Judiciary of England and Wales

The Senior Courts Costs Office Guide

2023



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List of costs judges and costs officers

Costs Judge	Court
Senior Costs Judge Gordon-Saker	101
Costs Judge Leonard	94
Costs Judge Rowley	100
Costs Judge James	95
Costs Judge Whalan	93
Costs Judge Brown	96
Costs Judge Nagalingam	97

Costs Officer	Room
Miss Kenny (Principal Costs Officer)	7.07
Mrs Alese	8.05
Mrs Nyenke	8.05
Mr Ahmed	8.05
Mr Shanjab	8.05
Mrs Prendergast	8.06
Mr Munford	8.06
Mr Bonaparte	8.06
Miss Balzanelli	8.06
Mrs Leggett	8.07
Mr Edwards	6.08
Mr Pigott	6.06

SCCO Postal Address Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL

SCCO DX Address DX 44454 Strand

SCCO Email Addresses

General scco@justice.gov.uk

eBills sccoebills@justice.gov.uk

SCCO Telephone Numbers

Costs Judges Team	020 7947 7124/6468
Court of Protection Team	020 7947 6404/6469/6436
Legal Aid	020 7947 6163/7818
Between the Parties	020 7947 6468/6505/6663

Please note there is no fax number

Court of Protection Team	020 7947 6404/6469
Issue Team	020 7947 6406/6334
Costs Officers	020 7947 7330/6237

Certificates

Court of Protection	020 7947 6404/6409
Legal Aid / Between the parties	020 7947 6406/6334

Please note there is no fax number

List of regional costs judges

Name	Court	Circuit
District Judge Batchelor	Sheffield	North Eastern
District Judge Corkill	Barnsley	North Eastern
District Judge Josling	Bradford and Harrogate	North Eastern
District Judge Keating	Teesside	North Eastern
District Judge Neaves	Scarborough	North Eastern
District Judge Rana	Huddersfield	North Eastern
District Judge Searl	Newcastle and Sunderland	North Eastern
District Judge Baldwin	Liverpool and Birkenhead	Northern
District Judge Clarke	Burnley	Northern
Deputy DJ Harris	Manchester	Northern
District Judge Jenkinson	Liverpool	Northern
District Judge Moss	Manchester	Northern
District Judge Stone	Carlisle	Northern
District Judge Woosnam	Blackpool	Northern
District Judge Gibson	Worcester	Midlands
District Judge Griffith	Birmingham	Midlands
District Judge Rouine	Birmingham	Midlands
District Judge Humphreys	Wrexham	Wales
District Judge Phillips	Cardiff	Wales
District Judge Lumb	Oxford	South Eastern
District Judge Reeves	Norwich	South Eastern
District Judge Harper	Hastings	South Eastern
District Judge Byass	Bath	Western
District Judge Griffiths	Aldershot & Farnham	Western
District Judge Middleton	Bodmin & Truro	Western
District Judge Woodburn	Bristol	Western

Foreword to the 2018 edition

“It’s all about costs”: How often as a barrister one heard those words, and how often as a judge one has suspected that the case was, in truth, all about costs. Despite (some may say because of) the reforms over the last 20 years, disputes about costs have become ever more common.

Furthermore, although the courts now have much better control of costs than before, the concepts of fixed costs and costs budgeting, and the express inclusion of costs as an element of proportionality, mean that the rules have to be detailed and thorough, and plotting a way through them has become increasingly important.

This new edition of the Senior Courts Costs Office Guide provides up-to-date guidance in respect of all these potential minefields, and much more. It is a vital guide and map book for anyone embarking on an exploration of the rules relating to costs. It is written by the specialist Costs Judges who know the answers. I commend it unreservedly.

