PRACTICE DIRECTION ABOUT COSTS

SUPPLEMENTING PARTS 43 TO 48 OF THE CIVIL PROCEDURE RULES

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B: Model form of bill of costs (detailed assessment of additional liability only)

C: Model form of bill of costs (payable by Defendant and the LSC)

D: Model form of bill of costs (alternative form, single column for amounts claimed, separate parts for costs payable by the LSC only)

E: Legal Aid/ LSC Schedule of Costs

F: Certificates for inclusion in bill of costs

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H: Estimate of costs served on other parties

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SECTION 1 INTRODUCTION

1.1 This Practice Direction supplements Parts 43 to 48 of the Civil Procedure Rules. It applies to all proceedings to which those Parts apply.

*1.2 Paragraphs 57.1 to 57.9 of this Practice Direction deal with various transitional provisions affecting proceedings about costs.

1.3 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.

*1.4 In these Directions:

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

'LSC' means Legal Services Commission.

'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.

1.5 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).

*1.6 This edition of the Costs Practice Direction comes into force as from 3rd July 2000. In this edition, the paragraphs have been renumbered from 1.1 to 57.9. An asterisk appears in the margin beside every paragraph in which an amendment has been made in this edition other than an amendment caused solely by the renumbering.

SECTION 2 SCOPE OF COSTS RULES AND DEFINITIONS

RULE 43.2 DEFINITIONS AND APPLICATION

*2.1 Where the court makes an order for costs and the receiving party has entered into a funding arrangement as defined in rule 43.2, the costs payable by the paying party include any additional liability (also defined in rule 43.2) unless the court orders otherwise.

*2.2 In the following paragraphs -

'funding arrangement', 'percentage increase', 'insurance premium', 'membership organisation' and 'additional liability' have the meanings given to them by rule 43.2 .

* A 'conditional fee agreement' is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or part of them, to be payable only in specified circumstances, whether or not it provides for a success fee as mentioned in section 58(2)(b) of the Courts and Legal Services Act 1990.

'base costs' means costs other than the amount of any additional liability.

*2.3 Rule 44.3A(1) provides that the court will not assess any additional liability until the conclusion of the proceedings or the part of the proceedings to which the funding arrangement relates. (As to the time when detailed assessment may be carried out see paragraph 27.1 below).

*2.4 For the purposes of the following paragraphs of this practice direction and rule 44.3A proceedings are concluded when the court has finally determined the matters in issue in the claim, whether or not there is an appeal. The making of an award of provisional damages under Part 41 will also be treated as a final determination of the matters in issue.

*2.5 The court may order or the parties may agree in writing that, although the proceedings are continuing, they will nevertheless be treated as concluded.

SECTION 3 MODEL FORMS FOR CLAIMS FOR COSTS

RULE 43.3 MEANING OF SUMMARY ASSESSMENT

*3.1 Rule 43.3 defines summary assessment. When carrying out a summary assessment of costs where there is an additional liability the court may assess the base costs alone, or the base costs and the additional liability.

*3.2 Form N260 is a model form of Statement of Costs to be used for summary assessments.

*3.3 Further details about Statements of Costs are given in paragraph 13.6 below.

RULE 43.4 MEANING OF DETAILED ASSESSMENT

*3.4 Rule 43.4 defines detailed assessment. When carrying out a detailed assessment of costs where there is an additional liability the court will assess both the base costs and the additional liability, or, if the base costs have already been assessed, the additional liability alone.

*3.5 Precedents A, B, C and D in the Schedule of Costs Precedents annexed to this Practice Direction are model forms of bills of costs to be used for detailed assessments.

*3.6 Further details about bills of costs are given in the next section of these Directions and in paragraphs 28.1 to 49.1, below.

*3.7 Precedents A, B, C and D in the Schedule of Costs Precedents and the next section of this Practice Direction all refer to a model form of bill of costs. The use of a model form is not compulsory, but is encouraged. A party wishing to rely upon a bill which departs from the model forms should include in the background information of the bill an explanation for that departure.

3.8 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 4 FORM AND CONTENTS OF BILLS OF COSTS

4.1 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 4.6;

(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 4.15.

*4.2 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 or LSC funding 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 or LSC funding was granted;

(b) costs claimed after legal aid or LSC funding was granted; and

(c) any costs claimed after legal aid or LSC funding 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 an order or 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.

(*6) Where the bill covers costs payable under an order or orders, in respect of which the receiving party wishes to claim interest from different dates, the bill should be divided to enable such interest to be calculated.

*4.3 Where a party claims costs against another party and also claims costs against the LSC only for work done in the same period, the costs claimed against the LSC only can be claimed either in a separate part of the bill or in additional columns in the same part of the bill. Precedents C and D in the Schedule of Costs Precedents annexed to this Practice Direction show how bills should be drafted when costs are claimed against the LSC only.

*4.4 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 40.4, below);

(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, LSC certificates and relevant amendment certificates in respect of which claims for costs are included in the bill.

4.5 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.

*4.6 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) attendances on and communications with other persons, including offices of public records;

(6) communications with the court and with counsel;

(7) work done on documents: preparing and considering documentation, including documentation relating to pre-action protocols where appropriate, work done in connection with arithmetical calculations of compensation and/or interest and time spent collating documents;

(8) work done in connection with negotiations with a view to settlement if not already covered in the heads listed above;

(9) attendances on and communications with London and other agents and work done by them;

(10) other work done which was of or incidental to the proceedings and which is not already covered in the heads listed above.

4.7 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;

*4.8 Routine communications are letters out, e mails out and telephone calls which because of their simplicity should not be regarded as letters or e mails of substance or telephone calls which properly amount to an attendance.

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

4.10 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).

*4.11 The numbered items of costs may be set out on paper divided into columns. Precedents A, B, C and D in the Schedule of Costs Precedents annexed to this Practice Direction illustrate various model forms of bills of costs.

4.12 In respect of heads (2) to (10) in paragraph 4.6 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.

4.13 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.

4.14 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.

*4.15 The bill of costs must contain such of the certificates, the texts of which are set out in Precedent F of the Schedule of Costs Precedents annexed to this Practice Direction, as are appropriate.

*4.16 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 by solicitors will not normally be allowed. 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 routine e-mails sent to the client or others on a unit basis of 6 minutes each, the charge being calculated by reference to the appropriate hourly rate.

(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 4.6 (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 (9) (attendances on London and other agents).

*4.17 (1) Where a claim is made for a percentage increase in addition to an hourly rate or base fee, the amount of the increase must be shown separately, either in the appropriate arithmetic column or in the narrative column. (For an example see Precedent A or Precedent B.)

(2) Where a claim is made against the LSC only and includes enhancement and where a claim is made in family proceedings and includes a claim for uplift or general care and conduct, the amount of enhancement uplift and general care and conduct must be shown, in respect of each item upon which it is claimed, as a separate amount either in the appropriate arithmetic column or in the narrative column. (For an example, see Precedent C.)

'Enhancement' means the increase in prescribed rates which may be allowed by a costs officer in accordance with the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 or the Legal Aid in Family Proceedings Regulations 1991.

Costs of preparing the bill

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

SECTION 5 SPECIAL PROVISIONS RELATING TO VAT

5.1 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

5.2 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

5.3 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.

5.4 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.

*5.5 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 substantially in the form illustrated in Precedent F in the Schedule of Costs Precedents 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.

5.6 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

5.7 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.

5.8 It will be assumed, unless a contrary indication is given in writing, that an election to take advantage of the provisions mentioned in paragraph 5.7 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

5.9 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 5.7 and 5.8 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.

5.10 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

5.11 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.

5.12 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/LSC Funding

*5.13 VAT will be payable in respect of every supply made pursuant to a Legal Aid/LSC Certificate provided only that the person making the supply is a taxable person and that the assisted person/ LSC funded client is not resident outside the European Union. Where the assisted person/ LSC funded client is registered for VAT and the legal services paid for by the LSC are in connection with that person's business, the VAT on those services will be payable by the LSC only.

*5.14 Any summary of costs payable by the LSC 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

5.15 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

5.16 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

*5.17 The total VAT allowed will be shown in the final costs certificate as a separate item. In a certificate of costs payable by the LSC the VAT on Counsel's fees will be shown separately from the remaining VAT.

Litigants acting in person

*5.18 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 in respect of work done by that litigant (even where, for example, that litigant is a solicitor or other legal representative).

5.19 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

5.20 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 6 ESTIMATES OF COSTS

*6.1 This section sets out certain steps which parties and their legal representatives must take in order to keep the 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.

*6.2 (1) In this section an 'estimate of costs' means -

(a) an estimate of base costs (including disbursements) already incurred; and

(b) an estimate of base costs (including disbursements) to be incurred,

which a party intends to seek to recover from any other party under an order for costs if he is successful in the case. ('Base costs' are defined in paragraphs 2.2 of this Practice Direction.)

(2) A party who intends to recover an additional liability (defined in rule 43.2) need not reveal the amount of that liability in the estimate.

6.3 The court may at any stage in a case order any party to file an estimate of base 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.

*6.4 (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 base costs and serve a copy of it on every other party, unless the court otherwise directs. The legal representative must in addition serve an estimate upon the party he represents.

(2) Where a party to a claim which 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 base 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 an estimate on the party he represents.

(3) This paragraph does not apply to litigants in person.

*6.5 An estimate of base costs should be substantially in the form illustrated in Precedent H in the Schedule of Costs Precedents annexed to the Practice Direction.

