

Costs budgeting: SARPD Oil International Ltd v. Addax Energy SA [2016] EWCA Civ 120 is overruled by the CPR

Changes made on 1 April 2017 suppress the effect of SARPD Oil International Ltd v. Addax Energy SA [2016] EWCA Civ 120.

The changes highlight the distinction between incurred costs and estimated costs.

The purpose is to avoid a party inadvertently losing their opportunity to object to incurred costs, if they did not do so at the CCMC (as appeared to be the case following SARP Oil).

Therefore, it is no longer necessary to record in the order words to the effect that: “both parties’ incurred costs may be challenged at detailed assessment”. However, if there has been any agreement, one should still be careful to ensure that the costs management order accurately reflects which type of costs has been agreed (i.e. incurred costs or estimated costs).

Estimated costs are “budgeted” costs that can be addressed at a CCMC. Incurred costs cannot be “budgeted” at a CCMC. Generally speaking, arguments about incurred costs are reserved for detailed assessment. However, the Judge can record comments about them (as in Redfern v. Corby Borough Council [2014] EWHC 4526 (QB); see CPR 3.15(4)).

The relevant provision now reads:

“CPR 3.15

(2) The court may at any time make a ‘costs management order’. [...] By a costs management order the court will—

- (a) record the extent to which the budgeted costs are agreed between the parties;
- (b) in respect of the budgeted costs which are not agreed, record the court’s approval after making appropriate revisions;
- (c) record the extent (if any) to which incurred costs are agreed.”

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