

# PRACTICE DIRECTION ABOUT COSTS

## SUPPLEMENTING PARTS 43 TO 48 OF THE CIVIL PROCEDURE RULES

### INTRODUCTION

1. This Practice Direction supplements Parts 43 to 48 of the Civil Procedure Rules. It applies to all proceedings to which those Parts apply.
2. Section III of the Directions Relating to Part 48 deals with transitional provisions affecting proceedings about costs which were pending before 26 April 1999.
3. Attention is drawn to the powers to make orders about costs conferred on the Supreme Court and any county court by Section 51 of the Supreme Court Act 1981.
4. In these Directions:

“counsel” means a barrister or other person with a right of audience in relation to all proceedings in the High Court or in the County Courts in which he is instructed to act.

“solicitor” means a solicitor of the Supreme Court or other person with a right of audience in relation to proceedings, who is conducting the claim or defence (as the case may be) on behalf of a party to the proceedings and, where the context admits, includes a patent agent.
5. In respect of any document which is required by these Directions to be signed by a party or his legal representative the Practice Direction supplementing Part 22 will apply as if the document in question was a statement of truth. (The Practice Direction supplementing Part 22 makes provision for cases in which a party is a child, a patient or a company or other corporation and cases in which a document is signed on behalf of a partnership).



# DIRECTIONS RELATING TO PART 43

## SCOPE OF COSTS RULES AND DEFINITIONS

### SECTION 1 MODEL FORMS FOR CLAIMS FOR COSTS

#### **RULE 43.3 MEANING OF SUMMARY ASSESSMENT**

- 1.1 Rule 43.3 defines summary assessment.
- 1.2 Form 1 of the Schedule of Costs Forms annexed to this Direction is a model form of Statement of Costs to be used for summary assessments.
- 1.3 Further details about Statements of Costs are given in paragraph 4 of the Directions Relating to Rule 44.7 (Procedure for assessing costs).

#### **RULE 43.4 MEANING OF DETAILED ASSESSMENT**

- 1.4 Rule 43.4 defines detailed assessment.
- 1.5 Form 2 of the Schedule of Costs Forms annexed to this Practice Direction is a model form of bill of costs to be used for detailed assessments.
- 1.6 Further details about bills of costs are given in the next section of these Directions and in paragraph 2.7 of the Directions Relating to Part 47 (Procedure for detailed assessment of costs and default provisions).
- 1.7 Form 2 of the Schedule of Costs Forms and the next section of this practice direction both refer to the model form of bills of costs. The use of the model form is not compulsory, but is encouraged. A party wishing to rely upon a bill which departs from the model form should include in the background information of the bill an explanation for that departure.
- 1.8 In any order of the court (whether made before or after 26 April 1999) the word “taxation” will be taken to mean “detailed assessment” and the words “to be taxed” will be taken to mean “to be decided by detailed assessment” unless in either case the context otherwise requires.

### SECTION 2 FORM AND CONTENTS OF BILLS OF COSTS

- 2.1 A bill of costs may consist of such of the following sections as may be appropriate:-
  - (1) title page;
  - (2) background information;
  - (3) items of costs claimed under the headings specified in paragraph 2.5;
  - (4) summary showing the total costs claimed on each page of the bill;

- (5) schedules of time spent on non-routine attendances; and
- (6) the certificates referred to in paragraph 2.14.

2.2 Where it is necessary or convenient to do so, a bill of costs may be divided into two or more parts, each part containing sections (2), (3) and (4) above. A division into parts will be necessary or convenient in the following circumstances:-

- (1) Where the receiving party acted in person during the course of the proceedings (whether or not he also had a legal representative at that time) the bill should be divided into different parts so as to distinguish between;
  - (a) the costs claimed for work done by the legal representative; and
  - (b) the costs claimed for work done by the receiving party in person.
- (2) Where the receiving party was represented by different solicitors during the course of the proceedings, the bill should be divided into different parts so as to distinguish between the costs payable in respect of each solicitor.
- (3) Where the receiving party obtained legal aid in respect of all or part of the proceedings the bill should be divided into separate parts so as to distinguish between;
  - (a) costs claimed before legal aid was granted;
  - (b) costs claimed against another party after legal aid was granted;
  - (c) costs claimed against the Legal Aid Board only; and
  - (d) any costs claimed after legal aid ceased.
- (4) Where value added tax (VAT) is claimed and there was a change in the rate of VAT during the course of the proceedings, the bill should be divided into separate parts so as to distinguish between;
  - (a) costs claimed at the old rate of VAT; and
  - (b) costs claimed at the new rate of VAT.
- (5) Where the bill covers costs payable under two or more orders under which there are different paying parties the bill should be divided into parts so as to deal separately with the costs payable by each paying party.

2.3 The title page of the bill of costs must set out:-

- (1) the full title of the proceedings;
- (2) the name of the party whose bill it is and a description of the document showing the right to assessment (as to which see paragraph 4.5 of the Directions Relating to Part 47);
- (3) if VAT is included as part of the claim for costs, the VAT number of the legal representative or other person in respect of whom VAT is claimed;

- (4) details of all legal aid certificates and legal aid amendment certificates in respect of which claims for costs are included in the bill.

2.4 The background information included in the bill of costs should set out:-

- (1) a brief description of the proceedings up to the date of the notice of commencement;
- (2) A statement of the status of the solicitor or solicitor's employee in respect of whom costs are claimed and (if those costs are calculated on the basis of hourly rates) the hourly rates claimed for each such person.

It should be noted that "legal executive" means a Fellow of the Institute of Legal Executives.

Other clerks who are fee earners of equivalent experience, may be entitled to similar rates. It should be borne in mind that Fellows of the Institute of Legal Executives will have spent approximately 6 years in practice, and taken both general and specialist examinations. The Fellows have therefore acquired considerable practical and academic experience. Clerks without the equivalent experience of legal executives will normally be treated as being the equivalent of trainee solicitors and para-legals.

- (3) a brief explanation of any agreement or arrangement between the receiving party and his solicitors which affects the costs claimed in the bill.

2.5 The bill of costs may consist of items under such of the following heads as may be appropriate:-

- (1) attendances on the court and counsel up to the date of the notice of commencement;
- (2) attendances on and communications with the receiving party;
- (3) attendances on and communications with witnesses including any expert witness;
- (4) attendances to inspect any property or place for the purposes of the proceedings;
- (5) searches and enquiries made at offices of public records, the Companies Registry and similar searches and enquiries;
- (6) attendances on and communications with other persons;
- (7) communications with the court and with counsel;
- (8) work done in connection with arithmetical calculations of compensation and/or interest;
- (9) work done on documents: preparing and considering documentation which was of and incidental to the proceedings, including time spent on pre-action protocols where appropriate and time spent collating documents;

- (10) work done in connection with mediation, alternative dispute resolution and negotiations with a view to settlement if not already covered in the heads listed above;
- (11) attendances on and communications with London and other agents and work done by them;
- (12) other work done which was of or incidental to the proceedings and which is not already covered in the heads listed above.

2.6 In respect of each of the heads of costs:-

- (1) “communications” means letters out and telephone calls;
- (2) communications which are not routine communications must be set out in chronological order;
- (3) routine communications should be set out as a single item at the end of each head;

2.7 Routine communications are letters out and telephone calls which by reason of their simplicity should not be regarded as letters of substance or telephone calls which properly amount to an attendance.

2.8 Each item claimed in the bill of costs must be consecutively numbered.

2.9 In each part of the bill of costs which claims items under head (1) (attendances on court and counsel) a note should be made of:

- (1) all relevant events, including events which do not constitute chargeable items;
- (2) any orders for costs which the court made (whether or not a claim is made in respect of those costs in this bill of costs).

2.10 The numbered items of costs may be set out on paper divided into five columns, of which the last two columns should be left blank. The five columns should be headed as follows: Item, Amount claimed, VAT, Amount allowed, VAT.

2.11 In respect of heads (2) to (12) in paragraph 2.5 above, if the number of attendances and communications other than routine communications is twenty or more, the claim for the costs of those items in that section of the bill of costs should be for the total only and should refer to a schedule in which the full record of dates and details is set out. If the bill of costs contains more than one schedule each schedule should be numbered consecutively.

2.12 The bill of costs must not contain any claims in respect of costs or court fees which relate solely to the detailed assessment proceedings other than costs claimed for preparing and checking the bill.

2.13 The summary must show the total profit costs and disbursements claimed separately from the total VAT claimed. Where the bill of costs is divided into

parts the summary must also give totals for each part. If each page of the bill gives a page total the summary must also set out the page totals for each page.

- 2.14 The bill of costs must contain such of the certificates, the texts of which are set out in Form 4 of the Schedule of Costs Forms annexed to this Practice Direction, as are appropriate.
- 2.15 The following provisions relate to work done by solicitors:
  - (1) Routine letters out and routine telephone calls will in general be allowed on a unit basis of 6 minutes each, the charge being calculated by reference to the appropriate hourly rate. The unit charge for letters out will include perusing and considering the relevant letters in and no separate charge should be made for in-coming letters.
  - (2) E-mails received or sent by solicitors will not normally be allowed but the court may, in its discretion, allow an actual time charge for preparation of e-mails sent by solicitors which properly amount to attendances provided that the time taken has been recorded. The court may also, in its discretion, allow a sum in respect of e-mails sent to the client or others where it is satisfied that, had e-mails not been sent, the number of communications which it would have been reasonable to allow would have been substantially greater than the number actually claimed.
  - (3) Local travelling expenses incurred by solicitors will not be allowed. The definition of “local” is a matter for the discretion of the court. While no absolute rule can be laid down, as a matter of guidance, “local” will, in general, be taken to mean within a radius of 10 miles from the court dealing with the case at the relevant time. Where travelling and waiting time is claimed, this should be allowed at the rate agreed with the client unless this is more than the hourly rate on the assessment.
  - (4) The cost of postage, couriers, out-going telephone calls, fax and telex messages will in general not be allowed but the court may exceptionally in its discretion allow such expenses in unusual circumstances or where the cost is unusually heavy.
  - (5) The cost of making copies of documents will not in general be allowed but the court may exceptionally in its discretion make an allowance for copying in unusual circumstances or where the documents copied are unusually numerous in relation to the nature of the case. Where this discretion is invoked the number of copies made, their purpose and the costs claimed for them must be set out in the bill.
  - (6) Agency charges as between a principal solicitor and his agent will be dealt with on the principle that such charges, where appropriate, form part of the principal solicitor’s charges. Where these charges relate to head (1) in paragraph 2.5 (attendances at court and on counsel) they should be included in their chronological order in that head. In other cases they should be included in head (11) (attendances on London and other agents).

### **Costs of preparing the bill**

- 2.16 A claim may be made for the reasonable costs of preparing and checking the bill of costs.

## **SECTION 3 SPECIAL PROVISIONS RELATING TO VAT**

- 3.1 This section deals with claims for value added tax (VAT) which are made in respect of costs being dealt with by way of summary assessment or detailed assessment.

