Neutral Citation Number: [2026] EWHC 2126 (KB)

Case No: KA-2026-BHM-000013

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil & Family Justice Centre

Date: 10 August 2026

Before :

MR JUSTICE CAVANAGH

- -

Between :

Mr Ndifreke Bassey (A protected person by his wife and litigation friend Andreia Bassey)	**Claimant/ Respondent**
- and -	
Mr Shanardo Travis Whittaker	**First Defendant**
-and-	
Watford Insurance Company Europe Limited	**Second Defendant Appellant**

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- -

Michael Lemmy (instructed by **Keoghs LLP**) for the Appellant
Simon Plault (instructed by **McGrath Solicitors, part of GT Stewart Solicitors**) for the Respondent

Hearing date: 22 July 2026

*This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand down is deemed to be **10:30am** on **Monday 10 August 2026.***

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JUDGMENT

....

Mr Justice Cavanagh:

1. This appeal raises issues concerning the meaning and effect of CPR 3.15A and the circumstances in which the court may revise costs budgets. In particular, the appeal raises the question whether the court can revise costs budgets even if there have been no significant developments since the costs budgets were finalised.

2. This appeal arises in the context of a personal injury claim brought by the Respondent to this appeal. The Respondent suffered very serious injuries in a road traffic accident. He was a pedestrian who was struck down by a car that was driven by the First Defendant. His injuries were so serious that he is now a protected person who lacks capacity to conduct litigation. His wife is his Litigation Friend. The First Defendant, who was the driver, has played no part in the proceedings or the appeal. The appellant is the Second Defendant, which is the First Defendant's insurer. The Second Defendant has conceded liability and so the proceedings are now concerned only with remedy.

3. This appeal follows the grant of permission to appeal by Soole J on the papers on 29 May 2026.

<u>The relevant provisions of CPR 3.15 and 3.15A</u>

4. CPR 3.15 provides for the court to make costs management orders which control the parties' budgets in respect of recoverable costs. It states, in relevant part:

> "3.15—(1) In addition to exercising its other powers, the court may manage the costs to be incurred (the budgeted costs) by any party in any proceedings.
>
> (2) The court may at any time make a "costs management order". Where costs budgets have been filed and exchanged the court will make a costs management order unless it is satisfied that the litigation can be conducted justly and at proportionate cost in accordance with the overriding objective without such an order being made. 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.
>
> (3) If a costs management order has been made, the court will thereafter control the parties' budgets in respect of recoverable costs.
>
> (4) Whether or not the court makes a costs management order, it may record on the face of any case management order any

> comments it has about the incurred costs which are to be taken into account in any subsequent assessment proceedings.
>
> ….
>
> (6) The court may set a timetable or give other directions for future reviews of budgets.

5. CPR 3.15A deals with revisions to costs budgets. It is headed, "Revision and variation of costs budgets on account of significant developments ("variation costs"). It provides, in relevant part:

> "(1) A party ("the revising party") must revise its budgeted costs upwards or downwards if significant developments in the litigation warrant such revisions.
>
> (2) Any budgets revised in accordance with paragraph (1) must be submitted promptly by the revising party to the other parties for agreement, and subsequently to the court, in accordance with paragraphs (3) to (5).
>
> …
>
> (5) The court may approve, vary or disallow the proposed variations, having regard to any significant developments which have occurred since the date when the previous budget was approved or agreed, or may list a further costs management hearing."

<u>The relevant procedural history in these proceedings</u>

6. The case was allocated to the multi-track on 27 March 2024.

7. In the present case, as I have said, the Appellant conceded liability. This was done at a case and costs management hearing on 18 December 2024, at which point judgment was entered against the First Defendant, with damages to be assessed. At that hearing, DJ Maddison made detailed directions to timetable the case for trial on issues for the assessment of damages, and for preparations in advance of trial. The District Judge gave directions for disclosure and for exchange of statements of witnesses of fact. These included directions for rolling disclosure of the Appellant's medical, rehabilitation, case management, and treating records every four months. By the time of the 18 December 2024 hearing, the Respondent had already served five expert medical reports. He was given permission to rely upon update reports from two of those experts and to rely on further medical expert reports from six further medical experts. The Respondent was given leave to rely upon two non-medical expert reports that had already been served, and upon two further non-medical expert reports. The Appellant had not served any expert medical reports at the time of the costs and case management hearing. The Appellant was given leave to serve eight medical expert reports and three non-medical expert reports. The usual orders were given for expert meetings and joint experts' reports. Directions were also given for service of an updated schedule and

counter-schedule of loss. The time estimate for trial was 10 days and the case was given a trial window between 1 June 2026 and 18 December 2026.

8. So far as the costs management hearing was concerned, DJ Maddison approved the Respondent's costs in the total sum of £1,028,580.85. This sum covered both incurred and estimated costs. The Respondent had claimed incurred and estimated costs in his Precedent H in the much greater sum of £1,981,163.55. DJ Maddison formally recorded that the incurred costs on the Respondent's Precedent H were disproportionate. The Appellant's costs budget was agreed in the sum of £341,382.01. It was recorded that the Court had not budgeted for the attendance of any expert at trial for either party.

9. On 7 July 2025, the trial window was extended to 19 March 2027 by HHJ Emma Kelly. This was because the parties had no common dates of availability within the original trial window.

10. A further hearing took place on 27 November 2025 before DJ McLoughlin, who had taken over management of the case from DJ Maddison. This was attended by Mr Plaut, who appears today for the Respondent and by Mr Hunter KC, who cannot be here today, and who is leading counsel for the Appellant. The Appellant is represented before me by Mr Lemmy, junior counsel who is instructed in the case. Mr Lemmy was not present at the hearing on 27 November 2025. The November 2025 hearing followed an application by the Appellant to vary the directions made by DJ Maddison on 18 December 2025, supported by a witness statement from the Appellant's solicitor, Mr Burn.

