes. Legal advisors must inform their client within seven days of any Cost Management Order.

When assessing costs, the court will have regard to the last approved budget and will not depart from it unless it is satisfied there is good reason to do so.

A party may also apply to the court if they consider another party is behaving oppressively in seeking that party to spend money disproportionately on costs.

Monitoring the pilot

Nicholas Gould, a partner here at Fenwick Elliott will (in his capacity as a Senior Visiting Lecturer at King's College, London) be monitoring the effectiveness of the pilot and is currently in the process of producing questionnaires for solicitors and Judges involved in the pilot. He will be assisted by Claire King an Associate here at Fenwick Elliott, and also by Christina Lockwood a lawyer and mediator with CEDR Solve. Readers will recall that Nicholas and Claire previously headed up a team analysing the results of a questionnaire into the use of mediation in construction disputes which was conducted while Lord Justice Jackson was the head of the TCC.

Anyone who experiences the pilot after 1 October 2011 should feel free to send any feedback (in addition to the completed questionnaire the TCC will provide you with) to nicholas.gould@kcl.ac.uk.

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