### **VAT Registration Number**

- 3.2 The number allocated by HM Customs and Excise to every person registered under the Value Added Tax Act 1983 (except a Government Department) must appear in a prominent place at the head of every statement, bill of costs, fee sheet, account or voucher on which VAT is being included as part of a claim for costs.

### **Entitlement to VAT on Costs**

- 3.3 VAT should not be included in a claim for costs if the receiving party is able to recover the VAT as input tax. Where the receiving party is able to obtain credit from HM Customs and Excise for a proportion of the VAT as input tax, only that proportion which is not eligible for credit should be included in the claim for costs.
- 3.4 The receiving party has responsibility for ensuring that VAT is claimed only when the receiving party is unable to recover the VAT or a proportion thereof as input tax.
- 3.5 Where there is a dispute as to whether VAT is properly claimed the receiving party must provide a certificate signed by the solicitors or the auditors of the receiving party in the form in the Schedule of Certificates annexed to this Practice Direction. Where the receiving party is a litigant in person who is claiming VAT, reference should be made by him to HM Customs and Excise and wherever possible a Statement to similar effect produced at the hearing at which the costs are assessed.
- 3.6 Where there is a dispute as to whether any service in respect of which a charge is proposed to be made in the bill is zero rated or exempt, reference should be made to HM Customs and Excise and wherever possible the view of HM Customs and Excise obtained and made known at the hearing at which the costs are assessed. Such application should be made by the receiving party. In the case of a bill from a solicitor to his own client such application should be made by the client.

### **Form of bill of costs where VAT rate changes**

- 3.7 Where there is a change in the rate of VAT, suppliers of goods and services are entitled by ss.88(1) and 88(2) of the VAT Act 1994 in most circumstances to elect whether the new or the old rate of VAT should apply to a supply where the basic and actual tax points span a period during which there has been a change in VAT rates.
- 3.8 It will be assumed, unless a contrary indication is given in writing, that an election to take advantage of the provisions mentioned in paragraph 3.7 above and to charge VAT at the lower rate has been made. In any case in which an election to charge at the lower rate is not made, such a decision must be justified to the court assessing the costs.

### **Apportionment**

- 3.9 All bills of costs, fees and disbursements on which VAT is included must be divided into separate parts so as to show work done before, on and after the date or dates from which any change in the rate of VAT takes effect. Where, however, a lump sum charge is made for work which spans a period during which there has been a change in VAT rates, and paragraphs 3.7 and 3.8 above do not apply, reference should be made to paragraphs 8 and 9 of Appendix F of Customs' Notice 700 (or any revised edition of that notice), a copy of which should be in the possession of every registered trader. If necessary, the lump sum should be apportioned. The totals of profit costs and disbursements in each part must be carried separately to the summary.
- 3.10 Should there be a change in the rate between the conclusion of a detailed assessment and the issue of the final costs certificate, any interested party may apply for the detailed assessment to be varied so as to take account of any increase or reduction in the amount of tax payable. Once the final costs certificate has been issued, no variation under this paragraph will be permitted.

### **Disbursements**

- 3.11 Petty (or general) disbursements such as postage, fares etc which are normally treated as part of a solicitor's overheads and included in his profit costs should be charged with VAT even though they bear no tax when the solicitor incurs them. The cost of travel by public transport on a specific journey for a particular client where it forms part of the service rendered by a solicitor to his client and is charged in his bill of costs, attracts VAT.
- 3.12 Reference is made to the criteria set out in the VAT Guide (Customs and Excise Notice 700 - 1st August 1991 edition paragraph 83, or any revised edition of that Notice), as to expenses which are not subject to VAT. Charges for the cost of travel by public transport, postage, telephone calls and telegraphic transfers where these form part of the service rendered by the solicitor to his client are examples of charges which do not satisfy these criteria and are thus liable to VAT at the standard rate.

## Legal Aid

- 3.13 VAT will be payable in respect of every supply made pursuant to a Legal Aid Certificate provided only that the person making the supply is a taxable person and that the assisted person is not resident outside the European Union. Where the assisted person is registered for VAT and the legal services paid for by the Legal Aid Board are in connection with the assisted person's business, the VAT on those services will be payable by the Legal Aid Board only.
- 3.14 In Legal Aid cases the legal aid summary must be drawn so as to show the total VAT on Counsel's fees as a separate item from the VAT on other disbursements and the VAT on profit costs.

## Tax invoice

- 3.15 A bill of costs filed for detailed assessment is always retained by the Court. Accordingly if a solicitor waives his solicitor and client costs and accepts the costs certified by the court as payable by the unsuccessful party in settlement, it will be necessary for a short statement as to the amount of the certified costs and the VAT thereon to be prepared for use as the tax invoice.

## Vouchers

- 3.16 Where receipted accounts for disbursements made by the solicitor or his client are retained as tax invoices a photostat copy of any such receipted account may be produced and will be accepted as sufficient evidence of payment when disbursements are vouched.

## Certificates

- 3.17 In non legal aid cases the total VAT allowed will be shown in the final costs certificate as a separate item. In legal aid cases the VAT on Counsel's fees will be shown separately from the remaining VAT.

## Litigants acting in person

- 3.18 Where a litigant acts in litigation on his own behalf he is not treated for the purposes of VAT as having supplied services and therefore no VAT is chargeable on that litigant's costs (even where, for example, that litigant is a solicitor or other legal representative).
- 3.19 Consequently in the circumstances described in the preceding paragraph, a bill of costs presented for agreement or assessment should not claim any VAT which will not be allowed on assessment.

## Government Departments

- 3.20 On an assessment between parties, where costs are being paid to a Government Department in respect of services rendered by its legal staff, VAT should not be added.

## SECTION 4 ESTIMATES OF COSTS

- 4.1 This section sets out certain steps which parties must take in order to keep the other parties informed about their potential liability in respect of costs and in order to assist the court to decide what, if any, order to make about costs and about case management.
- 4.2 In this section an estimate of costs means an estimate of those costs already incurred and, if appropriate, to be incurred by the party who gives it which he intends, if he is successful in the case, to seek to recover from any other party under an order for costs.
- 4.3 The court may at any stage in a case order any party to file an estimate of costs and to serve copies of the estimate on all other parties. The court may direct that the estimate be prepared in such a way as to demonstrate the likely effects of giving or not giving a particular case management direction which the court is considering, for example a direction for a split trial or for the trial of a preliminary issue. The court may specify a time limit for filing and serving the estimate. However, if no time limit is specified the estimate should be filed and served within 28 days of the date of the order.
- 4.4 An estimate of costs should be substantially in the form of a Statement of Costs as illustrated in Form 1 of the Schedule of Costs Forms annexed to this Practice Direction.
- 4.5
  - (1) When a party to a claim which is outside the financial scope of the small claims track, files an allocation questionnaire, he must also file an estimate of costs and serve a copy of it on every other party, unless the court otherwise directs. The legal representative must in addition serve a copy of the estimate upon the client.
  - (2) Where a party to a claim is being dealt with on the fast track or the multi track, or under Part 8 files a listing questionnaire, he must also file an estimate of costs and serve a copy of it on every other party, unless the court otherwise directs. Where a party is represented, the legal representative must in addition serve a copy of the estimate on the client.
  - (3) This paragraph does not apply to litigants in person.



# DIRECTIONS RELATING TO PART 44

## GENERAL RULES ABOUT COSTS

### **RULE 44.2 SOLICITOR'S DUTY TO NOTIFY CLIENT**

- 1.1 For the purposes of rule 44.2 "client" includes a party for whom a solicitor is acting and any other person (for example an insurer or a trade union) who has instructed the solicitor to act or who is liable to pay his fees.
- 1.2 Where a solicitor notifies a client of an order under that rule, he must also explain why the order came to be made.
- 1.3 Although rule 44.2 does not specify any sanction for breach of the rule the court may, either in the order for costs itself or in a subsequent order, require the solicitor to produce to the court evidence showing that he took reasonable steps to comply with the rule.

### **RULE 44.3 COURT'S DISCRETION AND CIRCUMSTANCES TO BE TAKEN INTO ACCOUNT WHEN EXERCISING ITS DISCRETION AS TO COSTS**

- 2.1 Attention is drawn to the factors set out in this rule which may lead the court to depart from the general rule stated in rule 44.3(2) and to make a different order about costs.
- 2.2 In a probate claim where a defendant has in his defence given notice that he requires the will to be proved in solemn form (see paragraph 8.3 of the Contentious Probate Practice Direction Supplementing Part 49), the court will not make an order for costs against the defendant unless it appears that there was no reasonable ground for opposing the will. The term "probate claim" is defined in paragraph 1.2 of the Contentious Probate Practice Direction.
- 2.3 (1) The court may make an order about costs at any stage in a case.  
(2) In particular the court may make an order about costs when it deals with any application, makes any order or holds any hearing and that order about costs may relate to the costs of that application, order or hearing.
- 2.4 In deciding what order to make about costs the court is required to have regard to all the circumstances including any payment into court or admissible offer to settle made by a party which is drawn to the court's attention (whether or not it is made in accordance with Part 36). Where a claimant has made a Part 36 offer and fails to obtain a judgment which is more advantageous than that offer that circumstance alone will not lead to a reduction in the costs awarded to the claimant under this rule.
- 2.5 There are certain costs orders which the court will commonly make in proceedings before trial. The following table sets out the general effect of these orders. The table is not an exhaustive list of the orders which the court may make.

Term	Effect
<ul style="list-style-type: none"> <li>• Costs</li> <li>• Costs in any event</li> </ul>	The party in whose favour the order is made is entitled to the costs in respect of the part of the proceedings to which the order relates, whatever other costs orders are made in the proceedings.
<ul style="list-style-type: none"> <li>• Costs in the case</li> <li>• Costs in the application</li> </ul>	The party in whose favour the court makes an order for costs at the end of the proceedings is entitled to his costs of the part of the proceedings to which the order relates.
<ul style="list-style-type: none"> <li>• Costs reserved</li> </ul>	The decision about costs is deferred to a later occasion, but if no later order is made the costs will be costs in the case.
<ul style="list-style-type: none"> <li>• Claimant's/ Defendant's costs in the case/ application.</li> </ul>	If the party in whose favour the costs order is made is awarded costs at the end of the proceedings, that party is entitled to his costs of the part of the proceedings to which the order relates. If any other party is awarded costs at the end of the proceedings, the party in whose favour the final costs order is made is not liable to pay the costs of any other party in respect of the part of the proceedings to which the order relates.
<ul style="list-style-type: none"> <li>• Costs thrown away</li> </ul>	<p>Where, for example, a judgment or order is set aside, the party in whose favour the costs order is made is entitled to the costs which have been incurred as a consequence.</p> <p>This includes the costs of -</p> <ol style="list-style-type: none"> <li>preparing for and attending any hearing at which the judgment or order which has been set aside was made;</li> <li>preparing for and attending any hearing to set aside the judgment or order in question;</li> <li>preparing for and attending any hearing at which the court orders the proceedings or the part in question to be adjourned;</li> <li>any steps taken to enforce a judgment or order which has subsequently been set aside.</li> </ol>
<ul style="list-style-type: none"> <li>• Costs of and caused by</li> </ul>	Where, for example, the court makes this order on an application to amend a statement of case, the party in whose favour the costs order is made is entitled to the costs of preparing for and attending the application and the costs of any consequential amendment to his own statement of case.