11. The order made on 27 November 2025 (and sealed on 2 December 2025) was made by consent. The order is headed "CONSENT ORDER".

12. A number of variations were made to the directions. The new directions extended time for service by the Respondent of his updated and further medical expert evidence and his non-expert medical evidence. The order also extended time for service by the Appellant of its medical and non-medical expert evidence. Consequential extensions of time were given for the joint statements of the medical and non-medical experts. and provided that the Respondent must provide rolling disclosure of all up to date medical, case management, and treating records and notes, including social services records every three months (rather than the four month intervals directed by DJ Maddison). The order also made provision for two additional quantum statements to be provided, one from the Respondent and one from his wife. The dates for updated schedules and counter-schedules of loss were extended.

13. Paragraph 3 of the Order stated:

> "The Court makes a costs management order as follows:
>
> (a) By no later than 4pm on 9 January 2026 the parties shall file and serve Precedent Ts, in accordance with the provisions of CPR 3.15A and in the form prescribed by PD3D to take account of the increased costs associated with the amendments to the order of DJ Maddison dated 18 December 2024;

> (b) A costs management hearing shall be listed at 2pm on 6th February 2025 before DJ McLoughlin, time estimate 1 hour.
> (c) The Claimant shall file a hearing bundle no later than 7 days before the hearing.
> (d) If the revisions to the parties' budgets are agreed, the parties shall notify the Court and request that the hearing be vacated."

14. The Respondent duly filed and served a Precedent T seeking a further £238,350.

15. At the hearing before DJ Maddison on 6 February 2026, Mr Plaut represented the Respondent and Mr Lemmy represented the Appellant. I have been provided with a transcript of the hearing, and also with a copy of the order made by DJ Maddison at that hearing.

16. The preamble to the order states:

> "Upon the Court recording that the amendments to the Order of DJ Maddison dated 18th December 2024 were not a significant development within CPR 3.15A but does not prevent the costs being increased"

17. The body of the order then went on to give directions for submissions by the parties on the quantum of the increased costs, to be followed by a 30 minute telephone hearing before DJ McLoughlin to determine the costs.

18. It is not in dispute between the parties that this order reflected a decision by DJ Maddison that costs budgets should be revised. The 30 minute telephone hearing was solely intended to hear argument on quantum, not on the question of principle as to whether costs should be increased.

<u>The issues in the appeal</u>

19. Against that background, three issues arise for determination by me in this appeal.

20. First, there is the Appellant's single ground of appeal: This is that "Having found that the amendments to the Order of DJ Maddison dated 18th December 2024 were not a significant development within CPR 3.15A District Judge McLoughlin was wrong in law to hold that he had the power to vary the approved cost budget."

21. The second issue is the point that is raised in the Respondent's Notice. This is that, if the Appellant is right that costs budgets can only be revised if there have been significant developments, the District Judge was wrong to find that there had been no significant developments since the costs management order had been made.

22. The third point is one that is raised in the Respondent's skeleton argument. This is that the Court has a general power to revisit and to revise costs budgets if the parties agree that this should happen, even if the requirements of CPR 3.15A as regards "significant developments have not been met". The Respondent submitted that DJ McLoughlin proceeded on the basis that there had been an order by consent at the previous hearing

in November 2025 that the costs budgets would be revised, and that the order dated 6 February 2026 gave effect to this.

23. It is convenient to deal with this third issue first.

Had DJ Maddison made an order by consent in November 2025 to the effect that costs budgets would be revised?

24. It is true that the Respondent's Notice does not itself take the point that is dealt with in the Respondent's skeleton argument but in my view it is necessary to consider the point anyway, because it is so closely connected to the Appellant's ground of appeal. Furthermore, in order to address the points that are taken in the appellant's notice and the respondent's notice, it is necessary to consider in some detail the observations and reasoning of DJ McLoughlin as recorded on the transcript of the hearing on 6 February 2026. In particular, it is necessary to understand the reasons why, on 6 February 2026, DJ McLoughlin gave directions for a further hearing to decide the detail of the variations to the costs budget. This requires me to confront the question as to whether DJ McLoughlin considered that there had already been agreement, in November 2025, that there had been significant developments and/or that the costs budgets should be increased, and how far this had an impact upon his ruling on 6 February 2026.

25. In other words it is necessary to deal with the issues raised in the R's skeleton argument in order to address the ground specifically raised in the Appellant's ground of appeal.

26. The Appellant has not been taken by surprise by this point, and the Appellant has been able to deal with it. It has been addressed in the Appellant's supplementary skeleton argument and in a witness statement of David Burn, the Appellant's solicitor, dated 8 July 2026. It has also been addressed in the parties' submissions before me.

27. The first question, therefore, is whether the parties agreed at the hearing on 27 November 2025 that the costs budgets should be revised and/or that there had been significant developments since the costs management orders in December 2025 and, if so, and whether this is reflected in the order made on that date. A related question, as I have said, is as regards what DJ McLoughlin thought, on 6 February 2026, had been agreed and dealt with by consent in his order of 27 November 2025.

28. The starting point is that the order made by DJ McLoughlin on 27 November 2025 is, with respect, somewhat ambiguous.

29. The following observations can be made on the text of the order:

(1) The order does not state in terms that it was agreed that the costs budgets should be revised, and there is no express ruling that to that effect;

(2) There is no statement, whether in the body of the order or in the preamble, to an agreement between the parties that there have been significant developments;

(3) The direction that the parties shall file and serve Precedent Ts is neutral. It might mean that this should happen because a decision has already been made that the budgets are to be varied, but it is equally readily explicable on the basis that the

parties are required to do this in case it is decided at the subsequent hearing that the costs budgets should be revised; and

(4) Sub-paragraph (d) of the order dated 27 November 2025 is, similarly, neutral. One cannot draw any conclusions from that sub-paragraph, in isolation, as regards whether there has been agreement that the costs budgets should be revised.