*6.6 On an assessment of the costs of a party the court may have regard to any estimate previously filed by that party, or by any other party in the same proceedings. Such an estimate may be taken into account as a factor among others, when assessing the reasonableness of any costs claimed.

DIRECTIONS RELATING TO PART 44

GENERAL RULES ABOUT COSTS

SECTION 7 SOLICITOR'S DUTY TO NOTIFY CLIENT: RULE 44.2

*7.1 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, a trade union or the LSC) who has instructed the solicitor to act or who is liable to pay his fees.

7.2 Where a solicitor notifies a client of an order under that rule, he must also explain why the order came to be made.

7.3 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.

SECTION 8 COURT'S DISCRETION AND CIRCUMSTANCES TO BE TAKEN INTO ACCOUNT WHEN EXERCISING ITS DISCRETION AS TO COSTS: RULE 44.3

8.1 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.

8.2 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.

*8.3 (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.

(3) * Rule 44.3A(1) provides that the court will not assess any additional liability until the conclusion of the proceedings or the part of the proceedings to which the funding arrangement relates. (Paragraphs 2.4 and 2.5 above explain when proceedings are concluded. As to the time when detailed assessment may be carried out see paragraphs 28.1, below.)

8.4 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.

8.5 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
• Costs • Costs in any event	The party in whose favour the order is made 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.
• Costs in the case • Costs in the application	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.
• Costs reserved	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.
• Claimant's/ Defendant's costs in case/ application	If the party in whose favour the costs order is made is awarded costs at the end of the 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.
• Costs thrown away	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. This includes the costs of - a) preparing for and attending any hearing at which the judgment or order which has been set aside was made; b) preparing for and attending any hearing to set aside the judgment or order in question;

	c) preparing for and attending any hearing at which the court orders the proceedings or the part in question to be adjourned; d) any steps taken to enforce a judgment or order which has subsequently been set aside.
• Costs of and caused by	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.
• 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.

8.6 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

*8.7 (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.

(3) The court will generally express an opinion only where:

(a) the paying party asks it to do so;

(b) more than one counsel appeared for a party or,

(c) the court wishes to record its opinion that the case was not fit for the attendance of counsel.

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

*8.8 (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 set out in Part 52. If the appeal is against the decision of an authorised court officer, it will be dealt with in accordance with rules 47.20 to 47.23.

SECTION 9 COSTS ORDERS RELATING TO FUNDING ARRANGEMENTS: RULE 44.3A

*9.1 Under an order for payment of 'costs' the costs payable will include an additional liability incurred under a funding arrangement.

*9.2 (1) If before the conclusion of the proceedings the court carries out a summary assessment of the base costs it may identify separately the amount allowed in respect of: solicitors' charges; counsels' fees; other disbursements; and any value added tax (VAT). (Sections 13 and 14 of this Practice Direction deal with summary assessment.)

(2) If an order for the base costs of a previous application or hearing did not identify separately the amounts allowed for solicitor's charges, counsel's fees and other disbursements, a court which later makes an assessment of an additional liability may apportion the base costs previously ordered.

SECTION 10 LIMITS ON RECOVERY UNDER FUNDING ARRANGEMENTS: RULE 44.3B

*10.1 In a case to which rule 44.3B(1)(c) or (d) applies the party in default may apply for relief from the sanction. He should do so as quickly as possible after he becomes aware of the default. An application, supported by evidence, should be made under Part 23 to a costs judge or district judge of the court which is dealing with the case. (Attention is drawn to rules 3.8 and 3.9 which deal with sanctions and relief from sanctions).

*10.2 Where the amount of any percentage increase recoverable by counsel may be affected by the outcome of the application, the solicitor issuing the application must serve on counsel a copy of the application notice and notice of the hearing as soon as practicable and in any event at least 2 days before the hearing. Counsel may make written submissions or may attend and make oral submissions at the hearing. (Paragraph 1.4 contains definitions of the terms 'counsel' and 'solicitor'.)

SECTION 11 FACTORS TO BE TAKEN INTO ACCOUNT IN DECIDING THE AMOUNT OF COSTS: RULE 44.5

11.1 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.

11.2 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.

11.3 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.

*11.4 Where a party has entered into a funding arrangement the costs claimed may, subject to rule 44.3B include an additional liability.

*11.5 In deciding whether the costs claimed are reasonable and (on a standard basis assessment) proportionate, the court will consider the amount of any additional liability separately from the base costs.

*11.6 In deciding whether the base costs are reasonable and (if relevant) proportionate the court will consider the factors set out in rule 44.5.

*11.7 Subject to paragraph 17.8(2), when the court is considering the factors to be taken into account in assessing an additional liability, it will have regard to the facts and circumstances as they reasonably appeared to the solicitor or counsel when the funding arrangement was entered into and at the time of any variation of the arrangement.

*11.8 (1) In deciding whether a percentage increase is reasonable relevant factors to be taken into account may include:-

(a) the risk that the circumstances in which the costs, fees or expenses would be payable might or might not occur;

(b) the legal representative's liability for any disbursements;

(c) what other methods of financing the costs were available to the receiving party.

(2) The court has the power, when considering whether a percentage increase is reasonable, to allow different percentages for different items of costs or for different periods during which costs were incurred.

*11.9 A percentage increase will not be reduced simply on the ground that, when added to base costs which are reasonable and (where relevant) proportionate, the total appears disproportionate.

*11.10 In deciding whether the cost of insurance cover is reasonable, relevant factors to be taken into account include:

(1) where the insurance cover is not purchased in support of a conditional fee agreement with a success fee, how its cost compares with the likely cost of funding the case with a conditional fee agreement with a success fee and supporting insurance cover;

(2) the level and extent of the cover provided;

(3) the availability of any pre-existing insurance cover;

(4) whether any part of the premium would be rebated in the event of early settlement;

(5) the amount of commission payable to the receiving party or his legal representatives or other agents.

*11.11 Where the court is considering a provision made by a membership organisation, rule 44.3B(1) (b) provides that any such provision which exceeds the likely cost to the receiving party of the premium of an insurance policy against the risk of incurring a liability to pay the costs of other parties to the proceedings is not recoverable. In such circumstances the court will, when assessing the additional liability, have regard to the factors set out in paragraph 11.10 above, in addition to the factors set out in rule 44.5.

SECTION 12 PROCEDURE FOR ASSESSING COSTS: RULE 44.7

12.1 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).

12.2 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.

12.3 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.

SECTION 13 SUMMARY ASSESSMENT: GENERAL PROVISIONS

13.1 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.

*13.2 The general rule is that the court should make a summary assessment of the costs:

(1) 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

(2) 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;

(3) in hearings in the Court of Appeal to which Paragraph 14 of the Practice Direction supplementing Part 52 (Appeals) applies;

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.

13.3 The general rule in paragraph 13.2 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. Paragraphs 49.3 and 49.4 deal in more detail with costs relating to mortgages.

13.4 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.

*13.5 (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 13.2 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 (VAT) to be claimed on these amounts.

(*3) The statement of costs should follow as closely as possible Form N260 and must be signed by the party or his legal representative. Where a litigant is an assisted person or is a LSC funded client or is represented by a solicitor in the litigant's employment the statement of costs need not include the certificate appended at the end of Form N260.

(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.

(5) *Where the litigant is or may be entitled to claim an additional liability the statement filed and served need not reveal the amount of that liability.

13.6 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.

*13.7 If the court makes a summary assessment of costs at the conclusion of proceedings the court will specify separately

(1) the base costs, and if appropriate, the additional liability allowed as solicitor's charges, counsel's fees, other disbursements and any VAT; and

(2) the amount which is awarded under Part 46 (Fast Track Trial Costs).

*13.8 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 before the same judge.

13.9 * The court will not make a summary assessment of the costs of a receiving party who is an assisted person or LSC funded client.

13.10 * A summary assessment of costs payable by an assisted person or LSC funded client is not by itself a determination of that person's liability to pay those costs (as to which see rule 44.17 and paragraphs 21.1 to 23.17 of this Practice Direction).

*13.11 (1) 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 51.1 below).

(2) The court may make a summary assessment of costs payable by a child or patient.

*13.12 (1) Attention is drawn to rule 44.3A which prevents the court from making a summary assessment of an additional liability before the conclusion of the proceedings or the part of the proceedings to which the funding arrangement relates. Where this applies, the court should nonetheless make a summary assessment of the base costs of the hearing or application unless there is a good reason not to do so.

(2) Where the court makes a summary assessment of the base costs all statements of costs and costs estimates put before the judge will be retained on the court file.

13.13 The court will not give its approval to disproportionate and unreasonable costs. Accordingly:

(a) When the amount of the costs to be paid has been agreed between the parties the order for costs must state 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.

SECTION 14 SUMMARY ASSESSMENT WHERE COSTS CLAIMED INCLUDE AN ADDITIONAL LIABILITY

Orders made before the conclusion of the proceedings

*14.1 The existence of a conditional fee agreement or other funding arrangement within the meaning of rule 43.2 is not by itself a sufficient reason for not carrying out a summary assessment.

*14.2 Where a legal representative acting for the receiving party has entered into a conditional fee agreement the court may summarily assess all the costs (other than any additional liability).

*14.3 Where costs have been summarily assessed an order for payment will not be made unless the court has been satisfied that in respect of the costs claimed, the receiving party is at the time liable to pay to his legal representative an amount equal to or greater than the costs claimed. A statement in the form of the certificate appended at the end of Form N260 may be sufficient proof of liability. The giving of information under rule 44.15 (where that rule applies) is not sufficient.

*14.4 The court may direct that any costs, for which the receiving party may not in the event be liable, shall be paid into court to await the outcome of the case, or shall not be enforceable until further order, or it may postpone the receiving party's right to receive payment in some other way.

