

# PART 47

## PROCEDURE FOR DETAILED ASSESSMENT OF COSTS AND DEFAULT PROVISIONS

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# I GENERAL RULES ABOUT DETAILED ASSESSMENT

## TIME WHEN DETAILED ASSESSMENT MAY BE CARRIED OUT

- 47.1 | The general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed procedure until the conclusion of the proceedings but the court may order them to be assessed immediately.

(The costs practice direction gives further guidance about when proceedings are concluded for the purpose of this rule)

## NO STAY OF DETAILED ASSESSMENT WHERE THERE IS AN APPEAL

- 47.2 | Detailed assessment is not stayed pending an appeal unless the court so orders.

## POWERS OF AN AUTHORISED COURT OFFICER

- 47.3 | (1) An authorised court officer has all the powers of the court when making a detailed assessment, except –
- (a) power to make a wasted costs order as defined in rule 48.7;
  - (b) power to make an order under –
    - (i) rule 44.14 (powers in relation to misconduct);

- (ii) rule 47.8 (sanction for delay in commencing detailed assessment proceedings);
  - (iii) paragraph (2) (objection to detailed assessment by authorised court officer); and
  - (c) power to make a detailed assessment of costs payable to a solicitor by his client, unless the costs are being assessed under rule 48.5 (costs where money is payable to a child or patient).
- (2) Where a party objects to the detailed assessment of costs being made by an authorised court officer, the court may order it to be made by a costs judge or a district judge.

(The costs practice direction sets out the relevant procedure)

## VENUE FOR DETAILED ASSESSMENT PROCEEDINGS

- 47.4 | (1) All applications and requests in detailed assessment proceedings must be made to or filed at the appropriate office.

(The costs practice direction sets out the meaning of ‘appropriate office’ in any particular case)

- (2) The court may direct that the appropriate office is to be the Supreme Court Costs Office.
- (3) A county court may direct that another county court is to be the appropriate office.
- (4) A direction under paragraph (3) may be made without proceedings being transferred to that court.

(Rule 30.2 makes provision for any county court to transfer the proceedings to another county court for detailed assessment of costs)

## II COSTS PAYABLE BY ONE PARTY TO ANOTHER – COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS

### APPLICATION OF THIS SECTION

- 47.5 | This section of Part 47 applies where a costs officer is to make a detailed assessment of costs which are payable by one party to another.

### COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS

- 47.6 | (1) Detailed assessment proceedings are commenced by the receiving party serving on the paying party –
- (a) notice of commencement in the relevant practice form; and
  - (b) a copy of the bill of costs.

(Rule 47.7 sets out the period for commencing detailed assessment proceedings)

- (2) The receiving party must also serve a copy of the notice of commencement and the bill on any other relevant persons specified in the costs practice direction.
- (3) A person on whom a copy of the notice of commencement is served under paragraph (2) is a party to the detailed assessment proceedings (in addition to the paying party and the receiving party).

(The costs practice direction deals with –

- other documents which the party must file when he requests detailed assessment;
- the court's powers where it considers that a hearing may be necessary;
- the form of a bill; and
- the length of notice which will be given if a hearing date is fixed)

## PERIOD FOR COMMENCING DETAILED ASSESSMENT PROCEEDINGS

**47.7** | The following table shows the period for commencing detailed assessment proceedings.

SOURCE OF RIGHT TO DETAILED ASSESSMENT	TIME BY WHICH DETAILED ASSESSMENT PROCEEDINGS MUST BE COMMENCED
Judgment, direction, order, award or other determination	3 months after the date of the judgment etc. Where detailed assessment is stayed pending an appeal, 3 months after the date of the order lifting the stay
Discontinuance under Part 38	3 months after the date of service of notice of discontinuance under rule 38.3; or 3 months after the date of the dismissal of application to set the notice of discontinuance aside under rule 38.4
Acceptance of an offer to settle or a payment into court under Part 36	3 months after the date when the right to costs arose