Lord Justice Peter Coulson
Deputy Head of Civil Justice
20 July 2018

Glossary

Applications clerk	The clerk to whom all papers and enquiries should be directed concerning the issue of claim forms and application notices: the applications clerk's office is currently located in Room 7.12.
Appropriate office	The office in which a request for a detailed assessment hearing should be filed: it is the County Court Office or District Registry for the court in which the order for costs was made or, in all other cases, the Senior Courts Costs Office (SCCO). Where the SCCO is the appropriate office for the request, it is also the appropriate office for any request or application made earlier in the detailed assessment proceedings, e.g., a request for a default costs certificate, a request or application to set aside such a certificate and applications for extension of time and sanctions for delay.
Central Funds	Money provided by Parliament out of which may be paid the costs of defendants in criminal cases in respect of which a "defendant's costs order" has been made.
Clerk of Appeals	The clerk to whom all papers and enquiries should be directed which relate to SCCO work concerning criminal fee appeals. The Clerk of Appeal's office is currently located in Room 7.12.
Costs between the parties	Costs payable by one litigant to another litigant under the terms of an order made by the court. The expression is used in order to distinguish these costs from "solicitor and client costs" (costs payable by a client to a solicitor under the terms of a contract made between them) and "legal aid only costs" (costs payable by the Legal Aid Agency to a solicitor or barrister).
Costs Judges	Judges sitting in the SCCO. Costs Judges also act as District Judges of the Principal Registry of the Family Division, and as Judges of the County Court when assessing costs from those courts.
Costs Officers	Authorised court officers who assess most bills for sums not exceeding certain amounts specified from time to time. From their decisions, appeals lie as of right to the Costs Judges.
Costs-only proceedings	The procedure to be followed where, before court proceedings are commenced, the parties to a dispute reach an agreement on all issues, including which party is to pay costs, but are unable to agree the amount of those costs.

CPR	The Civil Procedure Rules which, supplemented by their Practice Directions, govern the procedure to be followed in most civil cases brought in the SCCO. The text of the CPR and the Practice Directions is set out in practitioners' books such as the White Book Service and the Civil Court Practice and may also be found at: http://www.justice.gov.uk/courts/ procedure-rules/civil/rules.
Detailed assessment	The judicial process under which bills of costs are checked as to their reasonableness; the court may allow or disallow any items claimed in a bill or may vary any figures claimed in respect of them.
Determining officer	The court officer in criminal cases (only) who first assesses the costs payable to a defendant out of Central Funds (defined above) or payable to solicitors and counsel under criminal legal aid orders. Costs Judges have jurisdiction to hear appeals from the decisions of Determining Officers.
Disbursements	Sums of money, e.g., court fees, counsel's fees and witness expenses which are paid or payable by a "receiving party" (defined below) which cannot and do not include any element of profit for that party or for any solicitor acting for them. A special meaning is given to this term in the case of litigants in person (see para 22.2, below).
Form N252 and other N forms	Court forms which are referred to in the CPR (defined above). Copies of the forms for use in the SCCO can be obtained from the SCCO itself or from the SCCO page of the Court Service Website (as to which, see para 1.10, below).
Legal Aid	Financial help as to the costs of legal services which is provided by the State to litigants in civil claims and defendants in criminal cases who come within certain eligibility criteria. The Legal Aid Agency administers the scheme under the control of the Lord Chancellor.
Legal representative	A person authorised to exercise a right of audience or to conduct litigation on behalf of a party to that litigation.
Litigant in person	A party to any proceedings who does not have a legal representative duly authorised to represent them in those proceedings.
Open letter	An offer in writing made by one party to another in detailed assessment proceedings proposing the payment of a specific sum of money thereby avoiding the need for any further delay or expense. If the offer is not accepted and the costs in question are later subject to detailed assessment, the court will have regard to that offer when deciding what order for costs to make.
Part 23 application	Applications made by any party which relate to existing or intended detailed assessment proceedings. The notice of application should be in Form N244 (as to which, see above).

