

# SCOPE OF COST RULES AND DEFINITIONS

## PART 43

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### 43.1 Scope of this Part

This Part contains definitions and interpretation of certain matters set out in the rules about costs contained in Parts 44 to 48.

(Part 44 contains general rules about costs; Part 45 deals with fixed costs; Part 46 deals with fast track trial costs; Part 47 deals with the detailed assessment of costs and related appeals and Part 48 deals with costs payable in special cases)

### 43.2 Definitions and application

- (1) In Parts 44 to 48, unless the context otherwise requires –
  - (a) ‘costs’ includes fees, charges, disbursements, expenses, remuneration, reimbursement allowed to a litigant in person under rule 48.6, any additional liability incurred under a funding arrangement and any fee or reward charged by a lay representative for acting on behalf of a party in proceedings allocated to the small claims track;
  - (b) ‘costs judge’ means a taxing master of the Supreme Court;
  - (c) ‘costs officer’ means –
    - (i) a costs judge;
    - (ii) a district judge; and
    - (iii) an authorised court officer;
  - (d) ‘authorised court officer’ means any officer of –
    - (i) a county court;
    - (ii) a district registry;
    - (iii) the Principal Registry of the Family Division; or
    - (iv) the Supreme Court Costs Office,
 whom the Lord Chancellor has authorised to assess costs.
  - (e) ‘fund’ includes any estate or property held for the benefit of any person or class of person and any fund to which a trustee or personal representative is entitled in that capacity as such;
  - (f) ‘receiving party’ means a party entitled to be paid costs;
  - (g) ‘paying party’ means a party liable to pay costs;
  - (h) ‘assisted person’ means an assisted person within the statutory provisions relating to legal aid;
  - (i) ‘LSC funded client’ means an individual who receives services funded by the Legal Services Commission as part of the Community Legal Service within the meaning of Part I of the Access to Justice Act 1999;

- (j) 'fixed costs' means the amounts which are to be allowed in respect of solicitors' charges in the circumstances set out in Section I of Part 45.
  - (k) 'funding arrangement' means an arrangement where a person has –
    - (i) entered into a conditional fee agreement or a collective conditional fee agreement which provides for a success fee within the meaning of section 58(2) of the Courts and Legal Services Act 1990<sup>1</sup>;
    - (ii) taken out an insurance policy to which section 29 of the Access to Justice Act 1999 (recovery of insurance premiums by way of costs) applies; or
    - (iii) made an agreement with a membership organisation to meet that person's legal costs;
  - (l) 'percentage increase' means the percentage by which the amount of a legal representative's fee can be increased in accordance with a conditional fee agreement which provides for a success fee;
  - (m) 'insurance premium' means a sum of money paid or payable for insurance against the risk of incurring a costs liability in the proceedings, taken out after the event that is the subject matter of the claim;
  - (n) 'membership organisation' means a body prescribed for the purposes of section 30 of the Access to Justice Act 1999 (recovery where body undertakes to meet costs liabilities);
  - (o) 'additional liability' means the percentage increase, the insurance premium, or the additional amount in respect of provision made by a membership organisation, as the case may be;
  - (p) 'free of charge' has the same meaning as in section 194(10) of the Legal Services Act 2007;
  - (q) 'pro bono representation' means legal representation provided free of charge; and
  - (r) 'the prescribed charity' has the same meaning as in section 194(8) of the Legal Services Act 2007.
- (2) The costs to which Parts 44 to 48 apply include –
- (a) the following costs where those costs may be assessed by the court –
    - (i) costs of proceedings before an arbitrator or umpire;
    - (ii) costs of proceedings before a tribunal or other statutory body; and
    - (iii) costs payable by a client to his solicitor; and
  - (b) costs which are payable by one party to another party under the terms of a contract, where the court makes an order for an assessment of those costs.
- (3) Where advocacy or litigation services are provided to a client under a conditional fee agreement, costs are recoverable under Parts 44 to 48 notwithstanding that the client is liable to pay his legal representative's fees and expenses only to the extent that sums are recovered in respect of the proceedings, whether by way of costs or otherwise.
- (4) In paragraph (3), the reference to a conditional fee agreement is to an agreement which satisfies all the conditions applicable to it by virtue of section 58 of the Courts and Legal Services Act 1990<sup>2</sup>.

### 43.3 Meaning of summary assessment

'Summary assessment' means the procedure by which the court, when making an order about costs, orders payment of a sum of money instead of fixed costs or 'detailed assessment'.

<sup>1</sup> 1990 c. 41. Section 58 was substituted by section 27 of the Access to Justice Act 1999 with effect from 1st April 2000 (the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000, S.I. 2000/774 and the Access to Justice Act 1999 (Transitional Provisions) Order 2000, S.I. 2000/900).

<sup>2</sup> 1990 c.41, as substituted by s.27(1) of the Access to Justice Act 1999 (c.22).

#### **43.4 Meaning of detailed assessment**

‘Detailed assessment’ means the procedure by which the amount of costs is decided by a costs officer in accordance with Part 47.