## SANCTION FOR DELAY IN COMMENCING DETAILED ASSESSMENT PROCEEDINGS

- 47.8** |
- (1) Where the receiving party fails to commence detailed assessment proceedings within the period specified –
    - (a) in rule 47.7; or
    - (b) by any direction of the court,
 the paying party may apply for an order requiring the receiving party to commence detailed assessment proceedings within such time as the court may specify.
  - (2) On an application under paragraph (1), the court may direct that, unless the receiving party commences detailed assessment

proceedings within the time specified by the court, all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.

- (3) If –
- (a) the paying party has not made an application in accordance with paragraph (1); and
  - (b) the receiving party commences the proceedings later than the period specified in rule 47.7,
- the court may disallow all or part of the interest otherwise payable to the receiving party under –
- (i) section 17 of the Judgments Act 1838<sup>(60)</sup>; or
  - (ii) section 74 of the County Courts Act 1984<sup>(61)</sup>,
- but must not impose any other sanction except in accordance with rule 44.14 (powers in relation to misconduct).
- (4) Where the costs to be assessed in a detailed assessment are payable out of the Legal Aid Fund, this rule applies as if the receiving party were the solicitor to whom the costs are payable and the paying party were the Legal Aid Board.

## POINTS OF DISPUTE AND CONSEQUENCE OF NOT SERVING

- 47.9 | (1) The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute on –
- (a) the receiving party; and
  - (b) every other party to the detailed assessment proceedings.
- (2) The period for serving points of dispute is 21 days after the date of service of the notice of commencement.
- (3) If a party serves points of dispute after the period set out in paragraph (2), he may not be heard further in the detailed assessment proceedings unless the court gives permission.
- (The costs practice direction sets out requirements about the form of points of dispute)
- (4) The receiving party may file a request for a default costs certificate if –
- (a) the period set out in rule 47.9 (2) for serving points of dispute has expired; and
  - (b) he has not been served with any points of dispute.
- (5) If any party (including the paying party) serves points of dispute before the issue of a default costs certificate the court may not issue the default costs certificate.

(60) 1838 c.110. Section 17 was amended by S.I. 1998/2940.

(61) 1984 c.28. Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act 1995 (c.42).

(Section IV of this Part sets out the procedure to be followed after points of dispute have been filed)

## PROCEDURE WHERE COSTS ARE AGREED

- 47.10 | (1) If the paying party and the receiving party agree the amount of costs, either party may apply for a costs certificate (either interim or final) in the amount agreed.

(Rule 47.15 and rule 47.16 contain further provisions about interim and final costs certificates respectively)

- (2) An application for a certificate under paragraph (1) must be made –
- (a) where the right to detailed assessment arises from a judgment or court order –
    - (i) to the court where the judgment or order was given or made, if the proceedings have not been transferred since then; or
    - (ii) to the court to which the proceedings have been transferred; and
  - (b) in any other case, to the court which would be the venue for detailed assessment proceedings under rule 47.4.

## III COSTS PAYABLE BY ONE PARTY TO ANOTHER – DEFAULT PROVISIONS

### DEFAULT COSTS CERTIFICATE

- 47.11 | (1) Where the receiving party is permitted by rule 47.9 to obtain a default costs certificate, he does so by filing a request in the relevant practice form.

(The costs practice direction deals with the procedure by which the receiving party may obtain a default costs certificate)

- (2) A default costs certificate will include an order to pay the costs to which it relates.