Term	Effect
• Costs here and below	The party in whose favour the costs order is made is entitled not only to his costs in respect of the proceedings in which the court makes the order but also to his costs of the proceedings in any lower court. In the case of an appeal from a Divisional Court the party is not entitled to any costs incurred in any court below the Divisional Court.
• No order as to costs • Each party to pay his own costs	Each party is to bear his own costs of the part of the proceedings to which the order relates whatever costs order the court makes at the end of the proceedings.

- 2.6 Where, under rule 44.3(8), the court orders an amount to be paid before costs are assessed–
- (1) the order will state that amount, and
  - (2) if no other date for payment is specified in the order rule 44.8 (Time for complying with an order for costs) will apply.

### **Fees of counsel**

- 2.7
- (1) This paragraph applies where the court orders the detailed assessment of the costs of a hearing at which one or more counsel appeared for a party.
  - (2) Where an order for costs states the opinion of the court as to whether or not the hearing was fit for the attendance of one or more counsel, a costs officer conducting a detailed assessment of costs to which that order relates will have regard to the opinion stated.

### **Fees payable to conveyancing counsel appointed by the court to assist it**

- 2.8
- (1) Where the court refers any matter to the conveyancing counsel of the court the fees payable to counsel in respect of the work done or to be done will be assessed by the court in accordance with rule 44.3.
  - (2) An appeal from a decision of the court in respect of the fees of such counsel will be dealt with under the general rules as to appeals unless the appeal is against the decision of a costs officer when the appeal will be dealt with in accordance with Part 47 Section VIII. In either case the decision of the appellate court is final.

## **RULE 44.5 FACTORS TO BE TAKEN INTO ACCOUNT IN DECIDING THE AMOUNT OF COSTS**

- 3.1 In applying the test of proportionality the court will have regard to rule 1.1(2)(c). The relationship between the total of the costs incurred and the financial value of the claim may not be a reliable guide. A fixed percentage cannot be applied in all cases to the value of the claim in order to ascertain whether or not the costs are proportionate.
- 3.2 In any proceedings there will be costs which will inevitably be incurred and which are necessary for the successful conduct of the case. Solicitors are not required to conduct litigation at rates which are uneconomic. Thus in a modest claim the proportion of costs is likely to be higher than in a large claim, and may even equal or possibly exceed the amount in dispute.
- 3.3 Where a trial takes place, the time taken by the court in dealing with a particular issue may not be an accurate guide to the amount of time properly spent by the legal or other representatives in preparation for the trial of that issue.

## **RULE 44.7 PROCEDURE FOR ASSESSING COSTS**

- 4.1 Where the court does not order fixed costs (or no fixed costs are provided for) the amount of costs payable will be assessed by the court. This rule allows the court making an order about costs either
  - (a) to make a summary assessment of the amount of the costs, or
  - (b) to order the amount to be decided in accordance with Part 47 (a detailed assessment).
- 4.2 An order for costs will be treated as an order for the amount of costs to be decided by a detailed assessment unless the order otherwise provides.

### **Summary Assessment**

- 4.3 Whenever a court makes an order about costs which does not provide for fixed costs to be paid the court should consider whether to make a summary assessment of costs.
- 4.4 (1) The general rule is that the court should make a summary assessment of the costs:
  - (a) at the conclusion of the trial of a case which has been dealt with on the fast track, in which case the order will deal with the costs of the whole claim, and
  - (b) at the conclusion of any other hearing, which has lasted not more than one day, in which case the order will deal with the costs of the application or matter to which the hearing related. If this hearing disposes of the claim, the order may deal with the costs of the whole claim;

unless there is good reason not to do so e.g. where the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily or there is insufficient time to carry out a summary assessment.

- (2) The general rule in paragraph 1 does not apply to a mortgagee's costs incurred in mortgage possession proceedings or other proceedings relating to a mortgage unless the mortgagee asks the court to make an order for his costs to be paid by another party. Section 1 of the directions relating to Part 48 deals in more detail with costs relating to mortgages.
- (3) The general rule is that no summary assessment of costs will be made if the court has ordered that the costs in question will be treated as costs in the case (as to which see paragraph 2.4 above).
- (4) Where an application has been made and the parties to the application agree an order by consent without any party attending, the parties should agree a figure for costs to be inserted in the consent order or agree that there should be no order for costs. If the parties cannot agree the costs position attendance on the appointment will be necessary but unless good reason can be shown for the failure to deal with costs as set out above no costs will be allowed for that attendance.

- 4.5
- (1) It is the duty of the parties and their legal representatives to assist the judge in making a summary assessment of costs in any case to which paragraph 4.4 above applies, in accordance with the following paragraphs.
  - (2) Each party who intends to claim costs must prepare a written statement of the costs he intends to claim showing separately in the form of a schedule:
    - (a) the number of hours to be claimed,
    - (b) the hourly rate to be claimed,
    - (c) the grade of fee earner;
    - (d) the amount and nature of any disbursement to be claimed, other than counsel's fee for appearing at the hearing,
    - (e) the amount of solicitor's costs to be claimed for attending or appearing at the hearing,
    - (f) the fees of counsel to be claimed in respect of the hearing, and
    - (g) any Value Added Tax to be claimed on these amounts.
  - (3) The statement of costs should follow as closely as possible Form 1 of the Schedule of Costs Forms annexed to this practice direction and must be signed by the party or his legal representative. Where a litigant is represented by a solicitor in his employment the statement of costs need not include the certificate appended at the end of Form 1.
  - (4) The statement of costs must be filed at court and copies of it must be served on any party against whom an order for payment of those costs is

intended to be sought. The statement of costs should be filed and the copies of it should be served as soon as possible and in any event not less than 24 hours before the date fixed for the hearing.

- 4.6 The failure by a party, without reasonable excuse, to comply with the foregoing paragraphs will be taken into account by the court in deciding what order to make about the costs of the claim, hearing or application, and about the costs of any further hearing or detailed assessment hearing that may be necessary as a result of that failure.
- 4.7 If the court makes a summary assessment of the costs the court will specify the amount payable as a single figure which will include
  - (a) all sums in respect of profit costs, disbursements and VAT which is allowed, and
  - (b) the amount which is awarded under Part 46 (Fast Track Trial Costs).
- 4.8 The court awarding costs cannot make an order for a summary assessment of costs by a costs officer. If a summary assessment of costs is appropriate but the court awarding costs is unable to do so on the day, the court must give directions as to a further hearing.
- 4.9
  - (1) The court will not make a summary assessment of the costs of a receiving party who is an assisted person within the meaning of the Legal Aid Act 1988.
  - (2) A summary assessment of costs payable by an assisted person is not by itself a determination of the assisted person's liability to pay those costs (as to which see Section 17 of the Legal Aid Act 1988). Accordingly the court may make a summary assessment of costs payable by an assisted person.
  - (3) The court will not make a summary assessment of the costs of a receiving party who is a child or patient within the meaning of Part 21 unless the solicitor acting for the child or patient has waived the right to further costs (see paragraph 1.2(c) of the Direction relating to Part 48).
  - (4) The court may make a summary assessment of costs payable by a child or patient.
- 4.10 The court will not endorse disproportionate and unreasonable costs. Accordingly:
  - (a) When the amount of the costs to be paid has been agreed, the court will make this clear by saying that the order is by consent;
  - (b) If the judge is to make an order which is not by consent, the judge will, so far as possible, ensure that the final figure is not disproportionate and/or unreasonable having regard to Part 1 of the CPR. The judge will retain this responsibility notwithstanding the absence of challenge to individual items in the make-up of the figure sought. The fact that the paying party is not disputing the amount of costs can however be taken as some indication

that the amount is proportionate and reasonable. The judge will therefore intervene only if satisfied that the costs are so disproportionate that it is right to do so.

### **Payments on account of costs**

- 4.11 Whenever the court awards costs to be assessed by way of detailed assessment it should consider whether to exercise the power in rule 44.3(8) (Courts Discretion as to Costs) to order the paying party to pay such sum of money as it thinks just on account of those costs.

### **RULE 44.9 COSTS ON THE SMALL CLAIMS TRACK AND FAST TRACK**

- 5.1 (1) Before a claim is allocated to one of those tracks the court is not restricted by any of the special rules that apply to that track.
- (2) Where a claim has been allocated to one of those tracks, the special rules which relate to that track will apply to work done before as well as after allocation save to the extent (if any) that an order for costs in respect of that work was made before allocation.
- (3) (i) This paragraph applies where a claim issued for a sum in excess of the normal financial scope of the small claims track is allocated to that track only because an admission of part of the claim by the defendant reduces the amount in dispute to a sum within the normal scope of that track.

(See also paragraph 7.4 of the practice direction supplementing CPR Part 26)

- (ii) On entering judgment for the admitted part before allocation of the balance of the claim the court may allow costs in respect of the proceedings down to that date.

### **RULE 44.11 COSTS FOLLOWING ALLOCATION AND RE-ALLOCATION**

- 6.1 This paragraph applies where the court is about to make an order to re-allocate a claim from the small claims track to another track.
- 6.2 Before making the order to re-allocate the claim, the court must decide whether any party is to pay costs to any other party down to the date of the order to re-allocate in accordance with the rules about costs contained in Part 27 (The Small Claims Track).
- 6.3 If it decides to make such an order about costs, the court will make a summary assessment of those costs in accordance with that Part.

### **RULE 44.14 COURT'S POWERS IN RELATION TO MISCONDUCT**

- 7.1 Before making an order under rule 44.14 the court must give the party or legal representative in question a reasonable opportunity to attend a hearing to give reasons why it should not make such an order.

- 7.2 Conduct before or during the proceedings which gave rise to the assessment which is unreasonable or improper includes steps which are calculated to prevent or inhibit the court from furthering the overriding objective.
- 7.3 Although rule 44.14(3) does not specify any sanction for breach of the obligation imposed by the rule the court may, either in the order under paragraph (2) or in a subsequent order, require the solicitor to produce to the court evidence that he took reasonable steps to comply with the obligation.

# DIRECTIONS RELATING TO PART 45

## FIXED COSTS

### FIXED COSTS IN SMALL CLAIMS

- 1.1 Under Rule 27.14 the costs which can be awarded to a claimant in a small claims track case include the fixed costs payable under Part 45 attributable to issuing the claim.
- 1.2 Those fixed costs shall be the sum of
  - (a) the fixed commencement costs calculated in accordance with Table 1 of Rule 45.2 and;
  - (b) the appropriate court fee or fees paid by the claimant.

### FIXED COSTS ON THE ISSUE OF A DEFAULT COSTS CERTIFICATE

- 2.1 Unless paragraph 2.2 applies or unless the court orders otherwise, the fixed costs to be included in a default costs certificate are £80 plus a sum equal to any appropriate court fee payable on the issue of the certificate.
- 2.2 The fixed costs included in a certificate must not exceed the maximum sum specified for costs and court fee in the notice of commencement.