30. In my view, if there had been agreement that the costs budgets were to be revised, this would have been stated explicitly in the order. This did not happen. Read in its proper context, the order of 27 November 2025 was not an order to the effect that it has been agreed that the costs budgets should be revised, let alone that it had been agreed that there have been significant developments. It was an order giving directions so that the questions of whether there have been significant developments and as to whether the costs budgets should be revised (which does not automatically follow even if there have been significant developments) could be determined at the next hearing on 6 February 2026.

31. There was no correspondence between the parties, prior to the November 2025 hearing, which recorded an agreement that the costs budgets should be revised, or an agreement that there had been significant developments. Rather, as I will explain, it is absolutely clear on the evidence that no such agreement was reached at the hearing on 27 November 2025. Given that there was no such agreement, it is inconceivable that DJ McLoughlin would make an order on that occasion, stated to be by consent, to permit the costs budgets to be revised. He would not record in an order by consent something to which the parties had not consented.

32. The evidence that there was no relevant agreement is as follows:

33. Whilst there is no transcript of the hearing on 27 November 2025, Mr Burn's witness statement of 8 July 2026 exhibits an email sent to him by Mr Hunter KC after the hearing in November 2025. Mr Hunter said that the DJ "refused C's attempts to get him to record that there had been significant development in the case. He accepted my submission that this assumed that which needs to be established…. This might therefore not be a new development within the rules. The DJ accepted this and said that C needed to file some evidence to demonstrate the new development within the meaning of the rules . C was not happy with this but … will be seeking to address this point next time round."

34. Mr Hunter KC's near-contemporary note of the hearing on 27 November 2025 therefore makes clear that there was no agreement that there had been significant developments and no agreement that the costs budgets should be amended. It makes clear that the intention of DJ McLoughlin, on 27 November 2025, was that the hearing on 6 February 2026 was listed in order to consider whether there were significant developments and that it would only be if the court found that there were significant developments that the costs budget would be revised. Standing back, this makes sense, because it would not make sense for the Appellant to agree voluntarily to increase costs budgets as that would almost certainly work to the benefit of the Respondent, rather than the Appellant.

35. This conclusion is very strongly supported by the evidence that the Respondent filed in the days preceding the next hearing on 6 February 2026. The Respondent's solicitor, Mr Verma, provided a witness statement in which he described what had changed since

the costs budgets had been determined in December 2024 and gave reasons why it was the Respondent's case that these were significant developments. At paragraph 47 of the statement, Mr Verma observed that the reason that the February 2026 hearing had been listed was because the Appellant objected to a recital in the November 2025 order to the effect that there had been significant developments. At paragraph 48 he said "It is clear that these are significant developments which were not provided for in the original budgeting process.". At paragraph 49 he said, "I accept that the court has a discretion as to whether to permit a revision to a budget, even if satisfied that there has been a significant development. However, I invite the court to exercise that discretion." Finally, at paragraph 68 he said, " I humbly invite the court to make an order reflecting the Precedent T."

36. It is clear, therefore, that, immediately before the hearing on 6 February 2026, the understanding of the Respondent's legal team was that there was no agreement that the cost budgets should be revised or that there had been significant developments in this case. The only possible reason why the issue of whether there had been significant developments could be a live one at the hearing in February 2026 was because the parties were not in agreement as regards whether the costs budgets should be revised. Mr Plaut's skeleton argument for the appeal hearing said that "Given the terms of the consent order, the Respondent had not anticipated that the Appellant would still raise the "significant development" argument." It is hard to see how this can be so, given that Mr Verma had filed a witness statement in advance of the hearing which specifically addressed the "significant development" argument, and, as will be seen, at the hearing on 6 February 2026, Mr Plaut started his submissions by recognising that there was an argument between the parties as to whether there had been significant developments. At the hearing before me, Mr Plaut made a somewhat different point, which was that, in light of the evidence in Mr Verma's witness statement and the Appellant's own request for variation to the directions for trial, he had expected that the Appellant would simply agree at the hearing on 6 February 2026 that there had been significant developments. He was surprised that Mr Lemmy did not concede this at the hearing, not in light of the terms of the consent order, but in light of the evidence that the Respondent had subsequently provided. He also pointed out that, in his witness statement filed in advance of the hearing on 27 November 2025, Mr Burn, the Appellant's solicitor, had said that there had been "significant developments" in the litigation.

37. The Appellant's solicitor, Mr Burn, provided a short further witness statement in advance of the 6 February 2026 hearing. Unlike Mr Verma, his statement did not deal in detail with whether there had been significant developments, but the Appellant's solicitors filed a very lengthy bundle for the February 2026 hearing of materials whose principal relevance was to assist the District Judge in considering whether or not there had been significant developments since the costs budgets were finalised. This bundle ran to over 500 pages.

38. The conclusion that there had been no advance agreement in relation to significant developments or that the costs budgets should be revised, and that this was not the parties' understanding of what had happened, is further strongly supported by the transcript of the submissions made by counsel at the hearing on 6 February 2026. This was, of course, before the same District Judge as the one who had dealt with the hearing on 27 November 2025. At page 4C, Mr Plaut acknowledged that there was an argument

about whether there had been significant developments and then went on to make submissions on the issue. He cited authorities, **Persimmon Homes v Osborne Clarke** 2021 EWHC 831 (Ch) and **Sharp v Seekings v Moore** 2019 EWHC 1476 (Comm), and he cited a passage in the White Book dealing with the meaning of significant developments. He identified what he said were the significant developments in this case. At page 25 of the transcript, Mr Plaut said that at the November hearing he had wanted it recorded in the preamble that there had been a significant development and there had been an issue about that. Mr Plaut said that "that is why were are here. Everything else was agreed."

