

## 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 Practice Direction 57), 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 rule 57.1(2).
- 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, and which is not an offer to which costs consequences under Part 36 apply.
- 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.

<i>Term</i>	<i>Effect</i>
<ul style="list-style-type: none"> <li>● Costs</li> <li>● Costs in any event</li> </ul>	The party in whose favour the order is made is entitled to the costs in respect of the part of the proceedings to which the order relates, whatever other costs orders are made in the proceedings.
<ul style="list-style-type: none"> <li>● Costs in the case</li> <li>● Costs in the application</li> </ul>	The party in whose favour the court makes an order for costs at the end of the proceedings is entitled to his costs of the part of the proceedings to which the order relates.
<ul style="list-style-type: none"> <li>● Costs reserved</li> </ul>	The decision about costs is deferred to a later occasion, but if no later order is made the costs will be costs in the case.
<ul style="list-style-type: none"> <li>● Claimant's/Defendant's costs in case/application</li> </ul>	If the party in whose favour the costs order is made is awarded costs at the end of the proceedings, that party is entitled to his costs of the part of the proceedings to which the order relates. If any other party is awarded costs at the end of the proceedings, the party in whose favour the final costs order is made is not liable to pay the costs of any other party in respect of the part of the proceedings to which the order relates.
<ul style="list-style-type: none"> <li>● Costs thrown away</li> </ul>	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 – <ul style="list-style-type: none"> <li>(a) preparing for and attending any hearing at which the judgment or order which has been set aside was made;</li> <li>(b) preparing for and attending any hearing to set aside the judgment or order in question;</li> <li>(c) preparing for and attending any hearing at which the court orders the proceedings or the part in question to be adjourned;</li> <li>(d) any steps taken to enforce a judgment or order which has subsequently been set aside.</li> </ul>
<ul style="list-style-type: none"> <li>● Costs of and caused by</li> </ul>	Where, for example, the court makes this order on an application to amend a statement of case, the party in whose favour the costs order is made is entitled to the costs of preparing for and attending the application and the costs of any consequential amendment to his own statement of case.
<ul style="list-style-type: none"> <li>● Costs here and below</li> </ul>	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.
<ul style="list-style-type: none"> <li>● No order as to costs</li> <li>● Each party to pay his own costs</li> </ul>	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 10A ORDERS IN RESPECT OF PRO BONO

### REPRESENTATION: RULE 44.3C

- 10A.1** Rule 44.3C(2) sets out how the court may determine the amount of payment when making an order under section 194(3) of the Legal Services Act 2007. Paragraph 13.2 of this Practice Direction provides that the general rule is that the court will make a summary assessment of costs in the circumstances outlined in that paragraph unless there is good reason not to do so. This will apply to rule 44.3C(2)(b) with the modification that the summary assessment of the costs is to be read as meaning the summary assessment of the sum equivalent to the costs that would have been claimed by the party with pro bono representation in respect of that representation had it not been provided free of charge.
- 10A.2** Where an order under section 194(3) of the Legal Services Act 2007 is sought, to assist the court in making a summary assessment of the amount payable to the prescribed charity, the party who has pro bono representation must prepare, file and serve in accordance with paragraph 13.5(2) a written statement of the sum equivalent to the costs that party would have claimed for that legal representation had it not been provided free of charge.

## 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** 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) Omitted.

**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 Practice Direction 52 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 50.3 and 50.4 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 those costs 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 the party's 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 must be filed and the copies of it must be served as soon as possible and in any event –
    - (a) for a fast track trial, not less than 2 days before the trial; and
    - (b) for all other hearings, not less than 24 hours before the time 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 protected party within the meaning of Part 21 unless the solicitor acting for the child or protected party 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 protected party.
- 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 Practice Direction 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 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 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 costs officer may make an order by consent under paragraph 17.7, 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.
- 17.9**
- (1) For the purposes of rule 44.12A(4)(b) –
- (a) a claim will be treated as opposed if the defendant files an acknowledgment of service stating that he intends to contest the making of an order for costs or to seek a different remedy; and
- (b) a claim will not be treated as opposed if the defendant files an acknowledgment of service stating that he disputes the amount of the claim for costs.
- (2) An order dismissing the claim will be made as soon as an acknowledgment of service opposing the claim 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.

(Practice Direction (Pre-Action Conduct) provides that a party must inform any other party as soon as possible about a funding arrangement entered into prior to the start of proceedings.)

## **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 –
  - (a) state the name and address of the insurer, the policy number and the date of the policy and identify the claim or claims to which it relates (including Part 20 claims if any);
  - (b) state the level of cover provided by the insurance; and
  - (c) state whether the insurance premiums are staged and, if so, the points at which an increased premium is payable.
- (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.)

### **Transitional Provision**

- 19.6** The amendments to the parenthesis below paragraph 19.2 and to paragraph 19.4(3) do not apply where the funding arrangement was entered into before 1st October 2009 and the parenthesis below paragraph 19.2 and paragraph 19.4(3) in force immediately before that date will continue to apply to that funding arrangement as if those amendments had not been made.