# DIRECTIONS RELATING TO PART 46

## FAST TRACK TRIAL COSTS

### RULE 46.1 SCOPE OF PART 46

- 1.1 Part 46 applies to the costs of an advocate for preparing for and appearing at the trial of a claim in the fast track.
- 1.2 It applies only where, at the date of the trial, the claim is allocated to the fast track. It does not apply in any other case, irrespective of the financial value of the claim.
- 1.3 In particular it does not apply to:
  - (a) the hearing of a claim which is allocated to the small claims track with the consent of the parties given under rule 26.7(3); or
  - (b) a disposal hearing at which the amount to be paid under a judgment or order is decided by the court (see paragraph 12.8 of the Practice Direction which supplements Part 26 (Case Management - Preliminary Stage)).

### Cases which settle before trial

- 1.4 Attention is drawn to rule 44.10 (limitation on amount court may award where a claim allocated to the fast track settles before trial).



# DIRECTIONS RELATING TO PART 47

## PROCEDURE FOR DETAILED ASSESSMENT OF COSTS AND DEFAULT PROVISIONS

### SECTION I - GENERAL RULES ABOUT DETAILED ASSESSMENT

#### RULE 47.1 TIME WHEN ASSESSMENT MAY BE CARRIED OUT

- 1.1
- (1) For the purposes of this rule, proceedings are concluded when the court has finally determined the matters in issue in the claim, whether or not there is an appeal.
  - (2) For the purposes of this rule, the making of an award of provisional damages under Part 41 will be treated as a final determination of the matters in issue.
  - (3) (a) A party who is served with a notice of commencement (see paragraph 2.3 below) may apply to a costs judge or a district judge to determine whether the party who served it is entitled to commence detailed assessment proceedings.
  - (b) On hearing such an application the orders which the court may make include: an order allowing the detailed assessment proceedings to continue, or an order setting aside the notice of commencement.
  - (4) A costs judge or a district judge may make an order allowing detailed assessment proceedings to be commenced where there is no realistic prospect of the claim continuing.

#### RULE 47.2 NO STAY OF DETAILED ASSESSMENT WHERE THERE IS AN APPEAL

- 1.2
- (1) Rule 47.2 provides that detailed assessment is not stayed pending an appeal unless the court so orders.
  - (2) An application to stay the detailed assessment of costs pending an appeal may be made to the court whose order is being appealed or to the court who will hear the appeal.

#### RULE 47.3 POWERS OF AN AUTHORISED COURT OFFICER

- 1.3
- (1) The court officers authorised by the Lord Chancellor to assess costs in the Supreme Court Costs Office and the Principal Registry of the Family Division are authorised to deal with claims for costs not exceeding £17,500 (excluding VAT) in the case of senior executive officers and £35,000 (excluding VAT) in the case of principal officers.
  - (2) Where the receiving party, paying party and any other party to the detailed assessment proceedings who has served points of dispute are agreed that the assessment should not be made by an authorised court officer, the receiving party should so inform the court when requesting a hearing

date. The court will then list the hearing before a costs judge or a district judge.

- (3) In any other case a party who objects to the assessment being made by an authorised court officer must make an application to the costs judge or district judge under Part 23 (General Rules about Applications for Court Orders) setting out the reasons for the objection and if sufficient reason is shown the court will direct that the bill be assessed by a costs judge or district judge.

## **Rule 47.4 Venue for detailed assessment proceedings**

- 1.4 For the purposes of rule 47.4(1) the “appropriate office” means
  - (1) the district registry or county court in which the case was being dealt with when the judgment or order was made or the event occurred which gave rise to the right to assessment, or to which it has subsequently been transferred; or
  - (2) the Principal Registry of the Family Division if the costs in question are the costs of any proceedings which were being dealt with in that registry when the judgment or order was made or when the event occurred which gave rise to the right to assessment, or which have subsequently been transferred to that registry; or
  - (3) In the case of appeals from the Principal Registry of the Family Division, a District Registry or a county court in respect of family proceedings, the Principal Registry of the Family Division.
  - (4) in all other cases, the Supreme Court Costs Office.
- 1.5
  - (1) A direction under rule 47.4(2) or (3) specifying a particular court, registry or office as the appropriate office may be given on application or on the court’s own initiative.
  - (2) Before making such a direction on its own initiative the court will give the parties the opportunity to make representations.
  - (3) Unless the Supreme Court Costs Office is the appropriate office for the purposes of Rule 47.4(1) an order directing that an assessment is to take place at the Supreme Court Costs Office will be made only if it is appropriate to do so having regard to the size of the bill of costs, the difficulty of the issues involved, the likely length of the hearing, the cost to the parties and any other relevant matter.

## **SECTION II - COSTS PAYABLE BY ONE PARTY TO ANOTHER - COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS**

### **RULE 47.6 COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS**

- 2.1 Form 2 of the Schedule of Costs Forms annexed to this Practice Direction is a model form bill of costs for detailed assessment. Further information about

bills of costs is set out in Sections 2 and 3 of the Directions Relating to Part 43.

- 2.2 The receiving party must serve on the paying party and all other relevant persons the following documents:
- (1) a notice of commencement;
  - (2) a copy of the bill of costs;
  - (3) copies of the fee notes of counsel and of any expert in respect of fees claimed in the bill;
  - (4) written evidence as to any other disbursement which is claimed and which exceeds £250;
  - (5) a statement giving the name and address for service of any person upon whom the receiving party intends to serve the notice of commencement.
- 2.3 (1) The notice of commencement must be in Form 5 of the Schedule of Costs Forms annexed to this Practice Direction.
- (2) Before it is served it must be completed to show as separate items
- (a) the total amount of the bill of costs as drawn;
  - (b) the additional amounts which will be payable by way of fixed costs and court fees if a default costs certificate is obtained.
- (3) The fixed costs payable in respect of solicitors' charges on the issue of a default costs certificate are £80.
- 2.4 (1) This paragraph applies where the notice of commencement is to be served outside England and Wales.
- (2) The date to be inserted in the notice of commencement for the paying party to send points of dispute is a date (not less than 21 days from the date of service of the notice) which must be calculated by reference to the Practice Direction supplementing Section III of Part 6 as if the notice were a claim form and as if the date to be inserted was the date for the filing of a defence.
- 2.5 (1) For the purposes of rule 47.6(2) a "relevant person" means:
- (a) any person who has taken part in the proceedings which gave rise to the assessment and who is directly liable under an order for costs made against him;
  - (b) any person who has given to the receiving party notice in writing that he has a financial interest in the outcome of the assessment and wishes to be a party accordingly;
  - (c) any other person whom the court orders to be treated as such.
- (2) Where a party is unsure whether a person is or is not a relevant person, that party may apply to the appropriate office for directions.

(3) The court will generally not make an order that the person in respect of whom the application is made will be treated as a relevant person, unless within a specified time he applies to the court to be joined as a party to the assessment proceedings in accordance with Part 19 (Addition and Substitution of Parties).

- 2.6 (1) This paragraph applies in cases in which the bill of costs is capable of being copied onto a computer disk.
- (2) If, before the detailed assessment hearing, a paying party requests a disk copy of a bill to which this paragraph applies, the receiving party must supply him with a copy free of charge not more than 7 days after the date on which he received the request.

## **RULE 47.7 PERIOD FOR COMMENCING DETAILED ASSESSMENT PROCEEDINGS**

- 2.7 The parties may agree under rule 2.11 (Time limits may be varied by parties) to extend or shorten the time specified by rule 47.7 for commencing the detailed assessment proceedings.
- 2.8 A party may apply to the appropriate office for an order under rule 3.1(2)(a) to extend or shorten that time.
- 2.9 Attention is drawn to rule 47.6(1). The detailed assessment proceedings are commenced by service of the documents referred to.
- 2.10 Permission to commence assessment proceedings out of time is not required.

## **RULE 47.8 SANCTION FOR DELAY IN COMMENCING DETAILED ASSESSMENT PROCEEDINGS**

- 2.11 (1) An application for an order under rule 47.8 must be made in writing and be issued in the appropriate office.
- (2) The application notice must be served at least 7 days before the hearing.

## **RULE 47.9 POINTS OF DISPUTE AND CONSEQUENCES OF NOT SERVING**

- 2.12 The parties may agree under rule 2.11 (Time limits may be varied by parties) to extend or shorten the time specified by rule 47.9 for service of points of dispute. A party may apply to the appropriate office for an order under rule 3.1(2)(a) to extend or shorten that time.
- 2.13 Points of dispute should be short and to the point and should follow as closely as possible Form 6 of the Schedule of Costs Forms annexed to this Practice Direction.
- 2.14 Points of dispute must—
- (1) identify each item in the bill of costs which is disputed,
  - (2) in each case state concisely the nature and grounds of dispute,

- (3) where practicable suggest a figure to be allowed for each item in respect of which a reduction is sought, and
  - (4) be signed by the party serving them or his solicitor.
- 2.15 (1) The normal period for serving points of dispute is 21 days after the date of service of the notice of commencement.
- (2) Where a notice of commencement is served on a party outside England and Wales the period within which that party should serve points of dispute is to be calculated by reference to Section III of Part 6 as if the notice of commencement was a claim form and as if the period for serving points of dispute were the period for filing a defence.
- 2.16 A party who serves points of dispute on the receiving party must at the same time serve a copy on every other party to the detailed assessment proceedings, whose name and address for service appears on the statement served by the receiving party in accordance with paragraph 2.2(5) above.
- 2.17 (1) This paragraph applies in cases in which Points of Dispute are capable of being copied onto a computer disk.
- (2) If, within 14 days of the receipt of the Points of Dispute, the receiving party requests a disk copy of them, the paying party must supply him with a copy free of charge not more than 7 days after the date on which he received the request.

## **RULE 47.10 PROCEDURE WHERE COSTS ARE AGREED**

- 2.18 Where the parties have agreed terms as to the issue of a costs certificate (either interim or final) they should apply under rule 40.6 (Consent judgments and orders) for an order that a certificate be issued in terms set out in the application. Such an application may be dealt with by a court officer, who may issue the certificate.
- 2.19 Where the receiving party claims that the paying party has agreed to pay costs but that he will neither pay those costs nor join in a consent application under paragraph 2.18, the receiving party may apply under Part 23 (General Rules about Applications for Court Orders) for a certificate either interim or final to be issued.
- 2.20 An application under paragraph 2.19 must be supported by evidence and will be heard by a costs judge or a district judge. The respondent to the application must file and serve any evidence he relies on at least two days before the hearing date.
- 2.21 Nothing in rule 47.10 prevents parties who seek a judgment or order by consent from including in the draft a term that a party shall pay to another party a specified sum in respect of costs.