39. At no point did Mr Plaut suggest that the issue of significant developments had already been resolved or that it had already been agreed or decided that the costs budgets should be revised. Mr Lemmy then made submissions in response.

40. At page 8 of the transcript, the District Judge said, "OK,.. shall we deal with if it is a significant development or not."

41. The position becomes somewhat more opaque in light of comments that were then made by the District Judge.

42. At page 22 of the transcript, DJ McLoughlin pointed out that the order about costs following the hearing of 27 November 2025 was a consent order. He said, at page 23 of the transcript, "Maybe there was I think there was a dispute as to what was the situation in regard to developments, but anyway…"

43. DJ McLoughlin set out his conclusions at page 27 of the transcript. I must set these out in some detail. He said:

> "Moving on. …. the Consent Order allowed the Claimant to serve updated further medical expert evidence shall be extended to 24 April 2026, and then the costs management aspect said:
>
> "The parties file Precedent Ts, etc, to take account of the increased costs associated with the amendments to the order of DJ Maddison dated 18 December 2024."
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> So that was an agreed position. I mean, I, I cannot be falling into error, can I? If I say that order still needs, that that order alone is a costs management order to take account of those increased costs associated with the amendments to the order of DJ Maddison dated December 2024. Precedent Ts in accordance with that. That, that is the position. I do not want to reach a final view because there is only a few minutes.
>
> I must say, provisionally, I have got an issue as to whether it is a significant development or not that has been postulated and I am just wondering whether, in fact, that is a way, but there are other ways to ensure that the, the case is properly costs managed between the parties in accordance with the rules. I think that is my impression. I do not, I, I have read the statement that has been prepared and I have looked, prior to coming in because we were

a few minutes late, in relation to **Churchill v Boot** [2016] EWHC 1322 (QB), and I am, I think, in fact, was **Seekings v Moores** a, was that a Birmingham case? Anyway, I may not, it does not matter,

HHJ Worster --

…. And he, he sets out in that judgment I seem to recall various aspects that could constitute significant development. I pose the remarks carefully because I think we, we are going to have to come back to sort the, the numbers out, unless you can agree them. On the face of what I have read and heard I am not satisfied it is a, these are significant developments.

That does not mean there should not be an increase in the costs budget of the Claimant because that was predicated by an earlier hearing that I was at, so I am not dismissing that, that you are stuck with what you are stuck with because the order I made allowed Precedent Ts to be filed with a view to teasing out what had actually been incurred. But, as premised, it seems to be the significant developments suggested (inaudible) but, we have got rid of, you know, I do not, I do not want this to be pejorative to, to the earlier case manager. I mean, I do not know what went on.

Suffice it to say that was known, it was a known known, in the words of Donald Rumsfeld, or my words as I am now using. It was a known known. Accommodation was anticipated, timing for which was unknown because of a slug interim payment to get the property up and done, rehabilitation was anticipated. So it was, it was within the contemplation of the parties that those mechanisms would take place when the matter was, well, given the nature and extent of the Claimant's injuries those things would have to take place and the fact his lawyers know that he is living in a one, you know, a small flat, not up, not on the ground floor in restricted, restricted environment. So all those would be, I consider, to be within the reasonable contemplation of, of the parties.

I am not in a position to apportion blame, I do not think. Defendants are due to serve their evidence here in June. Sorry, April, June. In terms of expert evidence a number of them we are not even there and you, the, the Claimant's expert evidence was extended to 24 April 2026. So I do not think it, I do not think there are significant developments. But as I said, that does not prevent the costs being increased. I think that, that is where I am at with it now."

44. A little later in the hearing, DJ McLoughlin said that there should be a further hearing on the quantum of the revised budgets "I think to do justice to the, to be true to the order that was made."

45. I have quoted extensively from DJ McLoughlin's comments because, with respect to him, they are not entirely clear and require some unpicking. This is not a criticism of him. He had a busy list that afternoon and only had an hour allocated to this hearing. He was not provided with any skeleton arguments, but he had been provided with a bundle running to many hundreds of pages. He was running out of time and was making some observations and giving short reasons, rather than giving a formal judgment.

46. Nevertheless, it is clear to me that DJ McLoughlin decided that there had been no significant developments. Although at one stage he referred to this as his provisional view, he stated in clear terms, later in the transcript, that on the face of what he had read and heard he was not satisfied that there were significant developments. He then gave reasons for this view. This decision was also recorded in the preamble to his order. I do not think that it is significant that it was in the preamble rather than the body of the order. The fact remains that this was the District Judge's conclusion.

47. The complicating factor is that DJ McLoughlin then made arrangements for a further hearing to determine the level of adjustments that should be made to the costs budgets. In my judgment, the explanation for this is that DJ McLoughlin was under the belief that he had already ordered at the previous hearing on 27 November 2025 that the costs budgets could be revised, and that this was done by consent. He took the view that to be true to the order he had already made, he had to give directions for determining the quantum of the revised budgets.

48. In this, as I have said, DJ McLoughlin was mistaken. I appreciate that he had dealt with the hearing on 27 November 2025. However, the question of the true interpretation of the order made following that hearing is a matter of law, not a matter that depends upon the subjective interpretation, let alone recollection, of the judge who made the order. It is not at all surprising that a busy District Judge should not remember the detail of what he had ordered at a hearing some 3 months before. It appears that the District Judge misunderstood the significance of his order that Precedents T should be prepared. This was not made on the basis that it was agreed that budgets would be revised. Rather, the order was made so that the Precedents T would be ready if a decision was made at the next hearing that there were significant differences and that budgets should be revised. The Precedents T might help the District Judge with that decision.