Orders made at the conclusion of the proceedings

*14.5 Where there has been a trial of one or more issues separately from other issues, the court will not normally order detailed assessment of the additional liability until all issues have been tried unless the parties agree.

*14.6 Rule 44.3A(2) sets out the ways in which the court may deal with the assessment of the costs where there is a funding arrangement. Where the court makes a summary assessment of the base costs:

(1) The order may state separately the base costs allowed as (a) solicitor's charges, (b) counsel's fees, (c) any other disbursements and (d) any VAT;

(2) the statements of costs upon which the judge based his summary assessment will be retained on the court file.

*14.7 Where the court makes a summary assessment of an additional liability at the conclusion of proceedings, that assessment must relate to the whole of the proceedings; this will include any additional liability relating to base costs allowed by the court when making a summary assessment on a previous application or hearing.

*14.8 Paragraph 13.13 applies where the parties are agreed about the total amount to be paid by way of costs, or are agreed about the amount of the base costs that will be paid. Where they disagree about the additional liability the court may summarily assess that liability or make an order for a detailed assessment.

*14.9 In order to facilitate the court in making a summary assessment of any additional liability at the conclusion of the proceedings the party seeking such costs must prepare and have available for the court a bundle of documents which must include -

(1) a copy of every notice of funding arrangement (Form N251) which has been filed by him;

(2) a copy of every estimate and statement of costs filed by him;

(3) a copy of the risk assessment prepared at the time any relevant funding arrangement was entered into and on the basis of which the amount of the additional liability was fixed.

SECTION 15 COSTS ON THE SMALL CLAIMS TRACK AND FAST TRACK: RULE 44.9

15.1 (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.

SECTION 16 COSTS FOLLOWING ALLOCATION AND RE-ALLOCATION: RULE 44.11

16.1 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.

16.2 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).

16.3 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.

SECTION 17 COSTS - ONLY PROCEEDINGS: RULE 44.12A

*17.1 A claim form under this rule should be issued in the court which would have been the appropriate office in accordance with rule 47.4 had proceedings been brought in relation to the substantive claim. A claim form under this rule should not be issued in the High Court unless the dispute to which the agreement relates was of such a value or type that had proceedings been begun they would have been commenced in the High Court.

*17.2 A claim form which is to be issued in the High Court at the Royal Courts of Justice will be issued in the Supreme Court Costs Office.

*17.3 Attention is drawn to rule 8.2 (in particular to paragraph (b)(ii)) and to rule 44.12A(3). The claim form must:

(1) identify the claim or dispute to which the agreement to pay costs relates;

(2) state the date and terms of the agreement on which the claimant relies;

(3) set out or have attached to it a draft of the order which the claimant seeks;

(4) state the amount of the costs claimed; and,

(5) state whether the costs are claimed on the standard or indemnity basis. If no basis is specified the costs will be treated as being claimed on the standard basis.

*17.4 The evidence to be filed and served with the claim form under Rule 8.5 must include copies of the documents on which the claimant relies to prove the defendant's agreement to pay costs.

*17.5 A costs judge or a district judge has jurisdiction to hear and decide any issue which may arise in a claim issued under this rule irrespective of the amount of the costs claimed or of the value of the claim to which the agreement to pay costs relates. A court officer may make an order by consent under paragraph17.7, or an order dismissing a claim under paragraph 17.9 below.

*17.6 When the time for filing the defendant's acknowledgement of service has expired, the claimant may by letter request the court to make an order in the terms of his claim, unless the defendant has filed an acknowledgement of service stating that he intends to contest the claim or to seek a different order.

*17.7 Rule 40.6 applies where an order is to be made by consent. An order may be made by consent in terms which differ from those set out in the claim form.

*17.8 (1) An order for costs made under this rule will be treated as an order for the amount of costs to be decided by a detailed assessment to which Part 47 and the practice directions relating to it apply. Rule 44.4(4) (determination of basis of assessment) also applies to the order.

(2) In cases in which an additional liability is claimed, the costs judge or district judge should have regard to the time when and the extent to which the claim has been settled and to the fact that the claim has been settled without the need to commence proceedings.

*17.9 A claim will be treated as opposed for the purposes of rule 44.12A(4)(b) if the defendant files an acknowledgement of service stating that he intends to contest the proceedings or to seek a different remedy. An order dismissing it will be made as soon as such an acknowledgement is filed. The dismissal of a claim under rule 44.12A(4) does not prevent the claimant from issuing another claim form under Part 7 or Part 8 based on the agreement or alleged agreement to which the proceedings under this rule related.

*17.10 (1) Rule 8.9 (which provides that claims issued under Part 8 shall be treated as allocated to the multi-track) shall not apply to claims issued under this rule. A claim issued under this rule may be dealt with without being allocated to a track.

(2) Rule 8.1(3) and Part 24 do not apply to proceedings brought under rule 44.12A.

*17.11 Nothing in this rule prevents a person from issuing a claim form under Part 7 or Part 8 to sue on an agreement made in settlement of a dispute where that agreement makes provision for costs, nor from claiming in that case an order for costs or a specified sum in respect of costs.

SECTION 18 COURT'S POWERS IN RELATION TO MISCONDUCT: RULE 44.14

18.1 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.

18.2 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.

18.3 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.

SECTION 19 PROVIDING INFORMATION ABOUT FUNDING ARRANGEMENTS: RULE 44.15

*19.1 (1) A party who wishes to claim an additional liability in respect of a funding arrangement must give any other party information about that claim if he is to recover the additional liability. There is no requirement to specify the amount of the additional liability separately nor to state how it is calculated until it falls to be assessed. That principle is reflected in rules 44.3A and 44.15, in the following paragraphs and in Sections 6, 13, 14 and 31 of this Practice Direction. Section 6 deals with estimates of costs, Sections 13 and 14 deal with summary assessment and Section 31 deals with detailed assessment.

(2) In the following paragraphs a party who has entered into a funding arrangement is treated as a person who intends to recover a sum representing an additional liability by way of costs.

(3) Attention is drawn to paragraph 57.9 of this Practice Direction which sets out time limits for the provision of information where a funding arrangement is entered into between 31 March and 2 July 2000 and proceedings relevant to that arrangement are commenced before 3 July 2000.

Method of giving information

*19.2 (1) In this paragraph, 'claim form' includes petition and application notice, and the notice of funding to be filed or served is a notice containing the information set out in Form N251.

(2) (a) A claimant who has entered into a funding arrangement before starting the proceedings to which it relates must provide information to the court by filing the notice when he issues the claim form.

(b) He must provide information to every other party by serving the notice. If he serves the claim form himself he must serve the notice with the claim form. If the court is to serve the claim form, the court will also serve the notice if the claimant provides it with sufficient copies for service.

(3) A defendant who has entered into a funding arrangement before filing any document

(a) must provide information to the court by filing notice with his first document. A 'first document' may be an acknowledgement of service, a defence, or any other document, such as an application to set aside a default judgment.

(b) must provide information to every party by serving notice. If he serves his first document himself he must serve the notice with that document. If the court is to serve his first document the court will also serve the notice if the defendant provides it with sufficient copies for service.

(4) In all other circumstances a party must file and serve notice within 7 days of entering into the funding arrangement concerned.

(5) There is no requirement in this Practice Direction for the provision of information about funding arrangements before the commencement of proceedings. Such provision is however recommended and may be required by a pre-action protocol.

Notice of change of information

*19.3 (1) Rule 44.15 imposes a duty on a party to give notice of change if the information he has previously provided is no longer accurate. To comply he must file and serve notice containing the information set out in Form N251. Rule 44.15(3) may impose other duties in relation to new estimates of costs.

(2) Further notification need not be provided where a party has already given notice:

(a) that he has entered into a conditional fee agreement with a legal representative and during the currency of that agreement either of them enters into another such agreement with an additional legal representative; or

(b) of some insurance cover, unless that cover is cancelled or unless new cover is taken out with a different insurer.

(3) Part 6 applies to the service of notices.

(4) The notice must be signed by the party or by his legal representative.

Information which must be provided

*19.4 (1) Unless the court otherwise orders, a party who is required to supply information about a funding arrangement must state whether he has-

entered into a conditional fee agreement which provides for a success fee within the meaning of section 58(2) of the Courts and Legal Services Act 1990;

taken out an insurance policy to which section 29 of the Access to Justice Act 1999 applies;

made an arrangement with a body which is prescribed for the purpose of section 30 of that Act;

or more than one of these.

(2) Where the funding arrangement is a conditional fee agreement, the party must state the date of the agreement and identify the claim or claims to which it relates (including Part 20 claims if any).

(3) Where the funding arrangement is an insurance policy the party must state the name of the insurer, the date of the policy and must identify the claim or claims to which it relates (including Part 20 claims if any).

(4) Where the funding arrangement is by way of an arrangement with a relevant body the party must state the name of the body and set out the date and terms of the undertaking it has given and must identify the claim or claims to which it relates (including Part 20 claims if any).

(5) Where a party has entered into more than one funding arrangement in respect of a claim, for example a conditional fee agreement and an insurance policy, a single notice containing the information set out in Form N251 may contain the required information about both or all of them

*19.5 Where the court makes a Group Litigation Order, the court may give directions as to the extent to which individual parties should provide information in accordance with rule 44.15. (Part 19 deals with Group Litigation Orders.)