### SETTING ASIDE DEFAULT COSTS CERTIFICATE

- 47.12 | (1) The court must set aside a default costs certificate if the receiving party was not entitled to it.
- (2) In any other case, the court may set aside or vary a default costs certificate if it appears to the court that there is some good reason why the detailed assessment proceedings should continue.
- (3) Where –
- (a) the receiving party has purported to serve the notice of commencement on the paying party;

- (b) a default costs certificate has been issued; and
- (c) the receiving party subsequently discovers that the notice of commencement did not reach the paying party at least 21 days before the default costs certificate was issued,

the receiving party must –

- (i) file a request for the default costs certificate to be set aside; or
  - (ii) apply to the court for directions.
- (4) Where paragraph (3) applies, the receiving party may take no further step in –
- (a) the detailed assessment proceedings; or
  - (b) the enforcement of the default costs certificate,
- until the certificate has been set aside or the court has given directions.

(The costs practice direction contains further details about the procedure for setting aside a default costs certificate and the matters which the court must take into account)

## **IV COSTS PAYABLE BY ONE PARTY TO ANOTHER – PROCEDURE WHERE POINTS OF DISPUTE ARE SERVED**

### **OPTIONAL REPLY**

- 47.13 |
- (1) Where any party to the detailed assessment proceedings serves points of dispute, the receiving party may serve a reply on the other parties to the assessment proceedings.
  - (2) He may do so within 21 days after service on him of the points of dispute to which his reply relates.

### **DETAILED ASSESSMENT HEARING**

- 47.14 |
- (1) Where points of dispute are served in accordance with this Part, the receiving party must file a request for a detailed assessment hearing.
  - (2) He must file the request within 3 months of the expiry of the period for commencing detailed assessment proceedings as specified –
    - (a) in rule 47.7; or
    - (b) by any direction of the court.
  - (3) Where the receiving party fails to file a request in accordance with paragraph (2), the paying party may apply for an order requiring the receiving party to file the request within such time as the court may specify.

- (4) On an application under paragraph (3), the court may direct that, unless the receiving party requests a detailed assessment hearing within the time specified by the court, all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.
- (5) If –
  - (a) the paying party has not made an application in accordance with paragraph (3); and
  - (b) the receiving party commences the proceedings later than the period specified in paragraph (2),
 the court may disallow all or part of the interest otherwise payable to the receiving party under –
  - (i) section 17 of the Judgments Act 1838<sup>(62)</sup>; or
  - (ii) section 74 of the County Courts Act 1984<sup>(63)</sup>,
 but must not impose any other sanction except in accordance with rule 44.14 (powers in relation to misconduct).
- (6) No person other than –
  - (a) the receiving party;
  - (b) the paying party; and
  - (c) any party who has served points of dispute under rule 47.9,
 may be heard at the detailed assessment hearing unless the court gives permission.
- (7) Only items specified in the points of dispute may be raised at the hearing, unless the court gives permission.

(The costs practice direction specifies other documents which must be filed with the request for hearing and the length of notice which the court will give when it fixes a hearing date.)

## V INTERIM COSTS CERTIFICATE AND FINAL COSTS CERTIFICATE

### POWER TO ISSUE AN INTERIM CERTIFICATE

- 47.15 |
- (1) The court may at any time after the receiving party has filed a request for a detailed assessment hearing –
    - (a) issue an interim costs certificate for such sum as it considers appropriate;
    - (b) amend or cancel an interim certificate.
  - (2) An interim certificate will include an order to pay the costs to which it relates, unless the court orders otherwise.

(62) 1838 c.110. Section 17 was amended by S.I. 1998/2940.

(63) 1984 c.28. Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act 1995 (c.42).



- (3) The court may order the costs certified in an interim certificate to be paid into court.

## FINAL COSTS CERTIFICATE

- 47.16 |
- (1) In this rule a completed bill means a bill which the receiving party has calculated to show the amount due following the detailed assessment of the costs.
  - (2) The period for filing the completed bill is 14 days after the end of the detailed assessment hearing.
  - (3) When a completed bill is filed the court will issue a final costs certificate and serve it on the parties to the detailed assessment proceedings.
  - (4) Paragraph (3) is subject to any order made by the court that a certificate is not to be issued until other costs have been paid.
  - (5) A final costs certificate will include an order to pay the costs to which it relates, unless the court orders otherwise.