Part 36 offer	An offer in writing made by one litigant to another during the proceedings preceding the detailed assessment proceedings, or in the detailed assessment proceedings, proposing to settle those proceedings on specified terms. As to the recommended form to use, see Form N242A. If the offer is made in the detailed assessment proceedings and is not accepted, neither party is allowed to reveal the existence of the offer to the Costs Judge or Costs Officer until the detailed assessment has been completed.
Paying party	The party to detailed assessment proceedings who is liable to pay the costs which are the subject of the assessment. The opposing party is referred to as the "receiving party" which is defined below.
Points of dispute	A written statement made by the paying party identifying the areas of disagreement as to the costs to be assessed. In respect of each item of costs which is disputed the statement should outline the reason for disputing it and, where a reduction is sought, should suggest the reduced figure.
Profit costs	Costs paid or payable in respect of work done by a legal representative which are not "disbursements" (defined above).
Provisional assessment	The detailed assessment of costs which is conducted on paper only, i.e., without an oral hearing. Subsequently, the court notifies the parties of the sums proposed to be allowed and requires them to so inform the court office within a specified number of days if they wish the court to list the matter for an oral hearing.
RCJ	The Royal Courts of Justice the postal address of which is Strand, London, WC2A 2LL.
Receiving party	A party to detailed assessment proceedings who is entitled to recover from another party the costs which are the subject of the assessment. In the case of "costs between the parties" (defined above) the receiving party is the person in whose favour the court's order for costs was made or the solicitor or other legal representative acting for such a person. In the case of "solicitor and client costs" (which is defined below) the receiving party is the solicitor.
Regional Costs Judge	A District Judge who has been appointed to sit in both the County Court and the District Registry of the High Court to carry out detailed assessments in most of the larger and more difficult cases in each region of England and Wales.
SCCO	The Senior Courts Costs Office the postal address of which is Thomas More Building, Royal Courts of Justice, Strand, London, WC2A 2LL.

Solicitor and client costs	Costs payable by a client to a solicitor under the terms of a contract made between them. The expression is used in order to distinguish these costs from “costs between the parties” (see above) and “legal aid only costs” (costs payable by the Legal Aid Agency to a solicitor or barrister).
Statement of truth	A statement to be included in any claim form, application notice or witness statement which confirms that the facts stated therein are true. The statement of truth must be signed by the litigant, any litigation friend or legal representative or witness as the case may be.
Summary assessment	The procedure by which the court, when making an award of costs, immediately calculates and specifies the sum of costs it allows.
Wasted costs order	An order against a legal representative which disallows, or, as the case may be, orders the legal representative to meet, the whole or any part of costs found to have been incurred as a result of improper, unreasonable or negligent acts or omissions on the part of the legal representative or any consequential costs.

Part A
General matters



Section 1 - Introduction

1.1 The work of the SCCO

The Senior Courts Costs Office (SCCO) is a distinct part of the High Court, separate from the King's Bench Division, Chancery Division and Family Division. It deals with all aspects of costs from each Division and from the Court of Appeal. It has two ranks of judicial officer: Costs Judges and Authorised Court Officers known as Costs Officers (senior civil servants from whose decisions appeals lie as of right to a Costs Judge).

The primary function of the SCCO is the assessment of costs which are recoverable from one litigant by another litigant or by a lawyer. In the past, assessments (then called "taxations") were conducted by specialist Judges appointed to each court. In 1842 the office of Taxing Master was created, and Taxing Masters were appointed to each Division of the High Court. The Supreme Court Taxing Office (SCTO) was founded in 1902 and originally was one of the Departments which made up the Central Office. In 1999 the Civil Procedure Rules ("CPR") adopted the term "detailed assessment" in place of "taxation" at which time the SCTO became the SCCO. It now has jurisdiction to assess costs awarded by any Judge of the Court of Appeal, High Court or County Court. Since 2000 it has had the jurisdiction to assess orders for costs made in the Family Division of the High Court and in the Principal Registry.

Regional Costs Judges have been appointed on all circuits outside London. They are District Judges who have been appointed to hear detailed assessment of bills of costs that fall within the criteria of the scheme at a venue which is convenient to the parties and their legal representatives.

The criteria for a detailed assessment to be referred to a Regional Costs Judge, rather than the local District Judge, are as follows: the time estimate for the detailed assessment exceeds one day; and/or the sum claimed exceeds £100,000; and/or complex arguments on points of law, or an issue affecting a group of similar cases, are identified in the points of dispute or the reply or are referred to in argument at a detailed assessment hearing.