SECTION 20 PROCEDURE WHERE LEGAL REPRESENTATIVE WISHES TO RECOVER FROM HIS CLIENT AN AGREED PERCENTAGE INCREASE WHICH HAS BEEN DISALLOWED OR REDUCED ON ASSESSMENT: RULE 44.16

*20.1 Attention is drawn to Regulation 3(2)(b) of the Conditional Fee Agreements Regulations 2000, which provides that any amount of an agreed percentage increase, which is disallowed on assessment, ceases to be payable under that agreement unless the court is satisfied that it should continue to be so payable. Rule 44.16 allows the court to adjourn a hearing at which the legal representative acting for the receiving party applies for an order that a disallowed amount should continue to be payable under the agreement.

*20.2 In the following paragraphs 'counsel' means counsel who has acted in the case under a conditional fee agreement which provides for a success fee. A reference to counsel includes a reference to any person who appeared as an advocate in the case and who is not a partner or employee of the solicitor or firm which is conducting the claim or defence (as the case may be) on behalf of the receiving party.

Procedure following Summary Assessment

*20.3 (1) If the court disallows any amount of a legal representative's percentage increase, the court will, unless sub-paragraph (2) applies, give directions to enable an application to be made by the legal representative for the disallowed amount to be payable by his client, including, if appropriate, a direction that the application will be determined by a costs judge or district judge of the court dealing with the case.

(2) The court that has made the summary assessment may then and there decide the issue whether the disallowed amount should continue to be payable, if:

(a) the receiving party and all parties to the relevant agreement consent to the court doing so;

(b) the receiving party (or, if corporate, an officer) is present in court; and

(c) the court is satisfied that the issue can be fairly decided then and there.

Procedure following Detailed Assessment

*20.4 (1) Where detailed assessment proceedings have been commenced, and the paying party serves points of dispute (as to which see Section 34 of this Practice Direction), which show that he is seeking a reduction in any percentage increase charged by counsel on his fees, the solicitor acting for the receiving party must within 3 days of service deliver to counsel a copy of the relevant points of dispute and the bill of costs or the relevant parts of the bill.

(2) Counsel must within 10 days thereafter inform the solicitor in writing whether or not he will accept the reduction sought or some other reduction. Counsel may state any points he wishes to have made in a reply to the points of dispute, and the solicitor must serve them on the paying party as or as part of a reply.

(3) Counsel who fails to inform the solicitor within the time limits set out above will be taken to accept the reduction unless the court otherwise orders.

*20.5 Where the paying party serves points of dispute seeking a reduction in any percentage increase charged by a legal representative acting for the receiving party, and that legal representative intends, if necessary, to apply for an order that any amount of the percentage disallowed as against the paying party shall continue to be payable by his client, the solicitor acting for the receiving party must, within 14 days of service of the points of dispute, give to his client a clear written explanation of the nature of the relevant point of dispute and the effect it will have if it is upheld in whole or in part by the court, and of the client's right to attend any subsequent hearings at court when the matter is raised.

*20.6 Where the solicitor acting for a receiving party files a request for a detailed assessment hearing it must if appropriate, be accompanied by a certificate signed by him stating:

(1) that the amount of the percentage increase in respect of counsel's fees or solicitor's charges is disputed;

(2) whether an application will be made for an order that any amount of that increase which is disallowed should continue to be payable by his client;

(3) that he has given his client an explanation in accordance with paragraph 20.5; and,

(4) whether his client wishes to attend court when the amount of any relevant percentage increase may be decided.

*20.7 (1) The solicitor acting for the receiving party must within 7 days of receiving from the court notice of the date of the assessment hearing, notify his client, and if appropriate, counsel in writing of the date, time and place of the hearing.

(2) Counsel may attend or be represented at the detailed assessment hearing and may make oral or written submissions.

*20.8 (1) At the detailed assessment hearing, the court will deal with the assessment of the costs payable by one party to another, including the amount of the percentage increase, and give a certificate accordingly.

(2) The court may decide the issue whether the disallowed amount should continue to be payable under the relevant conditional fee agreement without an adjournment if:

(a) the receiving party and all parties to the relevant agreement consent to the court deciding the issue without an adjournment,

(b) the receiving party (or, if corporate, an officer or employee who has authority to consent on behalf of the receiving party) is present in court, and

(c) the court is satisfied that the issue can be fairly decided without an adjournment.

(3) In any other case the court will give directions and fix a date for the hearing of the application.

SECTION 21 APPLICATION OF COSTS RULES: RULE 44.17

*21.1 Rule 44.17(b) excludes the costs rules to the extent that regulations under the Legal Aid Act 1988 make different provision. The primary examples of such regulations are the regulations providing prescribed rates (with or without enhancement).

*21.2 Rule 44.17(a) also excludes the procedure for the detailed assessment of costs in cases to which Section 11 of the Access to Justice Act 1999 applies, whether it applies in whole or in part. In these excluded cases the procedure for determination of costs is set out in Section 22 of this Practice Direction.

*21.3 Section 11 of the Access to Justice Act 1999 provides special protection against liability for costs for litigants who receive funding by the LSC (Legal Services Commission) as part of the Community Legal Service. Any costs ordered to be paid by a LSC funded client must not exceed the amount which is reasonable for him to pay having regard to all the circumstances including:

(a) the financial resources of all the parties to the proceedings, and

(b) their conduct in connection with the dispute to which the proceedings relate.

*21.4 In this Practice Direction

'cost protection' means the limit on costs awarded against a LSC funded client set out in Section 11(1) of the Access to Justice Act 1999.

'partner' has the meaning given by the Community Legal Service (Costs) Regulations 2000.

*21.5 Whether or not cost protection applies depends upon the 'level of service' for which funding was provided by the LSC in accordance with the Funding Code approved under section 9 of the Access to Justice Act 1999. The levels of service referred to are:

(1) Legal Help - advice and assistance about a legal problem, not including representation or advocacy in proceedings.

(2) Help at Court - advocacy at a specific hearing, where the advocate is not formally representing the client in the proceedings.

(3) Family Mediation.

(4) Legal Representation - representation in actual or contemplated proceedings. Legal Representation can take the form of Investigative Help (limited to investigating the merits of a potential claim) or Full Representation.

(5) Approved Family Help - this can take the form of Help with Mediation (legal advice in support of the family mediation process) or General Family Help (help negotiating a settlement to a family dispute without recourse to adversarial litigation).

(6) Support Funding - partial funding in expensive cases that are primarily being funded privately, under or with a view to a conditional fee agreement. Support Funding can take the form of Investigative Support (equivalent to Investigative Help) or Litigation Support (equivalent to Full Representation).

*21.6 Levels of service (4) (5) and (6) are provided under a certificate (similar to a legal aid certificate). The certificate will state which level of service is covered. Where there are proceedings, a copy of the certificate will be lodged with the court.

*21.7 Cost protection does not apply where:

(1) The LSC funded client receives Help at Court;

(2) the LSC funded client receives Litigation Support (but see further, paragraph 21.8);

(3) the LSC funded client receives Investigative Support (except where the proceedings for which Investigative Support was given are not pursued after the certificate is discharged). Investigative Support will not normally cover the issue of proceedings (except for disclosure), but cost protection may be relevant if the defendant seeks an assessment of pre-action costs;

(4) the LSC funded client receives Legal Help only i.e. where the solicitor is advising, but not representing a litigant in person. However, where the LSC funded client receives Legal Help e.g. to write a letter before action, but later receives Legal Representation or Approved Family Help in respect of the same dispute, cost protection does apply to all costs incurred by the receiving party in the funded proceedings or prospective proceedings.

*21.8 Where cost protection does not apply, the court may award costs in the normal way. In the case of Litigation Support, costs that are not covered by the LSC funded client's insurance are usually payable by the LSC rather than the funded client, and the court should order accordingly (see Regulation. 6 of the Community Legal Service (Cost Protection) Regulations 2000).

*21.9 Where work is done before the issue of a certificate, cost protection does not apply to those costs, except where:

(1) pre-action Legal Help is given and the LSC funded client subsequently receives Legal Representation or Approved Family Help in the same dispute; or

(2) where urgent work is undertaken immediately before the grant of an emergency certificate when no emergency application could be made as the LSC's offices were closed, provided that the solicitor seeks an emergency certificate at the first available opportunity and the certificate is granted.

*21.10 If a LSC funded client's certificate is revoked, costs protection does not apply to work done before or after revocation.

*21.11 If a LSC funded client's certificate is discharged, costs protection only applies to costs incurred before the date on which funded services ceased to be provided under the certificate. This may be a date before the date on which the certificate is formally discharged by the LSC (Burridge v Stafford: Khan v Ali [2000] 1 WLR 927, [1999] 4 All ER 660 C.A.).

Assessing a LSC Funded Client's Resources

*21.12 The first £100,000 of the value of the LSC funded client's interest in the main or only home is disregarded when assessing his or her financial resources for the purposes of S.11 and cannot be the subject of any enforcement process by the receiving party. The receiving party cannot apply for an order to sell the LSC funded client's home, but could secure the debt against any value exceeding £100,000 by way of a charging order.

*21.13 The court may only take into account the value of the LSC funded client's clothes, household furniture, tools and implements of trade to the extent that it considers that having regard to the quantity or value of the items, the circumstances are exceptional.

*21.14 The LSC funded client's resources include the resources of his partner, unless the partner has a contrary interest in the dispute in respect of which funded services are provided.

Party acting in a Representative, Fiduciary or Official Capacity

*21.15 (1) Where a LSC funded client is acting in a representative, fiduciary or official capacity, the court shall not take the personal resources of the party into account for the purposes of either a Section 11 order or costs against the Commission, but shall have regard to the value of any property or estate or the amount of any fund out of which the party is entitled to be indemnified, and may also have regard to the resources of any persons who are beneficially interested in the property, estate or fund.