49. In any event, as I have said, I am satisfied that, when the history of the proceedings is analysed, and the order made on 27 November 2025 is looked at in context, it is clear that there was no ruling by consent on that day to the effect that the costs budgets can be amended, and no ruling that there had been significant developments in the case. The question whether there had been significant developments was only relevant on 6 February 2026 if the court had not yet decided whether to revise the costs budgets. DJ McLoughlin was mistaken in his recollection of what he had ordered on the previous occasion. It follows that the point taken by Mr Plaut in his skeleton argument on this issue must be rejected.

50. I should add, to make the position clear, that Mr Plaut said in his oral submissions before me that he accepts that it was not agreed at the hearing in November 2025 that there had been significant developments, or that the costs budgets should be revised. He emphasised that he did not make any such submission to DJ McLoughlin on 6 February 2026. He did not put this argument before the judge. He did not seek to mislead the judge about this. It was the DJ himself who, as Mr Plaut put it in his

submissions to me, saw a different route to permitting the parties to revise the budget. Mr Plaut submitted, and I agree, that the judge regarded himself as entitled, if not bound, to revise the costs budget in light of what was decided and/or agreed at the November 2025 hearing. The fact remains, however, that the judge was mistaken in this, and his understanding of the meaning and effect of the consent order made on 27 November 2025 did not accord with the Respondent's understanding it, let alone with the arguments that were advanced on the Respondent's behalf by Mr Plaut on 6 February 2026.

51. Before me, Mr Plaut valiantly submitted that the District Judge's order should stand, notwithstanding his mistake. Despite accepting that the judge had proceeded on the mistaken basis that there had been an order for the variation of the costs budgets in November 2025, Mr Plaut did not concede that the judge had been in error in authorising revisions to the costs budgets on 6 February 2026. He submitted that as a matter of law the judge had the power to make the order that he did on 6 February 2026, but qualified that submission by saying that the only basis on which the order could be set aside was if this court concludes that the District Judge was proceeding on an erroneous basis. For the reasons I have given, I am satisfied that the judge proceeded on an erroneous basis.

52. So, taking stock, I must deal with the grounds in the appellant's notice and in the respondent's notice on the following basis:

(1) There was no ruling by consent on 27 November 2025 that the costs budgets would be revised;

(2) There was no ruling on 27 November 2025 that there had been significant developments since the costs budgets had been determined on 18 December 2024;

(3) However, at the hearing on 6 February 2026, DJ McLoughlin gave directions for a further hearing at which variations to the costs budgets would be decided upon. He did so because he was under the mistaken impression that the parties had agreed at the hearing on 27 November 2025 that the costs budgets could be revised, and that this had been recorded in his order. He took the view that the court has power to revise costs budgets even if there have been no significant developments, if the parties are in agreement that this should happen;

(4) As there had been no previous order to authorise revisions to the costs budgets, the order of DJ McLoughlin on 6 February 2026 amounted to an order to revise the costs budgets and this is the order which is under appeal; and

(5) At the hearing on 6 February 2026, DJ McLoughlin decided that there had been no significant developments in the case since the costs budgets had been determined. He did not consider that this deprived him of the power to order variation of the costs budgets.

53. It follows that I am not required to decide today whether the court has power to vary cost budgets if the parties agree that this should be done, even if there have been no significant developments. Rather, I am required to decide whether the court has the power to vary costs budgets if the parties do not agree to this course of action, in

circumstances in which the court has found that there have been no significant developments.

54. In these circumstances it is not necessary or appropriate for me to express a view as regards whether, if all parties agree, the court has power under CPR 3.15A or pursuant to some residual power in CPR 3.15 or elsewhere to vary costs budgets even though there have been no significant developments. This is a difficult question which should be left to be decided in a case in which it arises. I will, however, observe that the issue will not often, if ever, arise. If the parties are in agreement that the costs budgets should be varied, they will no doubt also be in agreement that there have been significant developments and if that is the position, it may be unlikely that a judge would go behind such an agreement. However, that is not the issue in this case. The issue that arises on this appeal is whether the Court has a power to vary costs budgets if there is no agreement between the parties and there have been no significant developments.

Are "significant developments" a necessary precondition to the variation of costs budgets?

55. This brings me on the ground of appeal that is relied upon by Mr Lemmy on behalf of the Appellant. Did the judge err in law in ordering the amendment of costs budget in circumstances in which he had decided that there had been no significant developments? Mr Lemmy said that he did. Mr Plaut said that the judge has a discretion to amend costs budgets, even if there have been no significant developments.

56. This issue has been addressed by Master Kaye in **Persimmon Homes Ltd v Osborne Clark LLP** [2021] EWHC 831 (Ch).

57. At paragraph 19, Master Kaye said:

> 19. The effect of CPR 3.15A is to clarify the procedure to be followed when seeking to vary an agreed or approved costs budget and to elevate the procedure from a practice direction to a rule. CPR 3.15A (1), (2), (4) and (5) reflect the wording of CPR PD 3E 7.6 with the mandatory nature of the requirements emphasised by the inclusion of "must" in place of "shall", in CPR 3.15A (1), (2), (3) and (4). In addition, CPR 3.15A makes explicit the requirement for promptness which had been implicit in CPR PD 3E 7.6 by the addition of the word promptly in CPR 3.15A (2) and (4).
>
> 20. The applicant must therefore first satisfy the court that there has been a significant development in the litigation since the last approved or agreed budget which warrants a revision (upwards or downwards) to the last approved or agreed budget; and second that the particulars of the variation have been submitted promptly both to the other parties and the court in accordance with CPR 3.15A (2) to (4).
>
> 21. It is only if the applicant can satisfy the court that it has met these mandatory requirements - the threshold test - that the court goes on to consider the exercise of its discretion in relation to the

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> variation itself and the incurred costs caught by the application to vary in CPR 3.15A (5) and (6). An application to vary therefore involves a two-stage process.
>
> 22. Sub-paragraph (5) provides a discretion to the court which "may" approve, vary, or disallow the proposed variations."