Once a request for detailed assessment in Form N258 has been filed at court the bill will be referred to a District Judge who will consider whether it falls within the criteria for reference to a Regional Costs Judge. If it does, the bill will be referred to the appropriate Regional Costs Judge who will then decide whether to accept it and will give any directions required, including directions as to listing.

If a party wishes to make submissions as to whether any particular detailed assessment fulfils the criteria for reference to a Regional Costs Judge, or as to the most convenient court for any hearing before a Regional Costs Judge, they should first consult the other parties or their legal representatives before making submissions to the court. It is helpful if such submissions are filed with the court when the request for detailed assessment is lodged. If possible, the parties should attempt to agree the reference to the Regional Costs Judge, any directions and the most convenient venue.

A list of the names and courts of the District Judges who have been appointed Regional Costs Judges is set out on page 7.

1.2 Representation

Solicitors and other legal representatives

In most cases parties will be represented by the solicitors or other legal representatives who have acted for them in the litigation in which the order for costs has been made.

The name, address, telephone, email address and reference of each such legal representative is set out on the Statement of Parties which is lodged when a request for a detailed assessment hearing is made (see Section 12).

Where proceedings are brought by claim form under Part III of the Solicitors Act 1974, the name and other details of each party's solicitor are set out in the claim form or in the acknowledgment of service, as the case may be.

Law firms remain on the record of the court until they obtain an order for their removal, or until another firm or the litigant in person files and serves a notice of acting. Notices of acting must be filed in the SCCO and also in the court office of the court in which the relevant order for costs was made if proceedings are still continuing in that court.

The firm on the record may be represented by a fee earner, for example, a partner, an assistant solicitor, a legal executive, a trainee solicitor or a paralegal or other clerk employed by the firm. Alternatively, firms outside London sometimes instruct a law firm in London to act on their behalf as an agent at any hearing.

Bankrupt Party

It is normally for the trustee in bankruptcy to decide what steps to take on behalf of a bankrupt's estate in relation to any proceedings in the SCCO. A bankrupt has no right to be heard unless an order under Section 303 of the Insolvency Act 1986 has been made, or unless the litigation relates to rights or liabilities created post-bankruptcy.

Company

Under the CPR, companies are not required to act by a solicitor when starting proceedings or defending them. Thus, they may act by any duly authorised agent. Where a document is to be verified on behalf of a company a statement of truth as to that document may be signed by any person holding a senior position in the company. However, once a matter proceeds to a hearing, the company, by its officers or employees or otherwise, has no personal right of audience. CPR 39.6 permits the representation of a company "at trial" by an employee but this is not as of right; the rule states that the person wishing to speak for the company must obtain the court's permission. The Practice Direction to that rule sets out the information to be given to the court in such circumstances, states that such permission should be sought in advance and states that such permission may be obtained informally and without notice to the other parties. Although CPR 39.6 concerns representation at trial, the Practice Direction provisions concern representations at any hearing.

Costs Lawyers and Costs draftsmen

The Costs Lawyers Standards Board is authorised to grant rights of audience and rights to conduct litigation to suitably qualified members. Costs Lawyers have limited rights of audience in assessment proceedings and limited rights to conduct litigation under Part III of the Solicitors' Act 1974.

Independent costs draftsmen have no rights of audience as such but, by concession, are treated as if they are in the employ of the firm of solicitors or other legal representatives instructing them. They have no rights of audience on behalf of a litigant in person (but see McKenzie Friend below).

Chartered Legal Executives

Under the Legal Services Act 2007 Chartered Legal Executive lawyers are 'authorised persons' undertaking 'reserved legal activities', alongside solicitors and barristers. A Chartered Legal Executive lawyer specialises in a particular area of law, and will have been trained to the same standard as a solicitor in that area.