(2) The purpose of this provision is to ensure that any liability is determined with reference to the value of the property or fund being used to pay for the litigation, and the financial position of those who may benefit from or rely on it.

Costs against the LSC

*21.16 Regulation 5 of the Community Legal Service (Cost Protection) Regulations 2000 governs when costs can be awarded against the LSC. This provision only applies where cost protection applies and the costs ordered to be paid by the LSC funded client do not fully meet the costs that would have been ordered to be paid by him if cost protection did not apply.

*21.17 In this Section and the following two Sections of this Practice Direction 'non-funded party' means a party to proceedings who has not received LSC funded services in relation to these proceedings under a legal aid

certificate or a certificate issued under the LSC Funding Code other than a certificate which has been revoked.

*21.18 The following criteria set out in Regulation 5 must be satisfied before the LSC can be ordered to pay the whole or any part of the costs incurred by a non-funded party:

(1) the proceedings are finally decided in favour of a non-funded party;

(2) the non-funded party provides written notice of intention to seek an order against the LSC within three months of the making of the section 11(1) costs order;

(3) the court is satisfied that it is just and equitable in the circumstances that provision for the costs should be made out of public funds; and

(4) where costs are incurred in a court of first instance, the following additional criteria must also be met:

(i) the proceedings were instituted by the LSC funded client; and

(ii) the non-funded party will suffer severe financial hardship unless the order is made.

'Section 11(1) costs order' is defined in paragraph 22.1, below).

*21.19 In determining whether conditions (3) and (4) are satisfied, the court shall take into account the resources of the non-funded party and his partner, unless the partner has a contrary interest.

Effect of Appeals

*21.20 (1) An order for costs can only be made against the LSC when the proceedings (including any appeal) are finally decided. Therefore, where a court of first instance decides in favour of a non-funded party and an appeal lies, any order made against the LSC shall not take effect unless:

(a) where permission to appeal is required, the time limit for permission to appeal expires, without permission being granted;

(b) where permission to appeal is granted or is not required, the time limit for appeal expires without an appeal being brought.

(2) Accordingly, if the LSC funded client appeals, any earlier order against the LSC can never take effect. If the appeal is unsuccessful, an application can be made to the appeal court for a fresh order.

SECTION 22 ORDERS FOR COSTS TO WHICH SECTION 11 OF THE ACCESS TO JUSTICE ACT 1999 APPLIES

*22.1 In this Practice Direction:

'order for costs to be determined' means an order for costs to which Section 11 of the Access to Justice Act 1999 applies under which the

amount of costs payable by the LSC funded client is to be determined by a costs judge or district judge under Section 23 of this Practice Direction.

'order specifying the costs payable' means an order for costs to which Section 11 of the Act applies and which specifies the amount which the LSC funded client is to pay.

'full costs' means, where an order to which Section 11 of the Act applies is made against a LSC funded client, the amount of costs which that person would, had cost protection not applied, have been ordered to pay.

'determination proceedings' means proceedings to which paragraphs 22.1 to 22.10 apply.

'Section 11(1) costs order' means an order for costs to be determined or an order specifying the costs payable other than an order specifying the costs payable which was made in determination proceedings.

'statement of resources' means

(1) a statement, verified by a statement of truth, made by a party to proceedings setting out:

  (a) his income and capital and financial commitments during the previous year and, if applicable, those of his partner;

  (b) his estimated future financial resources and expectations and, if applicable, those of his partner ('partner' is defined in paragraph 21.4, above);

  (c) a declaration that he and, if applicable, his partner, has not deliberately foregone or deprived himself of any resources or expectations;

  (d) particulars of any application for funding made by him in connection with the proceedings; and,

  (e) any other facts relevant to the determination of his resources; or

(2) a statement, verified by a statement of truth, made by a client receiving funded services, setting out the information provided by the client under Regulation 6 of the Community Legal Service (Financial) Regulations 2000, and stating that there has been no significant change in the client's financial circumstances since the date on which the information was provided or, as the case may be, details of any such change.

'Regional Director' means any Regional Director appointed by the LSC and any member of his staff authorised to act on his behalf.

*22.2 Regulations 8 to 13 of the Community Legal Service (Costs) Regulations 2000 set out the procedure for seeking costs against a funded client and the LSC. The effect of these Regulations is set out in this section and the next section of this Practice Direction.

*22.3 As from 5 June 2000, Regulations 9 to13 of the Community Legal Service (Costs) Regulations 2000 also apply to certificates issued under the Legal Aid Act 1988 where costs against the assisted person fall to be assessed under Regulation 124 of the Civil Legal Aid (General) Regulations 1989. In this section and the next section of this Practice Direction the expression 'LSC funded client' includes an assisted person (defined in rule 43.2).

*22.4 Regulation 8 of the Community Legal Service (Costs) Regulations 2000 provides that a party intending to seek an order for costs against a LSC funded client may at any time file and serve on the LSC funded client a statement of resources. If that statement is served 7 or more days before a date fixed for a hearing at which an order for costs may be made, the LSC funded client must also make a statement of resources and produce it at the hearing.

*22.5 If the court decides to make an order for costs against a LSC funded client to whom cost protection applies it may either:

(1) make an order for costs to be determined, or

(2) make an order specifying the costs payable.

*22.6 If the court makes an order for costs to be determined it may also

(1) state the amount of full costs, or

(2) make findings of facts, e.g., concerning the conduct of all the parties which are to be taken into account by the court in the subsequent determination proceedings.

*22.7 The court will not make an order specifying the costs payable unless:

(1) it considers that it has sufficient information before it to decide what amount is a reasonable amount for the LSC funded client to pay in accordance with Section 11 of the Act, and

(2) either

(a) the order also states the amount of full costs, or

(b) the court considers that it has sufficient information before it to decide what amount is a reasonable amount for the LSC funded client to pay in accordance with Section 11 of the Act and is satisfied that, if it were to determine the full costs at that time, they would exceed the amounts specified in the order.

*22.8 Where an order specifying the costs payable is made and the LSC funded client does not have cost protection in respect of all of the costs awarded in that order, the order must identify the sum payable (if any) in respect of which the LSC funded client has cost protection and the sum payable (if any) in respect of which he does not have cost protection.

*22.9 The court cannot make an order under Regulations 8 to 13 of the Community Legal Service (Costs) Regulations 2000 except in proceedings to which the next section of this Practice Direction applies.

SECTION 23 DETERMINATION PROCEEDINGS AND SIMILAR PROCEEDINGS UNDER THE COMMUNITY LEGAL SERVICE (COSTS) REGULATIONS 2000

*23.1 This section of this Practice Direction deals with

(1) proceedings subsequent to the making of an order for costs to be determined,

(2) variations in the amount stated in an order specifying the amount of costs payable and

(3) the late determination of costs under an order for costs to be determined.

*23.2 In this section of this Practice Direction 'appropriate court office' means:

(1) the district registry or county court in which the case was being dealt with when the Section 11(1) order was made, or to which it has subsequently been transferred; or

(2) in all other cases, the Supreme Court Costs Office.

*23.3 (1) A receiving party seeking an order specifying costs payable by an LSC funded client and/or by the LSC may within 3 months of an order for costs to be determined, file in the appropriate court office an application in Form N244 accompanied by

(a) the receiving party's bill of costs (unless the full costs have already been determined);

(b) the receiving party's statement of resources; and

(c) if the receiving party intends to seek costs against the LSC, written notice to that effect.

(2) If the LSC funded client's liability has already been determined and is less than the full costs, the application will be for costs against the LSC only. If the LSC funded client's liability has not yet been determined, the receiving party must indicate if costs will be sought against the LSC if the funded client's liability is determined as less than the full costs.

(The LSC funded client's certificate will contain the addresses of the LSC funded client, his solicitor, and the relevant Regional Office of the LSC.)

*23.4 The receiving party must file the above documents in the appropriate court office and (where relevant) serve copies on the LSC funded client and the Regional Director. Failure to file a request within the 3 months time limit specified in Regulation 10(2) is an absolute bar to the making of a costs order against the LSC.

*23.5 On being served with the application, the LSC funded client must respond by filing a statement of resources and serving a copy of it on the receiving party (and the Regional Director where relevant) within 21 days. The LSC funded client may also file and serve written points disputing the bill within the same time limit. (Under rule 3.1 the court may extend or shorten this time limit.)

*23.6 If the LSC funded client fails to file a statement of resources without good reason, the court will determine his liability (and the amount of full costs if relevant) and need not hold an oral hearing for such determination.

*23.7 When the LSC funded client files a statement or the 21 day period for doing so expires, the court will fix a hearing date and give the relevant parties at least 14 days notice. The court may fix a hearing without waiting for the expiry of the 21 day period if the application is made only against the LSC.

*23.8 Determination proceedings will be listed for hearing before a costs judge or district judge.

*23.9 Where the LSC funded client does not have cost protection in respect of all of the costs awarded, the order made by the costs judge or district judge must in addition to specifying the costs payable, identify the full costs in respect of which cost protection applies and the full costs in respect of which cost protection does not apply.

*23.10 The Regional Director may appear at any hearing at which a costs order may be made against the LSC. Instead of appearing, he may file a written statement at court and serve a copy on the receiving party. The written statement should be filed and a copy served, not less than 7 days before the hearing.

Variation of an order specifying the costs payable

*23.11 (1) This paragraph applies where the amount stated in an order specifying the costs payable plus the amount ordered to be paid by the LSC is less than the full costs to which cost protection applies.