- 2.22 (1) The receiving party may discontinue the detailed assessment proceedings in accordance with Part 38 (Discontinuance).
- (2) Where the receiving party discontinues the detailed assessment proceedings before a detailed assessment hearing has been requested, the paying party may apply to the appropriate office for an order about the costs of the detailed assessment proceedings.
- (3) Where a detailed assessment hearing has been requested the receiving party may not discontinue unless the court gives permission.
- (4) A bill of costs may be withdrawn by consent whether or not a detailed assessment hearing has been requested.

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

#### **RULE 47.11 DEFAULT COSTS CERTIFICATE**

- 3.1 A request for the issue of a default costs certificate must be made in Form 7 of the Schedule of Costs Forms annexed to this Practice Direction and must be signed by the receiving party or his solicitor.
- 3.2 The request must be filed at the appropriate office.
- 3.3 A default costs certificate will be in Form 9 or Form 10 of the Schedule of Costs Forms annexed to this Practice Direction.
- 3.4 Attention is drawn to Rules 40.3 (Drawing up and Filing of Judgments and Orders) and 40.4 (Service of Judgments and Orders) which apply to the preparation and service of a default costs certificate. The receiving party will be treated as having permission to draw up a default costs certificate by virtue of this Practice Direction.
- 3.5 The issue of a default costs certificate does not prohibit, govern or affect any detailed assessment of the same costs which is made pursuant to the Legal Aid Act 1988.
- 3.6 An application for an order staying enforcement of a default costs certificate may be made either–
  - (1) to a costs judge or district judge of the court office which issued the certificate; or
  - (2) to the court (if different) which has general jurisdiction to enforce the certificate.
- 3.7 Proceedings for enforcement of default costs certificates may not be issued in the Supreme Court Costs Office.

## **RULE 47.12 SETTING ASIDE DEFAULT COSTS CERTIFICATE**

- 3.8 (1) A court officer may set aside a default costs certificate at the request of the receiving party under rule 47.12(3).
- (2) A costs judge or a district judge will make any other order or give any directions under this rule.
- 3.9 (1) An application for an order under rule 47.12(2) to set aside or vary a default costs certificate must be supported by evidence.
- (2) In deciding whether to set aside or vary a certificate under rule 47.12(2) the matters to which the court must have regard include whether the party seeking the order made the application promptly.
- (3) As a general rule a default costs certificate will be set aside under rule 47.12(2) only if the applicant shows a good reason for the court to do so and if he files with his application a draft of the points of dispute he proposes to serve if his application is granted.
- 3.10 (1) Attention is drawn to rule 3.1(3) (which enables the court when making an order to make it subject to conditions) and to rule 44.3(8) (which enables the court to order a party whom it has ordered to pay costs to pay an amount on account before the costs are assessed).
- (2) A costs judge or a district judge may exercise the power of the court to make an order under rule 44.3(8) although he did not make the order about costs which led to the issue of the default costs certificate.
- 3.11 If a default costs certificate is set aside the court will give directions for the management of the detailed assessment proceedings.

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

### **RULE 47.13 OPTIONAL REPLY**

- 4.1 (1) Where the receiving party wishes to serve a reply, he must also serve a copy on every other party to the detailed assessment proceedings. The time for doing so is within 21 days after service of the points of dispute.
- (2) A reply means:-
- (i) a separate document prepared by the receiving party; or
  - (ii) his written comments added to the points of dispute.
- (3) A reply must be signed by the party serving it or his solicitor.

### **RULE 47.14 DETAILED ASSESSMENT HEARING**

- 4.2 The time for requesting a detailed assessment hearing is within 3 months of the expiry of the period for commencing detailed assessment proceedings.

- 4.3 The request for a detailed assessment hearing must be in form 8 of the Schedule of Costs Forms annexed to this Practice Direction. The request must be accompanied by:
- (a) a copy of the notice of commencement of detailed assessment proceedings;
  - (b) a copy of the bill of costs;
  - (c) the document giving the right to detailed assessment (see paragraph 4.5 below);
  - (d) a copy of the points of dispute, annotated as necessary in order to show which items have been agreed and their value and to show which items remain in dispute and their value;
  - (e) as many copies of the points of dispute so annotated as there are persons who have served points of dispute;
  - (f) a copy of any replies served;
  - (g) a copy of all orders made by the court relating to the costs which are to be assessed;
  - (h) copies of the fee notes and other written evidence as served on the paying party in accordance with paragraph (2.2) above;
  - (i) where there is a dispute as to the receiving party's liability to pay costs to the solicitors who acted for the receiving party, any letter or other written information provided by the solicitor to his client explaining how the solicitor's charges are to be calculated;
  - (j) a statement signed by the receiving party or his solicitor giving the name, address for service, reference and telephone number and fax number, if any, of—
    - (i) the receiving party;
    - (ii) the paying party;
    - (iii) any other person who has served points of dispute or who has given notice to the receiving party under paragraph 2.5 above;
 and giving an estimate of the length of time the detailed assessment hearing will take;
  - (k) where the application for a detailed assessment hearing is made by a party other than the receiving party, such of the documents set out in this paragraph as are in the possession of that party;
  - (l) where the court is to assess the costs of an assisted person—
    - (i) the legal aid certificate, any amendment certificates, any authorities and any certificates of discharge or revocation of legal aid;
    - (ii) a certificate, in Form 4(2) of the Schedule of Costs Forms annexed to this Practice Direction;

- (iii) if the assisted person has a financial interest in the detailed assessment hearing and wishes to attend, the postal address of that person to which the court will send notice of any hearing;
- (iv) if the rates payable out of the legal aid fund are prescribed rates, a schedule to the bill of costs setting out all the items in the bill which are claimed against other parties calculated at the legal aid prescribed rates with or without any claim for enhancement: (further information as to this schedule is set out in Section IX (Legal aid costs at prescribed rates below));
- (v) a copy of any default costs certificate in respect of costs claimed in the bill of costs.

- 4.4 (1) This paragraph applies to any document described in paragraph 4.3(i) above which the receiving party has filed in the appropriate office. The document must be the latest relevant version and in any event have been filed not more than 2 years before filing the request for a detailed assessment hearing.
- (2) In respect of any documents to which this paragraph applies, the receiving party may, instead of filing a copy of it, specify in the request for a detailed assessment hearing the case number under which a copy of the document was previously filed.

- 4.5 “The document giving the right to detailed assessment” means such one or more of the following documents as are appropriate to the detailed assessment proceedings:

- (a) a copy of the judgment or order of the court giving the right to detailed assessment;
- (b) a copy of the notice served under rule 3.7 (sanctions for non-payment of certain fees) where a claim is struck out under that rule;
- (c) a copy of the notice of acceptance where an offer to settle is accepted under Part 36 (Offers to settle and payments into court);
- (d) a copy of the notice of discontinuance in a case which is discontinued under Part 38 (Discontinuance);
- (e) a copy of the award made on an arbitration under any Act or pursuant to an agreement, where no court has made an order for the enforcement of the award;
- (f) a copy of the order, award or determination of a statutorily constituted tribunal or body;
- (g) in a case under the Sheriffs Act 1887, the sheriff’s bill of fees and charges, unless a court order giving the right to detailed assessment has been made;
- (h) a notice of revocation or discharge under Regulation 82 of the Civil Legal Aid (General) Regulations 1989.

- (j) In the county courts certain Acts and Regulations provide for costs incurred in proceedings under those Acts and Regulations to be assessed in the county court if so ordered on application. Where such an application is made, a copy of the order.
- 4.6 On receipt of the request for a detailed assessment hearing the court will fix a date for the hearing, or, if the costs officer so decides, will give directions or fix a date for a preliminary appointment.
- 4.7
  - (1) The court will give at least 14 days notice of the time and place of the detailed assessment hearing to every person named in the statement referred to in paragraph 4.3(j) above.
  - (2) The court will when giving notice, give each person who has served points of dispute a copy of the points of dispute annotated by the receiving party in compliance with paragraph 4.3(d) above.
  - (3) Attention is drawn to rule 47.14(6)&(7): apart from the receiving party, only those who have served points of dispute may be heard on the detailed assessment unless the court gives permission, and only items specified in the points of dispute may be raised unless the court gives permission.
- 4.8
  - (1) If the receiving party does not file a request for a detailed assessment hearing within the prescribed time, the paying party may apply to the court to fix a time within which the receiving party must do so. The sanction, for failure to request a detailed assessment hearing within the time specified by the court, is that all or part of the costs may be disallowed (see rule 47.8(2)).
  - (2) Where the receiving party requests a detailed assessment hearing after the time specified in the rules but before the paying party has made an application to the court to specify a time, the only sanction which the court may impose is to disallow all or part of the interest which would otherwise be payable for the period of delay, unless the court exercises its powers under rule 44.14 (court's powers in relation to misconduct).
- 4.9 If either party wishes to make an application in the detailed assessment proceedings the provisions of Part 23 (General Rules about Applications for Court Orders) apply.
- 4.10
  - (1) This paragraph deals with the procedure to be adopted where a date has been given by the court for a detailed assessment hearing and
    - (a) the detailed assessment proceedings are settled; or
    - (b) a party to the detailed assessment proceedings wishes to apply to vary the date which the court has fixed; or
    - (c) the parties to the detailed assessment proceedings agree about changes they wish to make to any direction given for the management of the detailed assessment proceedings.
  - (2) If detailed assessment proceedings are settled, the receiving party must give notice of that fact to the court immediately, preferably by fax.

- (3) A party who wishes to apply to vary a direction must do so in accordance with Part 23 (General Rules about Applications for Court Orders).
  - (4) If the parties agree about changes they wish to make to any direction given for the management of the detailed assessment proceedings–
    - (a) they must apply to the court for an order by consent; and
    - (b) they must file a draft of the directions sought and an agreed statement of the reasons why the variation is sought; and
    - (c) the court may make an order in the agreed terms or in other terms without a hearing, but it may direct that a hearing is to be listed.
- 4.11 (1) If a party wishes to vary his bill of costs, points of dispute or a reply, an amended or supplementary document must be filed with the court and copies of it must be served on all other relevant parties.
- (2) Permission is not required to vary a bill of costs, points of dispute or a reply but the court may disallow the variation or permit it only upon conditions, including conditions as to the payment of any costs caused or wasted by the variation.
- 4.12 Unless the court directs otherwise the receiving party must file with the court the papers in support of the bill not less than 7 days before the date for the detailed assessment hearing and not more than 14 days before that date.
- 4.13 The papers to be filed in support of the bill and the order in which they are to be arranged, are as follows:
- (i) instructions and briefs to counsel arranged in chronological order together with all advices, opinions and drafts received in response to such instructions;
  - (ii) reports and opinions of medical and other experts arranged in chronological order;
  - (iii) correspondence files and attendance notes;
  - (iv) any other relevant papers;
  - (v) in detailed assessment proceedings to which rule 48.9 (Conditional Fees) applies, a copy of the conditional fee agreements;
  - (vi) in detailed assessment proceedings in proceedings which commenced before 26 April 1999, a full set of any relevant pleadings which have been served by the parties but not filed at court.
- 4.14 Once the detailed assessment hearing has ended it is the responsibility of the legal representative appearing for the receiving party or, as the case may be, the receiving party in person to remove the papers filed in support of the bill.