## **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**

- (1) Attention is drawn to Regulation 3(2)(b) of the Conditional Fee Agreements Regulations 2000 and to Regulation 5(2)(b) of the Collective Conditional Fee Agreements Regulations 2000, which provide that some or all of a success fee ceases to be payable in certain circumstances. [Both sets of regulations were revoked by the Conditional Fee Agreements (Revocation) Regulations 2005 but continue to have effect in relation to conditional fee agreements and collective conditional fee agreements entered into before 1<sup>st</sup> November 2005]
- (2) 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) provides that the procedure for detailed assessment does not apply to the extent that section 11 of the Access to Justice Act 1999 and provisions made under that Act make different provision.
- 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) General Family Help and Help with Mediation.
  - (6) Omitted
- 21.6** Levels of service (4) and (5) 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 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 General Family Help or Help with Mediation in respect of the same dispute, other than in family proceedings, cost protection does apply to all costs incurred by the receiving party in the funded proceedings or prospective proceedings;

- (3) The LSC funded client receives General Family Help or Help with Mediation in family proceedings;
- (4) The LSC funded client receives Legal Representation in family proceedings.

**21.8** Where cost protection does not apply, the court may award costs in the normal way.

**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 General Family Help or Help with Mediation in respect of the same dispute, other than in family proceedings; or
- (2) where urgent work is undertaken immediately before the grant of an emergency certificate, other than in family proceedings, 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.).

**21.11A** Where an LSC funded client has cost protection, the procedure described in sections 22 and 23 of this Practice Direction applies. However that procedure does not apply in relation to costs claimed during any periods in the proceedings when the LSC funded client did not have cost protection, and the procedure set out in CPR Parts 45 to 47 will apply (as appropriate) in relation to those periods.

### **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) Similarly, where a party is acting as a litigation friend to a client who is a child or a protected party, the court shall not take the personal resources of the litigation friend into account in assessing the resources of the client.
- (3) 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) unless there is good reason for delay 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;
  - (ii) the non-funded party is an individual; and
  - (iii) the non-funded party will suffer 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.

**21.19A** An order under Regulation 5 may be made in relation to proceedings in the Court of Appeal, High Court or a County Court, by a Costs Judge or a District Judge.

### **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 as amended 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 to 13 of the Community Legal Service (Costs) Regulations 2000 as amended 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 as amended 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 as amended 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;
  - (4) appeals in respect of determination.
- 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 Costs Office.

### **23.2A**

- (1) This paragraph applies where the appropriate office is any of the following county courts: Barnet, Bow, Brentford, Bromley, Central London, Clerkenwell and Shoreditch, Croydon, Edmonton, Ilford, Kingston, Lambeth, Mayors and City of London, Romford, Uxbridge, Wandsworth, West London, Willesden and Woolwich.
- (2) Where this paragraph applies:—
- (i) a receiving party seeking an order specifying costs payable by an LSC funded client and/or by the Legal Services Commission under this section must file his application in the Costs Office and, for all purposes relating to that application, the Costs Office will be treated as the appropriate office in that case; and
- (ii) unless an order is made transferring the application to the Costs Office as part of the High Court, an appeal from any decision made by a costs judge shall lie to the Designated Civil Judge for the London Group of County Courts or such judge as he shall nominate. The appeal notice and any other relevant papers should be lodged at the Central London Civil Justice Centre.

### **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 (unless the court is determining an application against a costs order against the LSC and the costs were not incurred in the court of first instance); 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. In respect of applications for funded services made before 3 December 2001 a 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. Where the application for funded services was made on or after 3 December 2001 the court does have power to extend the 3 months time limit, but only if the applicant can show good reason for the delay.

- 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. The determination of the liability on the LSC funded client will be listed as a private hearing.
- 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.

### **Appeals**

#### **23.18**

- (1) Save as mentioned above any determination made under Regulation 9 or 10 of the Costs Regulations is final (Regulation 11(1)). Any party with a financial interest in the assessment of the full costs, other than a funded party, may appeal against that assessment in accordance with CPR Part 52 (Regulation 11(2) and CPR rule 47.20).
- (2) The receiving party or the Commission may appeal on a point of law against the making of a costs order against the Commission, against the amount of costs the Commission is required to pay or against the court's refusal to make such an order (Regulation 11(4)).

## **SECTION 23A COSTS CAPPING ORDERS**

### **When to make an application**

**23A.1** The court will make a costs capping order only in exceptional circumstances.

**23A.2** An application for a costs capping order must be made as soon as possible, preferably before or at the first case management hearing or shortly afterwards. The stage which the proceedings have reached at the time of the application will be one of the factors the court will consider when deciding whether to make a costs capping order.

### **Estimate of costs**

**23A.3** The estimate of costs required by rule 44.19 must be in the form illustrated in Precedent H in the Schedule of Costs Precedents annexed to this Practice Direction.

### **Schedule of costs**

**23A.4** The schedule of costs referred to in rule 44.19(3) –  
(a) must set out –

- (i) each sub-heading as it appears in the applicant's estimate of costs (column 1);
  - (ii) alongside each sub-heading, the amount claimed by the applicant in the applicant's estimate of costs (column 2); and
  - (iii) alongside the figures referred to in sub-paragraph (ii) the amount that the respondent proposes should be allowed under each sub-heading (column 3); and
- (b)** must be supported by a statement of truth.

### **Assessing the quantum of the costs cap**

- 23A.5** When assessing the quantum of a costs cap, the court will take into account the factors detailed in rule 44.5 and the relevant provisions supporting that rule in this Practice Direction. The court may also take into account when considering a party's estimate of the costs they are likely to incur in the future conduct of the proceedings a reasonable allowance on costs for contingencies.