(2) The receiving party may apply to the court for a variation of the amount which the LSC funded client is required to pay on the ground that there has been a significant change in the client's circumstances since the date of the order.

*23.12 On an application under paragraph 23.11, where the order specifying the costs payable does not state the full costs

(1) the receiving party must file with his application the receiving party's statement of resources and bill of costs and copies of these documents should be served with the application.

(2) The LSC funded client must respond to the application by making a statement of resources which must be filed at court and served on the receiving party within 21 days thereafter. The LSC funded client may also file and serve written points disputing the bill within the same time limit.

(3) The court will, when determining the application assess the full costs identifying any part of them to which cost protection does apply and any part of them to which cost protection does not apply.

*23.13 On an application under paragraph 23.11 the order specifying the costs payable may be varied as the court thinks fit. That variation must not increase:

(1) the amount of any costs ordered to be paid by the LSC, and

(2) the amount payable by the LSC funded client,

to a sum which is greater than the amount of the full costs plus the costs of the application.

*23.14 (1) Where an order for costs to be determined has been made but the receiving party has not applied, within the three month time limit under paragraph 23.2, the receiving party may apply on any of the following grounds for a determination of the amount which the funded client is required to pay:

(a) there has been a significant change in the funded client's circumstances since the date of the order for costs to be determined; or

(b) material additional information about the funded client's financial resources is available which could not with reasonable diligence have been obtained by the receiving party at the relevant time; or

(c) there were other good reasons for the failure by the receiving party to make an application within the time limit.

(2) An application for costs payable by the LSC cannot be made under this paragraph.

*23.15 (1) Where the receiving party has received funded services in relation to the proceedings, the LSC may make an application under paragraphs 23.11 and 23.14 above.

(2) In respect of an application under paragraph 23.11 made by the LSC, the LSC must file and serve copies of the documents described in paragraph 23.12(1)

*23.16 An application under paragraph 23.11, 23.14 and 23.15 must be commenced before the expiration of 6 years from the date on which the court made the order specifying the costs payable, or (as the case may be) the order for costs to be determined.

23.17 Applications under paragraphs 23.11, 23.14 and 23.15 should be made in the appropriate court office and should be made in Form N244 to be listed for a hearing before a costs judge or district judge.

DIRECTIONS RELATING TO PART 45

FIXED COSTS

SECTION 24 FIXED COSTS IN SMALL CLAIMS

24.1 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.

24.2 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.

SECTION 25 FIXED COSTS ON THE ISSUE OF A DEFAULT COSTS CERTIFICATE

25.1 Unless paragraph 24.2 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.

25.2 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

SECTION 26 SCOPE OF PART 46: RULE 46.1

26.1 Part 46 applies to the costs of an advocate for preparing for and appearing at the trial of a claim in the fast track.

26.2 It applies only where, at the date of the trial, the claim is allocated to the fast track. It .y other case, irrespective of the final value of the claim.

26.3 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

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

SECTION 27 POWER TO AWARD MORE OR LESS THAN THE AMOUNT OF FAST TRACK TRIAL COSTS: RULE 46.3

*27.1 Rule 44.15 (providing information about funding arrangements) sets out the requirement to provide information about funding arrangements to the court and other parties. Section 19 of this Practice Direction sets out the information to be provided and when this is to be done.

*27.2 Section 11, of this Practice Direction explains how the court will approach the question of what sum to allow in respect of additional liability.

*27.3 The court has the power, when considering whether a percentage increase is reasonable, to allow different percentages for different items of costs or for different periods during which costs were incurred.

DIRECTIONS RELATING TO PART 47

PROCEDURE FOR DETAILED ASSESSMENT OF COSTS AND DEFAULT PROVISIONS

SECTION 28 TIME WHEN ASSESSMENT MAY BE CARRIED OUT: RULE 47.1

*28.1 (1) For the purposes of rule 47.1, 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) The court may order or the parties may agree in writing that, although the proceedings are continuing, they will nevertheless be treated as concluded.

(4) (a) A party who is served with a notice of commencement (see paragraph 32.3 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.

(5) 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.

SECTION 29 NO STAY OF DETAILED ASSESSMENT WHERE THERE IS AN APPEAL: RULE 47.2

29.1 (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.

SECTION 30 POWERS OF AN AUTHORISED COURT OFFICER: RULE 47.3

*30.1 (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) In calculating whether or not a bill of costs is within the authorised amounts, the figure to be taken into account is the total claim for costs including any additional liability.

(3) 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.

(4) 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.

SECTION 31 VENUE FOR DETAILED ASSESSMENT PROCEEDINGS: RULE 47.4

*31.1 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) in all other cases, the Supreme Court Costs Office.

31.2 (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 32 COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS: RULE 47.6

32.1 * Precedents A, B, C and D in the Schedule of Costs Precedents annexed to this Practice Direction are model forms of bills of costs for detailed assessment. Further information about bills of costs is set out in Section 4.

*32.2 A detailed assessment may be in respect of:

(1) base costs, where a claim for additional liability has not been made or has been agreed;

(2) a claim for additional liability only, base costs having been summarily assessed or agreed;

or

(3) both base costs and additional liability.

*32.3 If the detailed assessment is in respect of costs without any additional liability, the receiving party must serve on the paying party and all the other relevant persons the following documents:

(a) a notice of commencement;

(b) a copy of the bill of costs;

(c) copies of the fee notes of counsel and of any expert in respect of fees claimed in the bill;

(d) written evidence as to any other disbursement which is claimed and which exceeds £250;

(e) a statement giving the name and address for service of any person upon whom the receiving party intends to serve the notice of commencement.

*32.4 If the detailed assessment is in respect of an additional liability only, the receiving party must serve on the paying party and all other relevant persons the following documents:

(a) a notice of commencement;

(b) a copy of the bill of costs;

(c) the relevant details of the additional liability;

(d) a statement giving the name and address of any person upon whom the receiving party intends to serve the notice of commencement.

*32.5 The relevant details of an additional liability are as follows:

(1) In the case of a conditional fee agreement with a success fee:

(a) a statement showing the amount of costs which have been summarily assessed or agreed, and the percentage increase which has been claimed in respect of those costs;

(b) a statement of the reasons for the percentage increase given in accordance with Regulation 3 of the Conditional Fee Agreement Regulations 2000.

(2) If the additional liability is an insurance premium: a copy of the insurance certificate showing whether the policy covers the receiving party's own costs; his opponents costs; or his own costs and his opponent's costs; and the maximum extent of that cover, and the amount of the premium paid or payable.

(3) If the receiving party claims an additional amount under Section 30 of the Access of Justice Act 1999: a statement setting out the basis upon which the receiving party's liability for the additional amount is calculated.

*32.6 Attention is drawn to the fact that the additional amount recoverable pursuant to section 30 of the Access to Justice Act 1999 in respect of a membership organisation must not exceed the likely cost of the premium of an insurance policy against the risk of incurring a liability to pay the costs of other parties to the proceedings as provided by the Access to Justice (Membership Organisation) Regulations 2000 Regulation 4.

*32.7 If a detailed assessment is in respect of both base costs and an additional liability, the receiving party must serve on the paying party and all other relevant persons the documents listed in paragraph 32.3 and the documents giving relevant details of an additional liability listed in paragraph 32.5.

*32.8 (1) The Notice of Commencement should be in Form N252.

(2) Before it is served, it must be completed to show as separate items;

(a) the total amount of the costs claimed in the bill;

(b) the extra sum which will be payable by way of fixed costs and court fees if a default costs certificate is obtained.

*32.9 (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 Part 6 Section III 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.

32.10 (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 (Parties and Group Litigation).

32.11 (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.

SECTION 33 PERIOD FOR COMMENCING DETAILED ASSESSMENT PROCEEDINGS: RULE 47.7

33.1 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.

33.2 A party may apply to the appropriate office for an order under rule 3.1(2)(a) to extend or shorten that time.

33.3 Attention is drawn to rule 47.6(1). The detailed assessment proceedings are commenced by service of the documents referred to.

33.4 Permission to commence assessment proceedings out of time is not required.

SECTION 34 SANCTION FOR DELAY IN COMMENCING DETAILED ASSESSMENT PROCEEDINGS: RULE 47.8

34.1 (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.

SECTION 35 POINTS OF DISPUTE AND CONSEQUENCES OF NOT SERVING: RULE 47.9

35.1 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.

*35.2 Points of dispute should be short and to the point and should follow as closely as possible Precedent G of the Schedule of Costs Precedents annexed to this Practice Direction.

35.3 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.

*35.4 (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 Part 6 Section III 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.

35.5 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 32.3 or 32.4 above.

35.6 (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.

*35.7 (1) Where the receiving party claims an additional liability, a party who serves points of dispute on the receiving party may include a request for information about other methods of financing costs which were available to the receiving party.

(2) Part 18 (further information) and the Practice Direction Supplementing that part apply to such a request.

SECTION 36 PROCEDURE WHERE COSTS ARE AGREED: RULE 47.10

36.1 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.

*36.2 Where in the course of proceedings 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 36.1, 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.

36.3 An application under paragraph 36.2 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.

36.4 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.

36.5 (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 37 DEFAULT COSTS CERTIFICATE: RULE 47.11

37.1 A request for the issue of a default costs certificate must be made in Form N254 and must be signed by the receiving party or his solicitor.

37.2 The request must be filed at the appropriate office.

37.3 A default costs certificate will be in Form N255.

37.4 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.

*37.5 The issue of a default costs certificate does not prohibit, govern or affect any detailed assessment of the same costs which are payable out of the Community Legal Service Fund.