58. At paragraphs 96 98 and 99, Master Kaye said:

> "96. I have set out above the jurisdiction for an application to vary and the relevant background. When considering any application to vary a party's last approved costs budget the court's approach should be to first consider whether there has been a significant development in the litigation since the last approved costs budget."
>
> ….
>
> 98. As the notes to the 3rd Supplement to the White Book (2020) make clear at 3.15A.2 [148]:
>
> "An order for variation cannot be made in order to remedy a budget in respect of developments which could or should have been covered at an earlier approval or variation."
>
> 99. If there has not been a significant development the court need not go further, the jurisdiction in CPR 3.15A is simply not engaged."

59. This was part of the ratio of the case, because Master Kaye found that the threshold had not been met in relation to some of the additional costs in respect of which a variation had been sought (see judgment paragraphs 130 and 148). The reference to CPR PD 3E 7.6 was a reference to the practice direction which was replaced by CPR 3.15A.

60. I am not strictly bound by the judgment of a Master of the High Court, but it must be afforded the greatest respect, especially in relation to matters such as costs, in which a Master will have a much greater expertise than a High Court Judge. There was no suggestion on behalf of the Respondent at the hearing before DJ McLoughlin that **Persimmon Homes** was wrong or should not be followed. In any event, I entirely agree with the conclusions set out by Master Kaye in **Persimmon Homes**. For the reasons given by him, it is clear from the purpose, structure and language of CPR 3.15 and 3.15A that (at least absent agreement between the parties) the existence of significant developments since the costs budgets were finalised is a necessary precondition before costs budgets can be varied. The court does not have a general discretion to vary costs budgets even if there have been no significant developments. I reject Mr Plaut's argument that such a general discretion is to be found in CPR 3.15(3). It is clear from the structure of CPR 3 that the power for the court to amend costs budgets must be found in CPR 3.15A, and so the preconditions of that rule must be met.

61. It is true that CPR 3.15(6) states that "The court may set a timetable or give other directions for future reviews of budgets." No such timetable was set in the present case

and so I do not have to consider whether the "significant development" precondition applies to such pre-agreed reviews. I will observe, however, that it may well be that it does not do so, because provision for future reviews is a sign that the court recognises that, at the time of the costs budgeting, it is not possible to make final provision in relation to all costs. As Mr Lemmy pointed out, it is not uncommon for the court to part-budget the case, for example up to the next CCMC. In any event, CPR 3.15(6) makes provision for something different from the variation of a budget that is already finalised. That is dealt with by CPR 3.15A.

62. It follows that I accept the Appellant's submission that the District Judge erred in law on 6 February 2026 in making an order permitting the variation of the parties' costs budgets in circumstances in which he had found that there had been no significant developments since the costs budgets had been finalised.

63. I should add that there is a further difficulty with the District Judge's ruling, which would arise even if he did, indeed, have a power to revise costs budgets in the absence of significant developments. This is that the District Judge purported to exercise that power on a mistaken basis. He thought that he had to authorise a variation of the costs budgets because that is what had been decided, by consent, at the November 2025 hearing. As I have said, he was wrong about that. It follows that, even if, contrary to my conclusion on this point, District Judges/Masters have a power to vary costs budgets without significant developments, the reason given for doing so in the present case was wholly misconceived. I do not need to say any more about this point, as the Appellant has succeeded on the prior issue, as regards whether there is any such power at all, and so did not need to rely on this point.

Did the District Judge err in finding that there had been no "significant developments"?

64. I come now to the final issue. This is whether the District Judge erred in law on 6 February 2026 in coming to the conclusion that there had been no significant developments since 18 December 2024.

65. The developments relied upon by the Respondent were set out in Mr Verma's witness statement for the hearing on 6 February 2026.

66. Shortly before the costs and case management conference on 18 December 2024, a number of expert medical reports on behalf of the Respondent had been filed and served. The Appellant had not yet filed and served any of its expert reports.

67. Mr Verma said that, at the time of the costs and case management conference, there were reasons why the Respondents' prognosis, and the cost of future treatment, were not yet clear.

68. Mr Verma said that a number of things had happened since the costs budgets were finalised which had not been envisaged and which meant that a further round of medical expert reports would need to be obtained on behalf of the Respondent. The trial window was extended. At the request of the Appellant the directions had been varied. The Respondent had instructed his own case manager because of concerns about the jointly instructed brain injury case manager. The new case manager recommended a raft of additional rehabilitation and private referrals. The intention was that the Respondent

would change his accommodation and this would open up opportunities for different types of therapy and rehabilitation to be used.

69. Mr Verma said that further unanticipated costs would have to be incurred on behalf of the Respondent as a result of these developments. The Respondent's experts would have to produce further reports dealing with the updated treatment and therapy that he had received. The new developments could not simply be dealt with in a joint experts' report. In addition, there will be at least one further disclosure exercise because the frequency of disclosure has been increased, and updated quantum statements would be required from the Respondent and his litigation friend. Mr Verma said that this additional work would be time consuming and expensive.