(The costs practice direction deals with the form of a final costs certificate)

## VI DETAILED ASSESSMENT PROCEDURE FOR COSTS OF AN ASSISTED PERSON WHERE COSTS ARE PAYABLE OUT OF THE LEGAL AID FUND

### DETAILED ASSESSMENT PROCEDURE FOR COSTS OF AN ASSISTED PERSON WHERE COSTS ARE PAYABLE OUT OF THE LEGAL AID FUND

- 47.17 |
- (1) Where the court is to assess costs of an assisted person which are payable out of the legal aid fund, the assisted person's solicitor may commence detailed assessment proceedings by filing a request in the relevant practice form.
  - (2) A request under paragraph (1) must be filed within 3 months after the date when the right to detailed assessment arose.
  - (3) The solicitor must also serve a copy of the request for detailed assessment on the assisted person, if notice of the assisted person's interest has been given to the court in accordance with legal aid regulations.
  - (4) Where the solicitor has certified that the assisted person wishes to attend an assessment hearing, the court will, on receipt of the request for assessment, fix a date for the assessment hearing.
  - (5) Where paragraph (3) does not apply, the court will, on receipt of the request for assessment provisionally assess the costs without the attendance of the solicitor, unless it considers that a hearing is necessary.

- (6) After the court has provisionally assessed the bill, it will return the bill to the solicitor.
- (7) The court will fix a date for an assessment hearing if the solicitor informs the court, within 14 days after he receives the provisionally assessed bill, that he wants the court to hold such a hearing.

## VII COSTS OF DETAILED ASSESSMENT PROCEEDINGS

### LIABILITY FOR COSTS OF DETAILED ASSESSMENT PROCEEDINGS

- 47.18 |
- (1) The receiving party is entitled to his costs of the detailed assessment proceedings except where –
    - (a) the provisions of any Act, any of these Rules or any relevant practice direction provide otherwise; or
    - (b) the court makes some other order in relation to all or part of the costs of the detailed assessment proceedings.
  - (2) In deciding whether to make some other order, the court must have regard to all the circumstances, including –
    - (a) the conduct of all the parties;
    - (b) the amount, if any, by which the bill of costs has been reduced; and
    - (c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

### OFFERS TO SETTLE WITHOUT PREJUDICE SAVE AS TO COSTS OF THE DETAILED ASSESSMENT PROCEEDINGS

- 47.19 |
- (1) Where –
    - (a) a party (whether the paying party or the receiving party) makes a written offer to settle the costs of the proceedings which gave rise to the assessment proceedings; and
    - (b) the offer is expressed to be without prejudice<sup>(GL)</sup> save as to the costs of the detailed assessment proceedings,
 the court will take the offer into account in deciding who should pay the costs of those proceedings.
  - (2) The fact of the offer must not be communicated to the costs officer until the question of costs of the detailed assessment proceedings falls to be decided.

(The costs practice direction provides that rule 47.19 does not apply where the receiving party is an assisted person)

## VIII APPEAL AGAINST DECISIONS IN DETAILED ASSESSMENT PROCEEDINGS

### RIGHT TO APPEAL

- 47.20 |
- (1) Any party to detailed assessment proceedings may appeal against any decision of the court in those proceedings, subject to the requirements of rule 47.21.
  - (2) For the purposes of this Section, an assisted person is not a party to the detailed assessment proceedings.

### PRELIMINARY REQUIREMENTS FOR BRINGING AN APPEAL

- 47.21 |
- (1) A party may not appeal against a decision in detailed assessment proceedings until he has –
    - (a) sought written reasons for the decision in accordance with rule 47.23; and
    - (b) obtained the court's permission where necessary in accordance with rule 47.24,
 unless the court orders otherwise.
  - (2) Where a party has complied with the requirements under paragraph (1) he may file a notice of appeal in accordance with rule 47.25.