37.6 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.

37.7 Proceedings for enforcement of default costs certificates may not be issued in the Supreme Court Costs Office.

37.8 * The fixed costs payable in respect of solicitor's charges on the issue of the default costs certificate are £80.

SECTION 38 SETTING ASIDE DEFAULT COSTS CERTIFICATE: RULE 47.12

38.1 (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.

*38.2 (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 copy of the bill and a copy of the default costs certificate, and a draft of the points of dispute he proposes to serve if his application is granted.

38.3 (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.

38.4 If a default costs certificate is set aside the court will give directions for the management of the detailed assessment proceedings.

SECTION 39 OPTIONAL REPLY: RULE 47.13

39.1 (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.

SECTION 40 DETAILED ASSESSMENT HEARING: RULE 47.14

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

*40.2 The request for a detailed assessment hearing must be in Form N258. 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 40.4 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 32.3 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 agreement, 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 32.10 (1) (b) 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 or LSC funded client ·

(i) the legal aid certificate, LSC certificate and relevant amendment certificates, any authorities and any certificates of discharge or revocation.

(ii) a certificate, in Precedent F(3) of the Schedule of Costs Precedents;

(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 LSC 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 48 of this Practice Direction);

(v) a copy of any default costs certificate in respect of costs claimed in the bill of costs.

40.3 (1) This paragraph applies to any document described in paragraph 40.2(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.

40.4 '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.

40.5 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.

40.6 (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 40.2(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 40.2(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.

*40.7 (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 commence detailed assessment proceedings 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 commences detailed assessment proceedings 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).

40.8 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.

40.9 (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.

40.10 (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.

40.11 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.

*40.12 The following provisions apply in respect of the papers to be filed in support of the bill;

(a) If the claim is for costs only without any additional liability the papers to be filed, 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 and response to such instructions;

(ii) reports and opinions of medical and other experts;

(iii) any other relevant papers;

(iv) a full set of any relevant pleadings to the extent that they have not already been filed in court.

(v) correspondence, files and attendance notes;

(b) where the claim is in respect of an additional liability only, such of the papers listed at (a) above, as are relevant to the issues raised by the claim for additional liability;

(c) where the claim is for both base costs and an additional liability, the papers listed at (a) above, together with any papers relevant to the issues raised by the claim for additional liability.

40.13 The provisions set out in Section 20 of this Practice Direction apply where the court disallows any amount of a legal representative's percentage increase, and the legal representative applies for an order that the disallowed amount should continue to be payable by the client in accordance with Rule 44.16.

40.14 The court may direct the receiving party to produce any document which in the opinion of the court is necessary to enable it to reach its decision. These documents will in the first instance be produced to the court, but the court may ask the receiving party to elect whether to disclose the particular document to the paying party in order to rely on the contents of the document, or whether to decline disclosure and instead rely on other evidence.

*40.15 Costs assessed at a detailed assessment at the conclusion of proceedings may include an assessment of any additional liability in respect of the costs of a previous application or hearing.

40.16 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 41 POWER TO ISSUE AN INTERIM CERTIFICATE: RULE 47.15

41.1 (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.

SECTION 42 FINAL COSTS CERTIFICATE: RULE 47.16

42.1 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.

*42.2 The receiving party must, in order to complete the bill after the detailed assessment hearing make clear the correct figures agreed or allowed in respect of each item and must re-calculate the summary of the bill appropriately.

42.3 The completed bill of costs must be filed with the court no later than 14 days after the detailed assessment hearing.

*42.4 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 Precedent F(5) in the Schedule of Costs Precedents annexed to this Practice Direction.

42.5 No final costs certificate will be issued until all relevant court fees payable on the assessment of costs have been paid.

42.6 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).

42.7 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 costs payable out of the Community Legal Service Fund.

42.8 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.

42.9 Where the certificate relates to costs payable between parties a separate certificate will be issued for each party entitled to costs.

42.10 Form N257 is a model form of interim costs certificate and Form N256 is a model form of final costs certificate.

42.11 An application for an order staying enforcement of an 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.

42.12 Proceedings for enforcement of interim costs certificates or final costs certificates may not be issued in the Supreme Court Costs Office.

SECTION 43 DETAILED ASSESSMENT PROCEDURE WHERE COSTS ARE PAYABLE OUT OF THE COMMUNITY LEGAL SERVICE FUND: RULE 47.17

43.1 The provisions of this section apply where the court is to assess costs which are payable only out of the community legal service fund. Paragraphs 39.1 to 40.16 and 49.1 to 49.8 apply in cases involving costs payable by another person as well as costs payable only out of the community legal service fund.

43.2 The time for requesting a detailed assessment under rule 47.17 is within 3 months after the date when the right to detailed assessment arose.

*43.3 The request for a detailed assessment of costs must be in Form N258A. 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 40.4 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, LSC certificates, any relevant amendment certificates, any authorities and any certificates of discharge or revocation;

(g) In the Supreme Court Costs Office the relevant papers in support of the bill as described in paragraph 40.12 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, fax number 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.

43.4 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.

43.5 Where the court has provisionally assessed a bill of costs it will send to the solicitor a notice, in Form N253 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.

43.6 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.

43.7 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.

43.8 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.

*43.9 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 Community Legal Service assessment certificate (Form EX80A).

SECTION 44 COSTS OF DETAILED ASSESSMENT PROCEEDINGS

WHERE COSTS ARE PAYABLE OUT OF A FUND OTHER THAN THE COMMUNITY LEGAL SERVICE FUND: RULE 47.17A

*44.1 Rule 47.17A provides that the court will make a provisional assessment of a bill of costs payable out of a fund (other than the Community Legal Service Fund) unless it considers that a hearing is necessary. It also enables the court to direct under rule 47.17A(3) that the receiving party must serve a copy of the request for assessment and copies of the documents which accompany it, on any person who has a financial interest in the outcome of the assessment.

*44.2 (a) A person has a financial interest in the outcome of the assessment if the assessment will or may affect the amount of money or property to which he is or may become entitled out of the fund.

(b) Where an interest in the fund is itself held by a trustee for the benefit of some other person, that trustee will be treated as the person having such a financial interest.

(c) 'Trustee' includes a personal representative, receiver or any other person acting in a fiduciary capacity.

*44.3 The request for a detailed assessment of costs out of the fund should be in Form N258B, be accompanied by the documents set out at paragraph 43.3(a) to (e) and (g) above and the following;

(a) a statement signed by the receiving party giving his name, address for service, reference, telephone number, fax number and,

(b) a statement of the postal address of any person who has a financial interest in the outcome of the assessment, to which the court may send notice of any hearing; and

(c) in respect of each person stated to have such an interest if such person is a child or patient, a statement to that effect.

*44.4 The court will decide, having regard to the amount of the bill, the size of the fund and the number of persons who have a financial interest, which of those persons should be served. The court may dispense with service on all or some of them.

*44.5 Where the court makes an order dispensing with service on all such persons it may proceed at once to make a provisional assessment, or, if it decides that a hearing is necessary, give appropriate directions. Before deciding whether a hearing is necessary under this rule, the court may require the receiving party to provide further information relating to the bill.

*44.6 (1) Where the court has provisionally assessed a bill of costs, it will send to the receiving party, a notice in Form N253 of the amount of costs which the court proposes to allow together with the bill itself. If the receiving party is legally represented the legal representative should, if the provisional assessment is to be accepted, then complete the bill.

(2) The court will fix a date for a detailed assessment hearing, if the receiving party informs the court within 14 days after he receives the notice in Form N253 of the amount allowed on the provisional assessment, that he wants the court to hold such a hearing.

*44.7 Where the court makes an order that a person who has a financial interest is to be served with a copy of the request for assessment, it may give directions about service and about the hearing.

*44.8 The court will give at least 14 days notice of the time and place of the detailed assessment hearing to the receiving party and, to any person who has a financial interest in the outcome of the assessment and has been served with a copy of the request for assessment.

*44.9 If the receiving party, or any other party or any person who has a financial interest in the outcome of assessment, wishes to make an application in the detailed assessment proceedings, the provisions of Part 23 (General Rules about Applications for Court Orders) applies.

*44.10 If the receiving party is legally represented the legal representative must in order to complete the bill after the assessment make clear the correct figures allowed in respect of each item and must recalculate the summary of the bill if appropriate.

SECTION 45 LIABILITY FOR COSTS OF DETAILED ASSESSMENT PROCEEDINGS: RULE 47.18

45.1 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

45.2 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

*45.3 No party should file or serve a statement of costs of the detailed assessment proceedings unless the court orders him to do so.

45.4 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.

SECTION 46 OFFERS TO SETTLE WITHOUT PREJUDICE SAVE AS TO THE COSTS OF THE DETAILED ASSESSMENT PROCEEDINGS: RULE 47.19

46.1 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.

*46.2 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 value added tax (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.

46.3 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).

46.4 Where the receiving party is an assisted person or an LSC funded client, 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 47 APPEALS FROM AUTHORISED COURT OFFICERS IN DETAILED ASSESSMENT PROCEEDINGS: RIGHT TO APPEAL: RULE 47.20

*47.1 This Section and the next Section of this Practice Direction relate only to appeals from authorised court officers in detailed assessment proceedings. All other appeals arising out of detailed assessment proceedings (and arising out of summary assessments) are dealt with in accordance with Part 52 and the Practice Direction which supplements that Part. The destination of appeals is dealt with in accordance with the Access to Justice Act 1999 (Destination of Appeals) Order 2000.

