

PRACTICE DIRECTION ABOUT COSTS

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

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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

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).

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 13.5 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 Revenue and Customs 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 Revenue and Customs 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 Revenue and Customs 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 Revenue and Customs and wherever possible the view of HM Revenue and Customs 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

- (1) VAT will be payable in respect of every supply made pursuant to a legal aid/LSC certificate where –
- (a) the person making the supply is a taxable person; and
 - (b) the assisted person/LSC funded client –
 - (i) belongs in the United Kingdom or another member state of the European Union; and
 - (ii) is a private individual or receives the supply for non-business purposes.
- (2) Where the assisted person/LSC funded client belongs outside the European Union, VAT is generally not payable unless the supply relates to land in the United Kingdom.
- (3) For the purpose of sub-paragraphs (1) and (2), the place where a person belongs is determined by section 9 of the Value Added Tax Act 1994.
- (4) 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** In a costs certificate payable by the LSC, the VAT on solicitor's costs, Counsel's fees and disbursements will be shown separately.

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 paragraph 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 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) a party to a claim which is outside the financial scope of the small claims track files an allocation questionnaire; or
 - (b) a party to a claim which is being dealt with on the fast track or the multi track, or under Part 8, files a pre-trial check list (listing questionnaire),
he must also file an estimate of costs and serve a copy of it on every other party, unless the court otherwise directs. Where a party is represented, the legal representative must in addition serve an estimate on the party he represents.
- (2)** Where a party is required to file and serve a new estimate of costs in accordance with Rule 44.15(3), if that party is represented the legal representative must in addition serve the new estimate on the party he represents.
- (3)** This paragraph does not apply to litigants in person.

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

6.5A

- (1)** If there is a difference of 20% or more between the base costs claimed by a receiving party on detailed assessment and the costs shown in an estimate of costs filed by that party, the receiving party must provide a statement of the reasons for the difference with his bill of costs.
- (2)** If a paying party –
- (a) claims that he reasonably relied on an estimate of costs filed by a receiving party; or
 - (b) wishes to rely upon the costs shown in the estimate in order to dispute the reasonableness or proportionality of the costs claimed,
- the paying party must serve a statement setting out his case in this regard in his points of dispute.

(‘Relevant person’ is defined in paragraph 32.10(1) of the Costs Practice Direction)

6.6

- (1)** 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 and proportionality of any costs claimed.
- (2)** In particular, where –
- (a) there is a difference of 20% or more between the base costs claimed by a receiving party and the costs shown in an estimate of costs filed by that party; and
 - (b) it appears to the court that –
 - (i) the receiving party has not provided a satisfactory explanation for that difference; or
 - (ii) the paying party reasonably relied on the estimate of costs;the court may regard the difference between the costs claimed and the costs shown in the estimate as evidence that the costs claimed are unreasonable or disproportionate.