### COURT TO HEAR APPEAL

- 47.22 |
- (1) Where an appeal is made against a decision of an authorised court officer the appeal is –
    - (a) if the detailed assessment proceedings were in the High Court, to a costs judge or a district judge of that court; or
    - (b) if they were in a county court, to a district judge.
  - (2) Where an appeal is made to a costs judge or a district judge against a decision of an authorised court officer, a further appeal lies –
    - (a) if the detailed assessment proceedings were in the High Court, to a judge of that court; or
    - (b) if they were in a county court, to a circuit judge.
  - (3) Where an appeal against a decision of a costs judge or a district judge hearing the detailed assessment is made the appeal lies –
    - (a) if the detailed assessment proceedings were in the High Court, to a judge of that court; or
    - (b) if they were in a county court, to a circuit judge.

## DUTY TO SEEK REASONS

- 47.23 | (1) A party may seek reasons for a decision in detailed assessment proceedings by filing a request with the court that gave the decision.
- (2) Where the party seeking reasons is the receiving party, he must file his request for reasons when he files the completed bill of costs.
- (Rule 47.16 deals with completed bills of costs)
- (3) Where the party seeking reasons is the paying party, he must file his request for reasons within 7 days after the end of the detailed assessment hearing.

## OBTAINING THE COURT'S PERMISSION TO APPEAL

- 47.24 | (1) Permission is not required to appeal against –
- (a) a decision of an authorised court officer; or
  - (b) a decision of a costs judge or a district judge to impose a sanction on a legal representative under –
    - (i) rule 44.14 (powers in relation to misconduct); or
    - (ii) rule 48.7 (wasted costs order).
- (2) Subject to paragraph (1)(b), permission is required to appeal against a decision of a costs judge or a district judge.
- (3) Permission to appeal may be given by –
- (a) the costs judge or district judge who made the decision in question; or
  - (b) a High Court judge or a circuit judge, as the case may be.
- (4) A party may seek permission to appeal –
- (a) within 14 days after receiving written reasons under rule 47.23; or
  - (b) if the court directs that reasons do not need to be obtained, within 7 days after the decision in question.

## APPEAL PROCEDURE

- 47.25 | (1) A party who has a right to appeal may do so by filing a notice of appeal.
- (2) Where the appeal is against a decision of an authorised court officer, he must file the notice –
- (a) within 14 days after service of the court officer's reasons on him; or
  - (b) if the court has directed that reasons need not be obtained, within 7 days after the date of the decision appealed against.

- (3) Where the appeal is against a decision of a costs judge or a district judge, he must file the notice within 14 days after the date of the court's decision to give permission to appeal.
- (4) On receipt of a notice of appeal, the court will –
  - (a) serve a copy of the notice on the other parties to the detailed assessment proceedings; and
  - (b) give notice of the appeal hearing to those parties.

## POWERS OF THE COURT ON APPEAL

- 47.26 |
- (1) On an appeal from an authorised court officer the court will –
    - (a) re-hear the proceedings which gave rise to the decision appealed against; and
    - (b) make any order and give such directions as it considers appropriate.
  - (2) On an appeal from a costs judge or district judge, if the court is satisfied that the appeal should be allowed, it may make any order and give such directions as it considers appropriate.
  - (3) If on an appeal the court exercises the power to appoint assessors conferred –
    - (a) by section 70 of the Supreme Court Act 1981<sup>(64)</sup>; or
    - (b) by section 63 of the County Courts Act 1984<sup>(65)</sup>,
 it must appoint at least two assessors.
- (Rule 35.15 contains further provisions about the appointment of assessors)
- (4) One assessor must be a district judge or costs judge and one must be a practising barrister or solicitor.

<sup>(64)</sup> 1981 c.54.

<sup>(65)</sup> 1984 c.28. Section 63 was amended by S.I. 1998/2940.