*47.2 In respect of appeals from authorised court officers, there is no requirement to obtain permission, or to seek written reasons.

SECTION 48 PROCEDURE ON APPEAL FROM AUTHORISED COURT OFFICERS: RULE 47.22

*48.1 The appellant must file a notice which should be in Form N161 (an appellant's notice).

*48.2 The appeal will be heard by a costs judge or a district judge of the High Court, and is a re-hearing.

*48.3 The appellant's notice should, if possible, be accompanied by a suitable record of the judgment appealed against. Where reasons given for the decision have been officially recorded by the court an approved transcript of that record should accompany the notice. Photocopies will not be accepted for this purpose. Where there is no official record the following documents will be acceptable:

(1) The officer's comments written on the bill.

(2) Advocates' notes of the reasons where the appellant is unrepresented.

When the appellant was unrepresented before the authorised court officer, it is the duty of any advocate for the respondent to make his own note of the reasons promptly available, free of charge to the appellant where there is no official record or if the court so directs. Where the appellant was represented before the authorised court officer, it is the duty of his/her own former advocate to make his/her notes available. The appellant should submit the note of the reasons to the costs judge or district judge hearing the appeal.

*48.4 The appellant may not be able to obtain a suitable record of the authorised court officer's decision within the time in which the appellant's notice must be filed. In such cases, the appellant's notice must still be completed to the best of the appellant's ability. It may however be amended subsequently with the permission of the costs judge or district judge hearing the appeal.

SECTION 49 COSTS PAYABLE BY THE LSC AT PRESCRIBED RATES:

*49.1 This section applies to a bill of costs of an assisted person or LSC funded client which is payable by another person where the costs which can be claimed against the LSC are restricted to prescribed rates (with or without enhancement).

*49.2 Where this section applies, the solicitor of the assisted person or LSC funded client must file a legal aid/ LSC schedule in accordance with Paragraph 40.2(l) above. The schedule should follow as closely as possible Precedent E of the Schedule of Costs Precedents annexed to this Practice Direction.

49.3 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).

49.4 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.

*49.5 If the bill of costs contains additional columns setting out costs claimed against the LSC only, the schedule may be set out in a separate document or, alternatively, may be included in the additional columns of the bill.

*49.6 The detailed assessment of the legal aid/ LSC schedule will take place immediately after the detailed assessment of the bill of costs.

*49.7 Attention is drawn to the possibility that, on occasions, the court may decide to conduct the detailed assessment of the legal aid/ LSC 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 or regulations thereunder.

*49.8 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/ LSC schedule.

DIRECTIONS RELATING TO PART 48

COSTS - SPECIAL CASES

SECTION 50 AMOUNT OF COSTS WHERE COSTS ARE PAYABLE PURSUANT TO CONTRACT: RULE 48.3

50.1 Where the court is assessing costs payable under a contract, it may make an order that all or part of the costs payable under the contract shall be disallowed if it is satisfied by the paying party that costs have been unreasonably incurred or are unreasonable in amount.

50.2 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.

50.3 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

(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.

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.

50.4 (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(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

SECTION 51 COSTS WHERE MONEY IS PAYABLE BY OR TO A CHILD OR PATIENT: RULE 48.5

51.1 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.

SECTION 52 LITIGANTS IN PERSON: RULE 48.6

52.1 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.

52.2 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.

52.3 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.

52.4 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.

52.5 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 53 PERSONAL LIABILITY OF LEGAL REPRESENTATIVE FOR COSTS -WASTED COSTS ORDERS: RULE 48.7

53.1 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.

53.2 The court may make a wasted costs order against a legal representative on its own initiative.

53.3 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.

53.4 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.

53.5 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.

53.6 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 53.4 above.

53.7 On an application for a wasted costs order under Part 23 the court may proceed to the second stage described in paragraph 53.6 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.

53.8 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.

53.9 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.

*53.10 Attention is drawn to rule 44.3A(1) and (2) which respectively prevent the court from assessing any additional liability until the conclusion of the proceedings (or the part of the proceedings) to which the funding arrangement relates, and set out the orders the court may make at the conclusion of the proceedings.

SECTION 54 BASIS OF DETAILED ASSESSMENT OF SOLICITOR AND CLIENT COSTS: RULE 48.8

54.1 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.

54.2 (1) Costs as between a solicitor and client are assessed on the indemnity basis as defined by rule 44.4.

(2) Attention is drawn to the presumptions set out in rule 48.8(2). These presumptions may be rebutted by evidence to the contrary.

*54.3 Rule 48.10 and Section 56 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.

54.4 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.

SECTION 55 CONDITIONAL FEES: RULE 48.9

*55.1 (1) Attention is drawn to rule 48.9(1) as amended by the Civil Procedure (Amendment No.3) Rules 2000 (SI 2000/1317) with effect from 3 July 2000. Rule 48.9 applies only where the solicitor and the client have entered into a conditional fee agreement as defined in section 58 of the Courts and Legal Services Act 1990 as it was in force before 1 April 2000. 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 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.

55.2 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.

55.3 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.

*55.4 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.

SECTION 56 PROCEDURE ON ASSESSMENT OF SOLICITOR AND CLIENT COSTS: RULE 48.10

*56.1 The paragraphs in this section 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.

*56.2 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. Precedent J of the Schedule of Costs Precedents annexed to this Practice Direction is a model form of claim form. The application must be accompanied by the bill or bills in respect of which assessment is sought, and, if the claim concerns a conditional fee agreement, a copy of that agreement. If the original bill is not available a copy will suffice.

*56.3 Model forms of order, which the court may make, are set out in Precedents K, L and M of the Schedule of Costs Precedents annexed to this Practice Direction.

56.4 Attention is drawn to the time limits within which the required steps must be taken: i.e. 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.

56.5 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.

*56.6 Precedent P of the Schedule of Costs Precedents 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.

56.7 The provisions relating to default costs certificates (rule 47.11) do not apply to cases to which rule 48.10 applies.

56.8 Points of dispute should, as far as practicable, be in the form complying with paragraphs 35.1 · 35.7.

56.9 The time for requesting a detailed assessment hearing is within 3 months after the date of the order for the costs to be assessed.

*56.10 The form of request for a hearing date must be in Form N258C. 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.

56.11 The request must include an estimate of the length of time the detailed assessment hearing will take.

56.12 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.

56.13 (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 56.10(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 56.10(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.

56.14 (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.

56.15 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.

56.16 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.

56.17 (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.

*56.18 (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.

(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.

56.19 A final costs certificate will include an order to pay the sum it certifies unless the court orders otherwise.

SECTION 57 TRANSITIONAL ARRANGEMENTS:

57.1 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

*57.2 (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 five 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.

(e) to deal with funding arrangements made before 3 July 2000.

Scale 1 or lower scale costs

57.3 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

57.4 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

57.5 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

57.6 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

*57.7 (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 47.23 and Part 52 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 by Part 47 Section VIII (Appeals from Authorised Court Officers in Detailed Assessment Proceedings) and Part 52 (Appeals).

(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.

Transitional provisions concerning the Access to Justice Act 1999 sections 28 to 31

*57.8 (1) Sections 28 to 31 of the Access to Justice Act 1999, the Conditional Fee Agreements Regulations 2000, the Access to Justice (Membership Organisations) Regulations 2000, and the Access to Justice Act 1999 (Transitional Provisions) Order 2000 came into force on 1 April 2000. The Civil Procedure (Amendment No.3) Rules come into force on 3 July 2000.

(2) The Access to Justice Act 1999 (Transitional Provisions) Order 2000 provides that no conditional fee agreement or other arrangement about costs entered into before 1 April 2000 can be a funding arrangement, as defined in rule 43.2 The order also has the effect that where an conditional fee agreement or other funding arrangement has been entered into before 1 April 2000 and a second or subsequent funding arrangement is entered into on or after 1 April 2000, the second or subsequent funding arrangement does not give rise to an additional liability which is recoverable from a paying party.

*57.9 (1) Rule 39 of the Civil Procedure (Amendment No 3) Rules 2000 applies where between 1 April and 2 July 2000 (including both dates) -

(a funding arrangement is entered into, and proceedings are started in respect of a claim which is the subject of that agreement.

(2) Attention is drawn to the need to act promptly so as to comply with the requirements of the Rules and the Practice Directions by 31 July 2000 (i.e. within the28 days from 3 July 2000 permitted by Rule 39) if that compliance is to be treated as compliance with the relevant provision. Attention is drawn in particular to Rule 44.15 (Providing Information about Funding Arrangements) and Section 19 of this Practice Direction.

(3) Nothing in the legislation referred to above makes provision for a party who has entered into a funding arrangement to recover from another party any amount of an additional liability which relates to anything done or any costs incurred before the arrangement was entered into.

SCHEDULE OF COSTS PRECEDENTS

A: Model form of bill of costs (receiving party's solicitor and counsel on CFA terms)

B: Model form of bill of costs (detailed assessment of additional liability only)

C: Model form of bill of costs (payable by Defendant and the LSC)

D: Model form of bill of costs (alternative form, single column for amounts claimed, separate parts for costs payable by the LSC only)

E: Legal Aid/ LSC Schedule of Costs

F: Certificates for inclusion in bill of costs

G: Points of Dispute

H: Estimate of costs served on other parties

J: Solicitors Act 1974: Part 8 claim form under Part III of the Act

K: Solicitors Act 1974: order for delivery of bill

L: Solicitors Act 1974: order for detailed assessment (client)

M: Solicitors Act 1974: order for detailed assessment (solicitors)

P: Solicitors Act 1974: breakdown of costs