## SECTION V INTERIM COSTS CERTIFICATE AND FINAL COSTS CERTIFICATE

### **RULE 47.15 POWER TO ISSUE AN INTERIM CERTIFICATE**

- 5.1 (1) A party wishing to apply for an interim certificate may do so by making an application in accordance with Part 23 (General Rules about Applications for Court Orders).
- (2) Attention is drawn to the fact that the court's power to issue an interim certificate arises only after the receiving party has filed a request for a detailed assessment hearing.

### **RULE 47.16 FINAL COSTS CERTIFICATE**

- 5.2 At the detailed assessment hearing the court will indicate any disallowance or reduction in the sums claimed in the bill of costs by making an appropriate note on the bill.
- 5.3 Where the bill of costs is in the form illustrated in Form 2 of the Schedule of Costs Forms annexed to this Practice Direction, the receiving party must, in order to complete the bill after the detailed assessment hearing, enter in the fourth and fifth columns of the bill, the correct figures agreed or allowed in respect of each item and must re-calculate the summary of the bill appropriately.
- 5.4 The completed bill of costs must be filed with the court no later than 14 days after the detailed assessment hearing.
- 5.5 At the same time as filing the completed bill of costs, the party whose bill it is must also produce receipted fee notes and receipted accounts in respect of all disbursements except those covered by a certificate in Form 4(4) in the Schedule of Costs Forms annexed to this Practice Direction.
- 5.6 No final costs certificate will be issued until all relevant court fees payable on the assessment of costs have been paid.
- 5.7 If the receiving party fails to file a completed bill in accordance with rule 47.16 the paying party may make an application under Part 23 (General Rules about Applications for Court Orders) seeking an appropriate order under rule 3.1 (The court's general powers of management).
- 5.8 A final costs certificate will show:
  - (a) the amount of any costs which have been agreed between the parties or which have been allowed on detailed assessment;
  - (b) where applicable the amount agreed or allowed in respect of VAT on the costs agreed or allowed.

This provision is subject to any contrary provision made by the statutory provisions relating to legal aid.

- 5.9 A final costs certificate will include disbursements in respect of the fees of counsel only if receipted fee notes or accounts in respect of those disbursements have been produced to the court and only to the extent indicated by those receipts.
- 5.10 Where the certificate relates to costs payable between parties a separate certificate will be issued for each party entitled to costs.
- 5.11 Model forms of an interim costs certificate (Form 11) and final costs certificates (Forms 12 and 13) are included in the Schedule of Costs Forms annexed to this Practice Direction.
- 5.12 An application for an order staying enforcement of a interim costs certificate or final costs certificate may be made either:
  - (1) to a costs judge or district judge of the court office which issued the certificate; or
  - (2) to the court (if different) which has general jurisdiction to enforce the certificate.
- 5.13 Proceedings for enforcement of interim costs certificates or final costs certificates may not be issued in the Supreme Court Costs Office.

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

### **RULE 47.17 DETAILED ASSESSMENT PROCEDURE WHERE COSTS ARE PAYABLE OUT OF THE LEGAL AID FUND**

- 6.1 The provisions of this section apply where the court is to assess costs which are payable only out of the legal aid fund. Sections IV and IX apply in cases involving costs by another person as well as costs payable only out of the legal aid fund.
- 6.2 The time for requesting a detailed assessment of legal aid costs is within 3 months after the date when the right to detailed assessment arose.
- 6.3 The request for a detailed assessment of legal aid costs must be in Form 8 of the Schedule of Costs forms annexed to this Practice Direction. The request must be accompanied by:
  - (a) a copy of the bill of costs;
  - (b) the document giving the right to detailed assessment (for further information as to this document, see paragraph 4.5 above);
  - (c) a copy of all orders made by the court relating to the costs which are to be assessed;
  - (d) copies of any fee notes of counsel and any expert in respect of fees claimed in the bill;

- (e) written evidence as to any other disbursement which is claimed and which exceeds £250;
- (f) the legal aid certificates, any amendment certificates, any authorities and any certificates of discharge or revocation of legal aid;
- (g) In the Supreme Court Costs Office the relevant papers in support of the bill as described in paragraph 4.13 above; in cases proceeding in District Registries and county courts this provision does not apply and the papers should only be lodged if requested by the costs officer.
- (h) a statement signed by the solicitor giving his name, address for service reference, telephone number and fax number if any and, if the assisted person has a financial interest in the detailed assessment and wishes to attend, giving the postal address of that person, to which the court will send notice of any hearing:

- 6.4 Rule 47.17 provides that the court will hold a detailed assessment hearing if the assisted person has a financial interest in the detailed assessment and wishes to attend. The court may also hold a detailed assessment hearing in any other case, instead of provisionally assessing a bill of costs, where it considers that a hearing is necessary. Before deciding whether a hearing is necessary under this rule, the court may require the solicitor whose bill it is, to provide further information relating to the bill.
- 6.5 Where the court has provisionally assessed a bill of costs it will send to the solicitor a notice, in Form 14 in the Schedule of Costs Forms annexed to this practice direction, of the amount of costs which the court proposes to allow together with the bill itself. The legal representative should, if the provisional assessment is to be accepted, then complete the bill.
- 6.6 The court will fix a date for a detailed assessment hearing if the solicitor informs the court within 14 days after he receives the notice of the amount allowed on the provisional assessment that he wants the court to hold such a hearing.
- 6.7 The court will give at least 14 days notice of the time and place of the detailed assessment hearing to the solicitor and, if the assisted person has a financial interest in the detailed assessment and wishes to attend, to the assisted person.
- 6.8 If the solicitor whose bill it is, or any other party wishes to make an application in the detailed assessment proceedings, the provisions of Part 23 (General Rules about Applications for Court Orders) applies.
- 6.9 It is the responsibility of the legal representative to complete the bill by entering in the bill the correct figures allowed in respect of each item, recalculating the summary of the bill appropriately and completing the legal aid assessment certificate (Form 15).

## SECTION VII COSTS OF DETAILED ASSESSMENT PROCEEDINGS

### 47.18 LIABILITY FOR COSTS OF DETAILED ASSESSMENT PROCEEDINGS.

- 7.1 As a general rule the court will assess the receiving party's costs of the detailed assessment proceedings and add them to the bill of costs.
- 7.2 If the costs of the detailed assessment proceedings are awarded to the paying party, the court will either assess those costs by summary assessment or make an order for them to be decided by detailed assessment.
- 7.3 Attention is drawn to the fact that in deciding what order to make about the costs of detailed assessment proceedings the court must have regard to the conduct of all parties, the amount by which the bill of costs has been reduced and whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

### RULE 47.19 OFFERS TO SETTLE WITHOUT PREJUDICE SAVE AS TO THE COSTS OF THE DETAILED ASSESSMENT PROCEEDINGS.

- 7.4 Rule 47.19 allows the court to take into account offers to settle, without prejudice save as to the costs of detailed assessment proceedings, when deciding who is liable for the costs of those proceedings. The rule does not specify a time within which such an offer should be made. An offer made by the paying party should usually be made within 14 days after service of the notice of commencement on that party. If the offer is made by the receiving party it should normally be made within 14 days after the service of points of dispute by the paying party. Offers made after these periods are likely to be given less weight by the court in deciding what order as to costs to make unless there is good reason for the offer not being made until the later time.
- 7.5 Where an offer to settle is made it should specify whether or not it is intended to be inclusive of the cost of preparation of the bill, interest and VAT. The offer may include or exclude some or all of these items but the position must be made clear on the face of the offer so that the offeree is clear about the terms of the offer when it is being considered. Unless the offer states otherwise, the offer will be treated as being inclusive of all these items.
- 7.6 Where an offer to settle is accepted, an application may be made for a certificate in agreed terms, or the bill of costs may be withdrawn, in accordance with rule 47.10 (Procedure where costs are agreed).
- 7.7 Where the receiving party is an assisted person, an offer to settle without prejudice save as to the costs of the detailed assessment proceedings will not have the consequences specified under rule 47.19 unless the court so orders.

## SECTION VIII APPEAL AGAINST DECISIONS IN DETAILED ASSESSMENT PROCEEDINGS

### **RULE 47.23 DUTY TO SEEK REASONS**

- 8.1 A party wishing to appeal must request written reasons for the decision in accordance with Rule 47.23 and obtain the court's permission in accordance with Rule 47.24 unless the court otherwise orders. The request must be made in writing and filed at the end of the detailed assessment hearing, or subsequently in accordance with Rule 47.23(2) and (3). A copy of the request for written reasons must at the same time be served on all other parties to the detailed assessment hearing. A request for written reasons made by one party will be treated as a request made by all parties.
- 8.2 Attention is drawn to the time limits for requesting written reasons. In the case of the receiving party this is 14 days after the detailed assessment hearing (ie. when the completed bill of costs is filed). In the case of the paying party it is within 7 days after the detailed assessment hearing.
- 8.3 A request for written reasons must clearly identify the particular parts of the decision for which reasons are requested.
- 8.4 Before it gives written reasons the court may require the party seeking reasons to file a note of the decision in question and of the reasons which the court gave for it at the hearing.
- 8.5 Where a party requests written reasons the court may refuse the request. Such a refusal will usually be made only where the reasons underlying the decision are sufficiently recorded on the bill itself or in a note of the hearing which has been approved by the court.
- 8.6 The court will usually direct that written reasons are not necessary where the decision to be appealed against was a case management decision rather than a decision on the substance of the assessment proceedings.
- 8.7 A case management decision is one which does not decide the merits of the assessment proceedings. Examples are a decision to allow or refuse an extension of time, to adjourn proceedings or to add a party to the proceedings.
- 8.8 Where the court exercises any of its general case management powers under Part 3 the decision will generally be a case management decision.
- 8.9 Where written reasons are given the court will serve a copy of them on every party to the detailed assessment proceedings.

### **RULE 47.24 OBTAINING THE COURT'S PERMISSION TO APPEAL**

- 8.10 The party may request permission to appeal by letter delivered to the court and copies to the other parties. The letter must correctly set out the title of the action and the court reference. It must also set out the basis upon which

permission is sought. As a general rule the request should first be made to the judge who made the decision which is sought to be appealed. Where the same judge is unavailable, or states that he is unable to deal with the request for permission, the request may be made direct to the appellate court.

- 8.11 As a general rule the court will not rule upon a request for permission to appeal without first providing written reasons for the decision to which the request relates or without first dispensing with the need for written reasons.
- 8.12 Attention is drawn to the time limits for seeking permission to appeal ie. 14 days after receiving written reasons; or, if the court directs that no written reasons are required, within 7 days after service of that direction.
- 8.13 The time limit for seeking permission to appeal will be calculated without taking into account the day upon which the letter requesting permission was delivered to the court, the day upon which the party wishing to appeal received the court's reply to that letter or any day in between those days. (See rule 2.8(time)).
- 8.14 In considering an application for permission to appeal the court will take into account:
  - (1) whether the ground of appeal has a reasonable prospect of success;
  - (2) whether the costs of the appeal are likely to be disproportionate; this factor is particularly relevant where the appeal is as to quantum only;
  - (3) if the appeal is against a case management decision, whether an appeal at that stage in the proceedings is appropriate.