70. At the hearing on 6 February 2026, Mr Plaut relied on the witness statement from Mr Verma, which he said set out the Respondent's position. He referred the District Judge to what had been said by Master Kaye in **Persimmon Homes** about the meaning of "significant developments". He submitted that DJ Maddison had recognised in December 2024 that things might change and that the Respondent might have to move to new accommodation, which might have an impact upon his future treatment and rehabilitation. Mr Plaut pointed out that the Appellant's expert reports were yet to be provided and so the Respondent could deal with changes to the Respondent's planned treatment and therapy in a single set of reports. He submitted that, in light of the proposed changes to the plans for the Respondent's rehabilitation, it would be necessary for the Respondent's experts, who had provided their reports on a timely basis in advance of the November 2025 hearing, to provide supplementary reports, the cost of which had not been budgeted. The Respondent's experts had seen him before he moved home and before he undertook new and revised rehabilitation or therapy. Mr Plaut said that because of the changes the Respondent's team was now going to have do more work than was envisaged.

71. On behalf of the Respondent, Mr Lemmy submitted that, at the time when he set the costs budget and trial timetable, DJ Maddison anticipated that there might be twists and turns along the way. It was not unusual for the trial window to be extended by 3-6 months. That was the root cause of the extra work referred to but this is not, he submitted, a significant development. The Respondent's advisers were in direct contact with him and so they were in a better position than the Appellant to anticipate what might happen in future, so far as changes to therapy and rehabilitation were concerned. It had been their choice to serve their medical reports just before the hearing in November 2025, thereby making it necessary to serve supplementary reports if things changed. That may have been a tactical error but it did not give rise to a significant development. He submitted that one extra disclosure exercise, more or less, in the period leading up to trial was not a significant development. Disclosure is inherently unpredictable. As for the two extra proposed witness statements, this should be looked at in context. The Respondent's side had budgeted for eight statements and had so far served six, so the additional two just brings them up to the eight for which they had budgeted. Mr Lemmy submitted that these are just the twists and turns that are anticipated when costs budgets are finalised. Mr Lemmy further submitted that the decision on the part of the Respondent's legal advisers to serve their expert medical reports just before the hearing in November 2025 and then to ask for a variation to accommodate supplementary medical reports was, as Mr Lemmy put it, "building costs".

72. At the hearing on 6 February 2026, DJ McLoughlin said that, having read Mr Verma's statement and having looked at the authorities that were cited to him, he was not satisfied that there were significant developments. He said that the recent developments were known and anticipated at the time of the costs budget finalisation. It was within the contemplation of the parties that the Respondent would move accommodation and there would be new rehabilitation and therapy.

73. In his skeleton argument for today's hearing, Mr Plaut repeated the submissions that he made before DJ McLoughlin. He emphasised that the Appellant had accepted, by virtue of the consent order, that updating and further medical evidence from the R's experts was required. This was a change from the position at the costs and case management in December 2024, when DJ Maddison had ordered only a single round of expert evidence on behalf of the Appellant (apart from in respect of two early expert's reports which had been filed and served with the Particulars of Claim). The Respondent's experts could not have commented in their original expert reports upon developments in the Respondent's condition following the new therapy and rehabilitation that will take place after his change of accommodation. He stressed that Mr Burn, the Appellant's solicitor, had said in his witness statement in support of new directions that were sought at the November 2025 hearing that there had been "significant developments". Mr Plaut submitted that District Judge McLoughlin had only a brief time to consider the "significant developments" issue on 6 February 2026, as he had another case in his list that afternoon, and that he had not considered the issue in granular detail.

<u>The meaning of "significant developments"</u>

74. "Significant developments" is not defined in the CPR. It is obvious, however, that the word "significant" is a qualifier, and it indicates that not every development in litigation will justify revisions to the costs budget.

75. Assistance on the meaning of "significant developments" can be obtained from the judgment of Master Kaye in **Persimmon Homes**.

76. In **Persimmon Homes**, Master Kaye referred to the commentary in the third supplement to the White Book [2020] at 3.15A.1[148], which states:

> "The term "significant developments" is not defined. It appears to include any event, circumstance or steps which is of such a size and nature as to go beyond the events, circumstances and steps which were taken into account, expressly or impliedly, in the budget previously approved or agreed. A development is taken into account impliedly if it is something that was or should reasonably have been anticipated by the applicant for revision at the time of the previously approved budget. This paragraph and [**Sharp**] was applied in **Seekings v Moores** [2019] EWHC 1476 (comm) (Judge Worster)."

77. At paragraph 98 he said:

> 98. As the notes to the 3rd Supplement to the White Book (2020) make clear at 3.15A.2 [148]:

> "An order for variation cannot be made in order to remedy a budget in respect of developments which could or should have been covered at an earlier approval or variation."

78. At paragraphs 104 and 105, Master Kaye said about the costs budgeting exercise:

> "104. It is not a prospective detailed assessment; it is a high-level exercise in determining what the court considers to be a reasonable and proportionate sum for the parties to incur inter partes on the standard basis for a particular phase of the litigation and overall, in respect of future costs.
>
> 105. Costs budgeting is about determining the total recoverable costs to be allowed for each phase. It does not involve descending into the ring and carrying out a granular exercise akin to a detailed assessment on a line-by-line basis. Nor is it for the court to direct how the phase total, once determined, should be spent whatever the detail of the costs budget or its assumptions (CPR3.15 (8)."

79. As Master Kaye indicated, costs budgeting is necessarily broad brush, and so the fact that some estimates and assumptions change as a result of future developments does not mean that those developments are significant developments. It would not be in the interests of justice or the overriding objective if there was scope for constant tinkering with costs budgets if there are developments in the litigation. The "significant developments" test is satisfied if the development or developments is or are something that was not and could not reasonably have been anticipated by the applicant for revision at the time of the previously approved budget.

80. None of the authorities that have been cited to me deal with developments that have any similarity to the developments that are relied upon in this case. In **Seekings v Moore**, HHJ Worster give examples of cases in which the court has, or has not, found there to be significant developments, but every case is case specific and I do not derive assistance from decisions on the facts of other cases.

