

HOW TO REVISE A COSTS BUDGET – THE NEW PRECEDENT T

The update to the CPR and Practice Directions due on 1st October 2020 amends the costs budgeting process when Costs Budgets are to be revised. This includes the preparation of a new form called a Precedent T, the front page of which is set out below. The following briefly sets out how the new process will work.

Precedent T Summary Sheet					Page 1
Court:	Name	Current Budget date:		00/00/0000	
Parties:	Parties	Date Precedent T served:		00/00/0000	
Claim number:	Number	Cost budget for:		Party	
Work done / to be done	Current Budget Costs (prior to variation)		Variations (+ or -)	Total estimated costs after variation (£)	Completion by the Court : Estimated costs allowed or agreed after variation
	Incurred (£)	Estimated (£)	Variation in estimate (see explanation sheet for details)		
Pre-action costs	£0.00				
Issue /statements of case	£0.00	£0.00	£0.00	£0.00	£0.00
CMC	£0.00	£0.00	£0.00	£0.00	£0.00
Disclosure	£0.00	£0.00	£0.00	£0.00	£0.00
Witness statements	£0.00	£0.00	£0.00	£0.00	£0.00
Expert reports	£0.00	£0.00	£0.00	£0.00	£0.00
PTR	£0.00	£0.00	£0.00	£0.00	£0.00
Trial preparation	£0.00	£0.00	£0.00	£0.00	£0.00
Trial	£0.00	£0.00	£0.00	£0.00	£0.00
ADR / Settlement discussions	£0.00	£0.00	£0.00	£0.00	£0.00
Contingent cost A:	£0.00	£0.00	£0.00	£0.00	£0.00
Contingent cost B:	£0.00	£0.00	£0.00	£0.00	£0.00
	Total incurred	Total estimated	Variation	Total estimated costs after variation (£)	
Sub Totals	£0.00	£0.00	£0.00	£0.00	£0.00
Grand Total (including both incurred costs and estimated costs)	£0.00			£0.00	£0.00
This estimate excludes VAT (if applicable), success fees and ATE insurance premiums (if applicable), costs of detailed assessment, costs of any appeals, costs of enforcing any judgment and [complete as appropriate]					
Approved budget after variation (Incurred and estimated)					£0.00
Variation certification pursuant to Part 3.15 (A) 3(c)					
I certify that the costs and disbursements included in this variation are not included in any previous budgeted costs or variation (including any contingency), whether agreed or approved by the court.					
Signed					
Name (printed)					
Position					
Dated	00/00/0000				

The above is page one of the Precedent T. There are further pages to set out particulars of the variation being sought

The New Rules

There already exists in CPR PD 3E para 7.6 a requirement for parties to vary costs budgets where there have been significant developments, upwards or downwards. However, from 1 October 2020 that requirement will be enshrined as a new rule.

The rule change can be found at CPR 3.15A and provides a process that the parties must follow to revise their budgets upwards or downwards if “significant developments” in the litigation warrant such amendments.

Any budgets revised must be submitted promptly by the revising party to the other parties for agreement and subsequently to the court in accordance with CPR 3.15A (3) to (5) which sets out the procedure for revising the budget which, in straightforward terms, is to comply with the following:

1. Serve particulars of the variation proposed on every other party using Precedent T;
2. Ensure that only additional costs occasioned by the “significant developments” are included;
3. Certify, as prescribed by Practice Direction 3E, that the additional costs are not included in any previous budgeted costs or variation;
4. Submit particulars of variation promptly to the Court, together with the last agreed budget, and an explanation of the points of difference if not agreed between the parties.

Following the above steps, the Court may approve, vary or disallow the proposed variations whilst having regard to any significant developments which have occurred since the date the previous budget was approved / agreed or alternatively, a further Costs Management Hearing may be listed.

When the Court orders that a costs budget can be varied, the Court may vary the budget for costs related to that variation which have been incurred prior to the order for variation but after the costs management order. The court therefore does have a discretion to allow costs incurred prior to variation however, it would be good practice to prepare the Precedent T in advance of any such costs being incurred as there is no requirement upon the court to allow such costs. Indeed, in the interests of fairness to the other parties, it is probable the Court will disallow those costs unless there are circumstances rendering it impossible to agree the Precedent T prior to incurring such costs.

Format of the New Budget Variation Document

The varying party is required to submit the request for variations to the costs budget in Precedent T, which is a two tab Excel spreadsheet.

The Precedent T is in a format similar to that of a Precedent H Costs Budget and shows the previously incurred and estimated costs prior to variation as per previous agreement or a previous costs management order.

The column titled “Variations (+ or -)” requires the varying party to calculate the estimated costs following the variation. This is done by completing the “Variation Particulars” section which is a separate tab in the Excel spreadsheet. This gives the parties the opportunity to understand in a recognisable form what the proposed variations will be and the impact on the total estimated costs.

The final column is to be completed by the Court setting out the estimated costs approved or agreed after the variation.

The second tab included in the Precedent T spreadsheet should actually be completed first in accordance with guidance provided with the Precedent T. Essentially, the varying party must calculate and insert the valuation of the variation being sought for profit costs and disbursements for each phase. The spreadsheet will calculate the total of the variation sought for each phase and transpose that figure to the appropriate cell on the front page of the Precedent T.

Additionally, the varying party is required to provide a general explanation as to the significant development for the variation.

Where the variation exceeds £10,000.00 for any particular phase, further explanation is required. As

per the Precedent H, a breakdown of experts’ estimated fees is required for the Precedent T, if that is indeed the reason for requesting the variation.

The Variation Particulars section somewhat resembles the Precedent R in that the opponent is afforded the opportunity to comment on the variation being sought and if the proposed variation is not agreed, they are able to make a counter-offer for revised budget costs.

Conclusion

- From 1st October 2020, Precedent T must be completed for all proposed variations to costs budgets.
- No previously budgeted costs will be permitted on the Precedent T form and the varying party is required to sign a certification to this effect.
- Ensure Precedent T is served promptly upon the opponent.
- Submit particulars of variation to the Court promptly.

It is also worth highlighting that as yet, there is little guidance as to what constitutes a “significant development” and additionally, it is unlikely that the intention of this document is to be used for interim applications, the costs of which generally fall outside of the costs budget.

The introduction of the Precedent T is very welcome as the question of how to properly revise an approved Costs Budget has been an issue since the introduction of costs budgeting back in April 2013. Our previous briefing on the judgment in [Sharp v Blank \[2017\] EWHC 3390 \(ch\)](#), which can be found on our website, highlighted the need for clearer guidance and direction about how to revise a Costs Budget. Ultimately this new process should assist avoiding retrospective costs budgeting as well as arguments at the detailed assessment stage regarding departure from an approved costs budget, thereby streamlining the assessment process.

This briefing is prepared by Malcolm Goodwin and Laura Dear. It is not intended to be an exhaustive statement of the law and should not be relied on as legal advice.