## **RULE 47.25 APPEAL PROCEDURE**

- 8.15 The time for filing notice of appeal is set out at rule 47.25. Attention is drawn to the fact that permission is not required to appeal against the decision of an authorised court officer or in respect of a decision of a Costs Judge or District Judge against a legal representative in relation to misconduct or in respect of wasted costs.
- 8.16 A notice of appeal against the decision of a Costs Officer must be in Form 16 of the Schedule of Costs Forms annexed to this Practice Direction. The Notice must set out the grounds of appeal.
- 8.17
  - (1) If it is necessary to obtain the court's permission to appeal and the Costs Officer refuses to give permission, the party wishing to appeal must, before filing a notice of appeal, apply to the High Court Judge or Circuit Judge, as the case may be, on notice requesting permission.
  - (2) A copy of that notice must be served on all other parties who may be affected by the appeal.
  - (3) If the Judge who deals with the application grants permission to appeal, the order made will extend the time for appealing.

(4) The extended period will be as stated in the order, or, if no period is stated will be the period up to 7 days after the date of the Judge's decision to give permission to appeal.

- 8.18 Where a decision of a costs judge or district judge on an appeal from an authorised court officer is taken on further appeal to a High Court Judge or a Circuit Judge, the appellant must, before the hearing of the further appeal, file a note of the decision given by the costs judge or district judge. The note filed must be agreed (if possible) with the other parties to the appeal and must be approved by the costs judge or district judge.

## SECTION IX LEGAL AID COSTS AT PRESCRIBED RATES

- 9.1 This section applies to a bill of costs of an assisted person which is payable by another person where the costs which can be claimed out of the legal aid fund are restricted to legal aid prescribed rates (with or without enhancement).
- 9.2 Where this section applies, the solicitor of the assisted person must file a legal aid schedule in accordance with Paragraph 4.3(l) above. The schedule should follow as closely as possible Form 3 of the Schedule of Costs Forms annexed to this Practice Direction.
- 9.3 The schedule must set out by reference to the item numbers in the bill of costs, all the costs claimed as payable by another person, but the arithmetic in the schedule should claim those items at prescribed rates only (with or without any claim for enhancement).
- 9.4 Where there has been a change in the prescribed rates during the period covered by the bill of costs, the schedule (as opposed to the bill) should be divided into separate parts, so as to deal separately with each change of rate. The schedule must also be divided so as to correspond with any divisions in the bill of costs.
- 9.5 The detailed assessment of the legal aid schedule will take place immediately after the detailed assessment of the bill of costs.
- 9.6 Attention is drawn to the possibility that, on occasions, the court may decide to conduct the detailed assessment of the legal aid schedule separately from any detailed assessment of the bill of costs. This will occur, for example, where a default costs certificate is obtained as between the parties but that certificate is not set aside at the time of the detailed assessment pursuant to the Legal Aid Act 1988.
- 9.7 Where costs have been assessed at prescribed rates it is the responsibility of the legal representative to enter the correct figures allowed in respect of each item and to recalculate the summary of the legal aid schedule referred to in paragraph 9.2 above.

# DIRECTIONS RELATING TO PART 48

## COSTS - SPECIAL CASES

### SECTION I COSTS PAYABLE BY OR TO PARTICULAR PERSONS

#### **RULE 48.3 AMOUNT OF COSTS WHERE COSTS ARE PAYABLE PURSUANT TO CONTRACT**

- 1.1 Where the court is assessing costs payable under a contract, the court may make an order that all or part of the costs payable under the contract shall be disallowed if the court is satisfied by the paying party that costs have been unreasonably incurred or are unreasonable in amount.
- 1.2 Rule 48.3 only applies if the court is assessing costs payable under a contract. It does not-
  - (1) require the court to make an assessment of such costs; or
  - (2) require a mortgagee to apply for an order for those costs that he has a contractual right to recover out of the mortgage funds.
- 1.3 The following principles apply to costs relating to a mortgage-
  - (1) An order for the payment of costs of proceedings by one party to another is always a discretionary order: section 51 of the Supreme Court Act 1981<sup>1</sup>.
  - (2) Where there is a contractual right to the costs the discretion should ordinarily be exercised so as to reflect that contractual right.
  - (3) The power of the court to disallow a mortgagee's costs sought to be added to the mortgage security is a power that does not derive from section 51, but from the power of the courts of equity to fix the terms on which redemption will be allowed.
  - (4) A decision by a court to refuse costs in whole or in part to a mortgagee litigant may be-
    - (a) a decision in the exercise of the section 51 discretion;
    - (b) a decision in the exercise of the power to fix the terms on which redemption will be allowed;
    - (c) a decision as to the extent of a mortgagee's contractual right to add his costs to the security;

or

  - (d) a combination of two or more of these things.

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<sup>1</sup> 1981 c. 54

The statements of case in the proceedings or the submissions made to the court may indicate which of the decisions has been made.

- (5) A mortgagee is not to be deprived of a contractual or equitable right to add costs to the security merely by reason of an order for payment of costs made without reference to the mortgagee's contractual or equitable rights, and without any adjudication as to whether or not the mortgagee should be deprived of those costs.

1.4 (1) Where the contract entitles a mortgagee to—

- (a) add the costs of litigation relating to the mortgage to the sum secured by it;
- (b) require a mortgagor to pay those costs, or
- (c) both,

the mortgagor may make an application for the court to direct that an account of the mortgagee's costs be taken.

(Rule 25.(1)(n) provides that the court may direct that a party file an account)

- (2) The mortgagor may then dispute an amount in the mortgagee's account on the basis that it has been unreasonably incurred or is unreasonable in amount.
- (3) Where a mortgagor disputes an amount, the court may make an order that the disputed costs are assessed under rule 48.3

## **RULE 48.5 COSTS WHERE MONEY IS PAYABLE BY OR TO A CHILD OR PATIENT**

1.5 The circumstances in which the court need not order the assessment of costs under rule 48.5(3) are as follows:

- (a) where there is no need to do so to protect the interests of the child or patient or his estate;
- (b) where another party has agreed to pay a specified sum in respect of the costs of the child or patient and the solicitor acting for the child or patient has waived the right to claim further costs;
- (c) where the court has decided the costs payable to the child or patient by way of summary assessment and the solicitor acting for the child or patient has waived the right to claim further costs;
- (d) where an insurer or other person is liable to discharge the costs which the child or patient would otherwise be liable to pay to his solicitor and the court is satisfied that the insurer or other person is financially able to discharge those costs.

## **RULE 48.6 LITIGANTS IN PERSON**

1.6 In order to qualify as an expert for the purpose of rule 48.6(3)(c) (expert assistance in connection with assessing the claim for costs), the person in

question must be a

- (1) barrister,
- (2) solicitor,
- (3) Fellow of the Institute of Legal Executives,
- (4) Fellow of the Association of Law Costs Draftsmen,
- (5) law costs draftsman who is a member of the Academy of Experts,
- (6) law costs draftsman who is a member of the Expert Witness Institute.

- 1.7 Where a litigant in person wishes to prove that he has suffered financial loss he should produce to the court any written evidence he relies on to support that claim, and serve a copy of that evidence on any party against whom he seeks costs at least 24 hours before the hearing at which the question may be decided.
- 1.8 Where a litigant in person commences detailed assessment proceedings under rule 47.6 he should serve copies of that written evidence with the notice of commencement.
- 1.9 The amount which may be allowed to a litigant in person under rule 46.3(5)(b) and rule 48.6(4) is £9.25 per hour.
- 1.10 Attention is drawn to rule 48.6(6)(b). A solicitor who, instead of acting for himself, is represented in the proceedings by his firm or by himself in his firm name, is not, for the purpose of the Civil Procedure Rules, a litigant in person.

## SECTION II COSTS RELATING TO SOLICITORS AND OTHER LEGAL REPRESENTATIVES

### **RULE 48.7 PERSONAL LIABILITY OF LEGAL REPRESENTATIVE FOR COSTS – WASTED COSTS ORDERS**

- 2.1 Rule 48.7 deals with wasted costs orders against legal representatives. Such orders can be made at any stage in the proceedings up to and including the proceedings relating to the detailed assessment of costs. In general, applications for wasted costs are best left until after the end of the trial.
- 2.2 The court may make a wasted costs order against a legal representative on its own initiative.
- 2.3 A party may apply for a wasted costs order–
  - (1) by filing an application notice in accordance with Part 23; or
  - (2) by making an application orally in the course of any hearing.
- 2.4 It is appropriate for the court to make a wasted costs order against a legal representative, only if–

- (1) the legal representative has acted improperly, unreasonably or negligently;
- (2) his conduct has caused a party to incur unnecessary costs, and
- (3) it is just in all the circumstances to order him to compensate that party for the whole or part of those costs.

2.5 The court will give directions about the procedure that will be followed in each case in order to ensure that the issues are dealt with in a way which is fair and as simple and summary as the circumstances permit.

2.6 As a general rule the court will consider whether to make a wasted costs order in two stages–

- (1) in the first stage, the court must be satisfied–
  - (a) that it has before it evidence or other material which, if unanswered, would be likely to lead to a wasted costs order being made; and
  - (b) the wasted costs proceedings are justified notwithstanding the likely costs involved.
- (2) at the second stage (even if the court is satisfied under paragraph (1)) the court will consider, after giving the legal representative an opportunity to give reasons why the court should not make a wasted costs order, whether it is appropriate to make a wasted costs order in accordance with paragraph 2.4 above.

2.7 On an application for a wasted costs order under Part 23 the court may proceed to the second stage described in paragraph 2.5 without first adjourning the hearing if it is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the court should not make a wasted costs order. In other cases the court will adjourn the hearing before proceeding to the second stage.

2.8 On an application for a wasted costs order under Part 23 the application notice and any evidence in support must identify–

- (1) what the legal representative is alleged to have done or failed to do; and
- (2) the costs that he may be ordered to pay or which are sought against him.

2.9 A wasted costs order is an order –

- (1) that the legal representative pay a specified sum in respect of costs to a party; or
- (2) for costs relating to a specified sum or items of work to be disallowed.

## **RULE 48.8 BASIS OF DETAILED ASSESSMENT OF SOLICITOR AND CLIENT COSTS**

2.10 A client and his solicitor may agree whatever terms they consider appropriate about the payment of the solicitor's charges for his services. If however, the costs are of an unusual nature (either in amount or in the type of costs

incurred) those costs will be presumed to have been unreasonably incurred unless the solicitor satisfies the court that he informed the client that they were unusual and, where the costs relate to litigation, that he informed the client they might not be allowed on an assessment of costs between the parties. That information must have been given to the client before the costs were incurred.