81. This does not mean that a party who has incurred additional costs as a result of developments that fall short of being significant developments after the costs budgets have been finalised is without any recourse. Both Mr Lemmy and Mr Plaut agreed that, even if costs budgets have not been revised under CPR 3.15A, it is open to a party to argue before a costs judge, after the proceedings have concluded, that there was a good reason why the costs judge should allow more costs than were provided for in the costs budget. However, they both agreed that it was much better for a party to obtain a revision to the costs budget under CPR 3.15A than to throw itself on the mercy of a costs judge at the end of the trial. A revision to the costs budget provides certainty, and a party would have an uphill battle if they sought to persuade a costs judge to depart from the costs budget after the trial was over.

<u>The test to be applied in an appeal such as this</u>

82. The test on appeal is set out in CPR 52.21: 12 (3):

> "The appeal court will allow an appeal where the decision of the lower court was— (a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court."

83. The test to be applied in a challenge to a judge's decision on whether there has been a "significant development " for the purposes of CPR 3.15A was set out by Picken J in **Churchill v Boot** at paragraph 8:

> 9. On behalf of the claimant, it is acknowledged by Mr Nugent that this is an appeal, or a proposed appeal, which entails an attack on the exercise by the Master of a discretion. On this basis, it is accepted that the appropriate guidance is that which was set out by the House of Lords in **G v G** [1985] 1 WLR 647 at page 652, letters (d) to (f), where Lord Fraser said this:
>
> "the appellate court should only interfere when they consider that the judge of the first instance has not merely preferred an imperfect solution which is different from an alternative imperfect solution which the Court of Appeal might or would have adopted but has exceeded the generous ambit within which a reasonable disagreement is possible."

84. This approach to appeals on the exercise of a judicial discretion, or something that may perhaps be more appropriately referred to as evaluative judgment, is consistent with the approach that has been endorsed in many other cases of high appellate authority summarised in **Fage UK Ltd v Chobani** UK Ltd [2014] EWCA Civ 5; [2014] ETMR 26, at paragraph 114, and **Volpi v Volpi** [2022] EWCA Civ. 464, [2022] 4 WLR 48, at paras. 2-3 and 52, in both cases by Lewison LJ. In **Cook v Skeggs** [2026] EWHC 1132 (KB), Sweeting J said at paragraph 6 that "appeals against costs involve a high threshold."

Decision

85. In my judgment, it is clear that the decision of DJ McLoughlin that there had been no significant developments for the purposes of CPR 3.15A was well within the generous ambit within which a reasonable disagreement is possible. It is plain from his summary of Mr Plaut's submissions on page 16 of the transcript that DJ McLoughlin understood the submissions that were being made on behalf of the Respondent. It was perfectly reasonable for the District Judge to take the view that the developments were ones which could have been anticipated at the time that the costs budgets were finalised and therefore were not "significant". The fact that, in a different context, Mr Burn had referred to the developments as being "significant" did not mean that it was not open to the District Judge to conclude that the developments were not significant for the purposes of CPR 3.15A.

86. It is almost always a possibility, in a case concerning assessment of damages for personal injury, that further expert reports and further quantum statements might be required. The possibility that there might be changes to the Respondent's condition as a result of new therapy or rehabilitation was an obvious possibility at the time of the costs budgeting exercise, especially as it was already known that he might move

accommodation and that this might broaden the scope for different forms of therapy and rehabilitation. It was known that the experts would have to consider whether any of this made a difference to their views. The pressing need for the Respondent to move accommodation was referred to at the costs budgeting hearing in December 2024, as was the likely need for a new case manager. Indeed, at the hearing in December 2024, Mr Plaut had asked the District Judge to postpone costs budgeting until the position became clearer, but the District Judge declined to do so.

87. The Respondent served all of his expert medical evidence in advance of the hearing in November 2025. This was served two months late, according to the timetable, and two days before that hearing. The Appellant says that the Respondent should have held off filing its expert medical evidence at that stage, as the Appellant did, because by then the parties knew that the expert evidence would have to be revisited. The Appellant says that this was a mis-judgment and means that the Respondent's legal team are at fault if this increases the costs of preparing the expert evidence. In my view, this is a somewhat harsh criticism. Most of the work on preparing the expert evidence for the Respondent had already been completed by November 2025, and expert reports were ready to be filed. The Respondent would incur additional costs when his medical experts took account of the impact of new rehabilitation and therapy, whether or not they filed one expert report or two. But this is all beside the point. What matters is that the District Judge was entitled to find that the extra work by the medical experts was known or reasonably anticipated at the time that the budgets were finalised in December 2024, and so the further work by the medical experts did not amount to significant developments.

88. Similarly, it can readily be anticipated that the trial window might slip and that there may be additional disclosure. In fact, in this case, disclosure was given when new material was available, rather than on a strict 3-month or 4-month cycle.

89. Mr Plaut showed me some correspondence that indicated that, at one stage between November 2025 and February 2026, the Appellant's solicitors had anticipated that there might be agreement about significant developments. However, no such agreement was reached and this does not mean that the Appellant had conceded that there were significant developments.

90. In argument before me, Mr Plaut put forward some examples of developments in litigation which are frequently considered by judges to be significant developments. These include the attendance of medical experts at court, and the use of surveillance evidence. Such other examples do not assist the court in the present case. Each case depends on its own facts.

91. For these reasons, I am unable to accept the Respondent's submission that the District Judge erred in finding that there were no significant developments. There is some force in the Appellant's submissions that, to a large extent, the Respondent's arguments before me on significant developments were simply an attempt to reargue points that had already been argued before DJ McLoughlin.

92. Accordingly, the appeal is allowed. I will ask counsel to draw up a draft order and I will then address consequential matters, if any.