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## A Landmark in Security for Costs: Key Takeaways for Funders and Defendants

Lucy Glyn · Thursday, September 4th, 2025

The recent decision in *Lloyds Developments Limited v Accor HotelServices UK Limited* has quickly become a touchstone for litigation funders, ATE insurers, and defendants alike. The case provides a practical roadmap for how the courts are likely to approach security for costs in complex, high-value disputes, especially where claimants are backed by third-party funding and ATE insurance.

### Case Summary: What Happened and Why It Matters

#### The Initial Claim

Lloyds Developments Limited (“Lloyds”) brought proceedings against *Accor HotelServices UK Limited* (“Accor”) in a dispute concerning security for costs in ongoing litigation. The case focused on whether Lloyds could satisfy a security for

costs order by relying on an After the Event (ATE) insurance policy, backed by a third-party funder, rather than by making a payment into court. The dispute did not concern construction defects or project delays, but rather the adequacy and enforceability of the ATE policy as security for Accor's potential costs.

### **The Court's Findings and Rulings**

The High Court (Constable J) found that while ATE insurance can, in principle, be an appropriate form of security for costs, the policy wording must be sufficiently robust—particularly in relation to anti-avoidance provisions. The court scrutinised the anti-avoidance endorsement (AAE) to ensure that the insurer could not avoid liability for fraud or dishonesty by any party, including agents or third parties. The court ultimately approved revised wording that provided the necessary clarity and breadth, and permitted Lloyds to provide security by way of the ATE policy with the approved AAE. The court also made a partial costs order in favour of Accor, reflecting the parties' conduct and the need for two hearings.

### **Why Was Lloyds' ATE Policy Not Enough?**

A key issue in the case was whether Lloyds' After-the-Event (ATE) insurance policy, together with an anti-avoidance endorsement (AAE), was sufficient to satisfy Accor's application for security for costs. The court found that while ATE insurance is a valuable tool, it is not automatically sufficient. The court required the anti-avoidance wording to be drafted in the clearest possible terms, expressly covering fraud or dishonesty by any person (including agents and third parties), to prevent the insurer from avoiding liability. Only once the policy was revised to meet this standard did the court accept it as adequate security. The court also emphasised that the policy must be directly enforceable by the defendant and provide protection equivalent to a payment into court.

### **Implications for Security for Costs**

The decision is already being cited for several key points that matter to litigators and funders:

1. **ATE insurance as security:** The court confirmed that ATE insurance can be accepted as security for costs, but only if the policy wording is sufficiently robust and comprehensive, particularly in relation to anti-avoidance provisions.
2. **Clarity of anti-avoidance wording:** Anti-avoidance clauses must be drafted in the clearest possible terms, expressly covering fraud or dishonesty by any person (including agents and third parties), to prevent the insurer from avoiding liability.
3. **Direct enforceability:** The policy must be structured so that the defendant can enforce it directly, with no gaps in cover.
4. **Judicial scrutiny:** The court will closely scrutinise any ATE policy and anti-avoidance endorsement to ensure the defendant receives protection equivalent to a payment into court.
5. **Template for future cases:** The approved ATE policy and AAE wording in this case are likely to serve as a template for future cases, setting a high standard for clarity and breadth in anti-avoidance clauses.

For litigation funders, the message is clear: expect close judicial scrutiny of policy wording and structure, and be prepared to ensure that ATE policies are drafted to the highest standard. For defendants, *Lloyds v Accor* provides reassurance that the courts will require robust and enforceable security before accepting ATE insurance in lieu of a payment into court.

## The Wider Landscape: Insurance as Security for Costs

Traditionally, the courts have preferred security for costs to be provided by way of a payment into court or a bank guarantee, as these offer the defendant a high degree of certainty and immediate access to funds if a costs order is made in their favour. However, as litigation funding and insurance products have become more sophisticated, claimants increasingly seek to rely on After the Event (ATE) insurance policies as an alternative form of security.

The general position is that ATE insurance can be accepted as security for costs, but only where the policy is sufficiently robust: it must be clear, comprehensive, and directly enforceable by the defendant, with no material risk of avoidance or delay. Courts will scrutinise the policy wording, especially anti-avoidance provisions, to ensure that the insurer cannot escape liability due to fraud, non-disclosure, or other technicalities, and that the defendant is protected as effectively as if cash had been paid into court.

The *Lloyds v Accor* decision is significant because it sets a new benchmark for the clarity and breadth required in anti-avoidance clauses if ATE insurance is to be treated as an acceptable form of security. The judgment provides practical guidance for both claimants and defendants: claimants (and their funders) must ensure their policies are drafted to the highest standard, while defendants can be confident that the courts will not accept insurance as security unless it offers real, enforceable protection. This case is likely to serve as a template for future disputes and will shape the market standard for ATE policy drafting and security for costs applications going forward.

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