- 2.11 (1) Costs as between a solicitor and client are assessed on the indemnity basis as defined by rule 44.4, proportionality is therefore not relevant.
- (2) Attention is drawn to the presumptions set out in rule 48.8(2). These presumptions may be rebutted by evidence to the contrary.
- 2.12 Rule 48.10 and paragraphs 2.17 to 2.36 of this Practice Direction deal with the procedure to be followed for obtaining the assessment of a solicitor's bill pursuant to an order under Part III of The Solicitors Act 1974.
- 2.13 If a party fails to comply with the requirements of rule 48.10 concerning the service of a breakdown of costs or points of dispute, any other party may apply to the court in which the detailed assessment hearing should take place for an order requiring compliance with rule 48.10. If the court makes such an order, it may–
  - (a) make it subject to conditions including a condition to pay a sum of money into court; and
  - (b) specify the consequence of failure to comply with the order or a condition.

## **RULE 48.9 CONDITIONAL FEES**

- 2.14 (1) A client who has entered into a conditional fee agreement with a solicitor may apply for assessment of the base costs (which is carried out in accordance with rule 48.8(2) as if there were no conditional fee agreement) or for assessment of the percentage increase (success fee) or both.
- (2) Where the court is to assess the percentage increase, proportionality is relevant and the court will have regard to all the relevant factors as they appeared to the solicitor or counsel when the conditional fee agreement was entered into.
- 2.15 Where the client applies to the court to reduce the percentage increase which the solicitor has charged the client under the conditional fee agreement, the client must set out in his application notice:
  - (a) the reasons why the percentage increase should be reduced; and
  - (b) what the percentage increase should be.
- 2.16 The factors relevant to assessing the percentage increase include–
  - (a) the risk that the circumstances in which the fees or expenses would be payable might not occur;

- (b) the disadvantages relating to the absence of payment on account;
  - (c) whether the amount which might be payable under the conditional fee agreement is limited to a certain proportion of any damages recovered by the client;
  - (d) whether there is a conditional fee agreement between the solicitor and counsel;
  - (e) the solicitor's liability for any disbursements.
- 2.17 When the court is considering the factors to be taken into account, it will have regard to the circumstances as they reasonably appeared to the solicitor or counsel when the conditional fee agreement was entered into or at the time of any variation of the agreement.

## **RULE 48.10 ASSESSMENT PROCEDURE**

- 2.18 Paragraphs 2.18 to 2.36 apply to orders made under Part III of the Solicitors Act 1974 for the assessment of costs. In these paragraphs "client" includes any person entitled to make an application under Part III of that Act.
- 2.19 The procedure for obtaining an order under Part III of the Solicitors Act 1974 is by the alternative procedure for claims under Part 8. The provisions of RSC Order 106 appear, appropriately amended, in Schedule 1 to the CPR.
- 2.20 Model forms of order which the court may make are set out in Forms 17, 18 and 19 of the Schedule of Costs Forms annexed to this Practice Direction.
- 2.21 Attention is drawn to the time limits within which the required steps must be taken: ie. the solicitor must serve a breakdown of costs within 28 days of the order for costs to be assessed, the client must serve points of dispute within 14 days after service on him of the breakdown, and any reply must be served within 14 days of service of the points of dispute.
- 2.22 The breakdown of costs referred to in rule 48.10 is a document which contains the following information:
- (a) details of the work done under each of the bills sent for assessment; and
  - (b) in applications under Section 70 of the Solicitors Act 1974, an account showing money received by the solicitor to the credit of the client and sums paid out of that money on behalf of the client but not payments out which were made in satisfaction of the bill or of any items which are claimed in the bill.
- 2.23 Form 20 of the Schedule of Costs Forms annexed to this Practice Direction is a model form of breakdown of costs. A party who is required to serve a breakdown of costs must also serve—
- (1) copies of the fee notes of counsel and of any expert in respect of fees claimed in the breakdown, and

- (2) written evidence as to any other disbursement which is claimed in the breakdown and which exceeds £250.
- 2.24 The provisions relating to default costs certificates (rule 47.11) do not apply to cases to which rule 48.10 applies.
- 2.25 Points of dispute should, as far as practicable, be in the form complying with paragraphs 2.12 and 2.13 of the Directions Relating to Part 47.
- 2.26 The time for requesting a detailed assessment hearing is within 3 months after the date of the order for the costs to be assessed.
- 2.27 The form of request for a hearing date must be in Form 21 of the Schedule of Costs Forms annexed to this Practice Direction. The request must be accompanied by copies of–
- (a) the order sending the bill or bills for assessment;
  - (b) the bill or bills sent for assessment;
  - (c) the solicitor's breakdown of costs and any invoices or accounts served with that breakdown;
  - (d) a copy of the points of dispute, annotated as necessary in order to show which items have been agreed and their value and to show which items remain in dispute;
  - (e) as many copies of the points of dispute so annotated as there are other parties to the proceedings to whom the court should give details of the assessment hearing requested;
  - (f) a copy of any replies served;
  - (g) a statement signed by the party filing the request or his legal representative giving the names and addresses for service of all parties to the proceedings.
- 2.28 The request must include an estimate of the length of time the detailed assessment hearing will take.
- 2.29 On receipt of the request for a detailed assessment hearing the court will fix a date for the hearing or if the Costs Judge or District Judge so decides, will give directions or fix a date for a preliminary appointment.
- 2.30
- (1) The court will give at least 14 days notice of the time and place of the detailed assessment hearing to every person named in the statement referred to in paragraph 2.26(g) above.
  - (2) The court will when giving notice, give all parties other than the party who requested the hearing a copy of the points of dispute annotated by the party requesting the hearing in compliance with paragraph 2.26(e) above.
  - (3) Attention is drawn to rule 47.14(6) and (7): apart from the solicitor whose bill it is, only those parties who have served points of dispute may be heard on the detailed assessment unless the court gives permission, and

only items specified in the points of dispute may be raised unless the court gives permission.

- 2.31 (1) If a party wishes to vary his breakdown of costs, points of dispute or reply, an amended or supplementary document must be filed with the court and copies of it must be served on all other relevant parties.  
(2) Permission is not required to vary a breakdown of costs, points of dispute or a reply but the court may disallow the variation or permit it only upon conditions, including conditions as to the payment of any costs caused or wasted by the variation.
- 2.32 Unless the court directs otherwise the solicitor must file with the court the papers in support of the bill not less than 7 days before the date for the detailed assessment hearing and not more than 14 days before that date.
- 2.33 Once the detailed assessment hearing has ended it is the responsibility of the legal representative appearing for the solicitor or, as the case may be, the solicitor in person to remove the papers filed in support of the bill.
- 2.34 (1) Attention is drawn to rule 47.15 (power to issue an interim certificate).  
(2) If, in the course of a detailed assessment hearing of a solicitor's bill to his client, it appears to the costs judge or district judge that in any event the solicitor will be liable in connection with that bill to pay money to the client, he may issue an interim certificate specifying an amount which in his opinion is payable by the solicitor to his client. Such a certificate will include an order to pay the sum it certifies unless the court orders otherwise.
- 2.35 (1) Attention is drawn to rule 47.16 which requires the solicitor to file a completed bill within 14 days after the end of the detailed assessment hearing. The court may dispense with the requirement to file a completed bill. If it does so the time for a request by the solicitor for written reasons under rule 47.23 is 7 days after the date of the order dispensing with the requirement for a completed bill.  
(2) After the detailed assessment hearing is concluded the court will—
  - (a) complete the court copy of the bill so as to show the amount allowed;
  - (b) determine the result of the cash account;
  - (c) award the costs of the detailed assessment hearing in accordance with Section 70(8) of the Solicitors Act 1974; and
  - (d) issue a final costs certificate showing the amount due following the detailed assessment hearing.
- 2.36 A final costs certificate will include an order to pay the sum it certifies unless the court orders otherwise.
- 2.37 Attention is drawn to Section VIII of Part 47 (appeal against decisions in detailed assessment proceedings).

## SECTION III TRANSITIONAL ARRANGEMENTS

- 3.1 (1) This section deals with the application of the Civil Procedure Rules (“CPR”) to taxation proceedings commenced before 26th April 1999.
- (2) In this section “the previous rules” means the Rules of the Supreme Court 1965 (“RSC”) or County Court Rules 1981 (“CCR”), as appropriate.

### General Scheme of Transitional Arrangements concerning Costs Proceedings

- 3.2 (1) Paragraph 18 of the Practice Direction which supplements Part 51 (Transitional Arrangements) provides that the CPR govern any assessments of costs which take place on or after 26th April 1999 and states a presumption to be applied in respect of costs for work undertaken before 26th April 1999.
- (2) The following paragraphs provide four further transitional arrangements:
- (a) to provide an additional presumption to be applied when assessing costs which were awarded by an order made in a county court before 26th April 1999 which allowed costs “on Scale 1” to be determined in accordance with CCR Appendix A, or “on the lower scale” to be determined in accordance with CCR Appendix C.
  - (b) to preserve the effect of CCR Appendix B Part III, paragraph 2;
  - (c) to clarify the approach to be taken where a bill of costs was provisionally taxed before 26th April 1999 and the receiving party is unwilling to accept the result of the provisional taxation.
  - (d) to preserve the right to carry in objections or apply for a reconsideration in all taxation proceedings commenced before 26th April 1999.

### Scale 1 or lower scale costs

- 3.3 Where an order was made in county court proceedings before 26th April 1999 under which the costs were allowed on Scale 1 or the lower scale, the general presumption is that no costs will be allowed under that order which would not have been allowed in a taxation before 26th April 1999.

### Fixed costs on the lower scale

- 3.4 The amount to be allowed as fixed costs for making or opposing an application for a rehearing to set aside a judgment given before 26th April 1999 where the costs are on lower scale is £11.25.

### Bills provisionally taxed before 26th April 1999

- 3.5 In respect of bills of costs provisionally taxed before 26th April 1999:

- (1) The previous rules apply on the question who can request a hearing and the time limits for doing so; and
- (2) The CPR govern any subsequent hearing in that case.

### **Bills taxed before 26th April 1999**

- 3.6 Where a bill of costs was taxed before 26th April 1999, the previous rules govern the steps which can be taken to challenge that taxation.

### **Other taxation proceedings**

- 3.7
- (1) This paragraph applies to taxation proceedings which were commenced before 26th April 1999, were assigned for taxation to a Taxing Master or District Judge, and which were still pending on 26th April 1999.
  - (2) Any assessment of costs that takes place in cases to which this paragraph applies which is conducted on or after 26th April 1999, will be conducted in accordance with the CPR.
  - (3) In addition to the possibility of appeal under rules 47.20 to 47.26 any party to a detailed assessment who is dissatisfied with any decision on a detailed assessment made by a costs judge or district judge may apply to that costs judge or district judge for a review of the decision. The review shall, for procedural purposes, be treated as if it were an appeal from an authorised court officer.
  - (4) The right of review provided by paragraph (3) above, will not apply in cases in which, at least 28 days before the date of the assessment hearing, all parties were served with notice that the rights of appeal in respect of that hearing would be governed only by Part 47 Section VIII (Appeal against Decisions in Detailed Assessment Proceedings).
  - (5) An order for the service of notice under sub-paragraph (4) above may be made on the application of any party to the detailed assessment proceedings or may be made by the court of its own initiative.