

Model form of prospective costs order

UPON THE APPLICATION etc.

AND UPON HEARING etc.

AND UPON READING etc.

AND UPON the Solicitors for the Defendant undertaking to make the repayments mentioned in paragraph 2 below in the circumstances there mentioned

IT IS [BY CONSENT] ORDERED THAT:

1. The Claimants as trustees of (“the [Settlement/Scheme]”) do-
 - (a) pay from the assets of the [Settlement/Scheme] the costs of and incidental to these proceedings incurred by the Defendant such costs to be subject to a detailed assessment on the indemnity basis if not agreed and (for the avoidance of doubt) to-
 - (i) include costs incurred by the Defendant from and after [date] in anticipation of being appointed to represent any class of persons presently or formerly beneficially interested under the trusts of the [Settlement/Scheme] irrespective of whether [he/she] is in fact so appointed; and
 - (ii) exclude (in the absence of any further order) costs incurred in prosecuting any Part 20 claim or any appeal;
 - (b) indemnify the Defendant in respect of any costs which he may be ordered to pay to any other party to these proceedings in connection therewith.
2. Until the outcome of the detailed assessment (or the agreement regarding costs) contemplated in paragraph 1 above, the Claimants as trustees do pay from the assets of the [Settlement/Scheme] to the Solicitors for the Defendant monthly (or at such other intervals as may be agreed) such sums on account of the costs referred to in paragraph 1(a) of this Order as the Solicitors for the Defendant shall certify-
 - (i) to have been reasonably and properly incurred and not to exceed such amount as is likely in their opinion to be allowed on a detailed assessment on the indemnity basis; and
 - (ii) to have accrued on account of the present proceedings in the period prior to the date of such certificate and not to have been previously provided for under this Order.

PROVIDED ALWAYS that the Solicitors for the Defendant shall repay such sums (if any) as, having been paid to them on account, are disallowed on a detailed assessment or are otherwise agreed to be repaid and any such sums shall be repaid together with interest at 1% above the base rate for the time being of [Barclays] Bank plc from and including the date of payment to those Solicitors up to and including the date of repayment, such interest to accrue daily.
3. Any party may apply to vary or discharge paragraphs 1 and 2 of this Order but only in respect of costs to be incurred after the date of such application.

Note: this form of order assumes that the trustees are the claimants. If the claimant is a beneficiary and the trustees are defendants, references to the parties need to be adapted accordingly.