Patent agents, trademark agents and claims consultants

In any patent action conducted by a chartered patent attorney, the attorney may have a right to appear. Similar rights have now been granted to chartered trademark attorneys in respect of trademark cases. In certain cases (such as arbitrations and planning matters) surveyors and other persons acting as claims consultants who have conducted the proceedings may be permitted to appear.

Counsel and counsel's clerks

Counsel, properly briefed by solicitors, or by a litigant under the Direct Access provisions, have full rights of audience. However, if they appear on their own behalf without a brief they are not entitled to a fee. Counsel's clerks attending as such do not have any right of audience. However, in an exceptional case, counsel's clerk may be allowed a hearing on behalf of counsel if counsel so requests in writing and if the Costs Judge or Costs Officer so allows.

McKenzie Friend

With regard to McKenzie Friends, the only right is that of the litigant to have reasonable assistance. A McKenzie Friend has no right to act as such. A McKenzie Friend is not entitled to address the court. A McKenzie Friend who does so becomes an advocate and that requires the grant of a right of audience from the court. As a general rule, a litigant in person who wishes to have a McKenzie Friend will be allowed to do so unless the judge is satisfied that fairness and the interests of justice do not so require. The court can prevent a McKenzie Friend from continuing to act in that capacity where the assistance given impedes the efficient administration of justice.

1.3 Office hours

In common with other civil courts, the SCCO is open from 10am until 4.30pm from Mondays to Fridays. It is closed on public holidays and on such other days as the Lord Chancellor may direct.

1.4 SCCO support sections

Once proceedings have been commenced in the SCCO, further work done in preparation for hearings is dealt with by the clerks of the Costs Judges' Section for hearings before a Costs Judge and by clerks of the Costs Officers' Section for hearings before a Costs Officer. When an assessment has been completed and the appropriate fees paid these Sections will also deal with the issue of the final costs certificates. The clerks in these Sections deal with appointments, correspondence and telephone enquiries. They do not give legal advice to parties. However, assistance and guidance may be given in appropriate circumstances as to general office practice.

Assistance and guidance on technical matters which are complex and difficult may be referred to a Principal Costs Officer who will endeavour to help, possibly after consultation with the Costs Judge or Costs Officer to whom the case has been allocated.

1.5 Filing documents, the court file and electronic filing

1.5.1

The SCCO now uses electronic filing and all documents filed after 20 January 2020 will be stored by the SCCO only on CE-File. Court users are able to file documents electronically direct to the court file by logging on to https://efile.cefile-app.com. Parties who are legally represented must file their documents by uploading them to the court file using CE-File and not by any other means. Lawyers representing themselves in criminal costs appeals and professional deputies appointed by the Court of Protection are considered to be legally represented.

1.5.2

A party who is not legally represented may upload documents electronically to the court file or may continue to file their documents on paper. Where a party who is not legally represented files a paper document it will be scanned to the electronic file by the court staff.

1.5.3

The rules relating to electronic filing are set out in Practice Direction 51O of the Civil Procedure Rules as supplemented by a Practice Note issued by the Senior Costs Judge which may be found at: https://www.judiciary.uk/wp-content/uploads/2019/10/Practice-Note-CE-File.pdf.

Further practical guidance for users of CE-File can be found at: https://www.gov.uk/guidance/ce-file-system-information-and-support-advice.

1.5.4

The following key points should be noted:

Format

- Draft Orders must be filed as Word documents. Electronic bills must be filed in both Excel spreadsheet and pdf format. All other documents filed must be in pdf format.
- Exhibits, Annexes and Appendices must each be filed as an associated filing to the main document.

Applications

- A hard copy hearing bundle is required for every hearing of an application. If no bundle has been lodged, the hearing may be adjourned to the next available date.
- Responsibility for lodging the hard copy hearing bundle will normally fall on the applicant. This general rule will apply whether or not the applicant is a Litigant in Person, unless a represented party has been directed by a judge or has agreed in writing to assume responsibility for the production of the hard copy hearing bundle. The parties must co-operate with each other and all parties have responsibility for ensuring that the court receives a bundle lodged two clear days before the hearing, save where this is impossible due to the urgent nature of the hearing. Late service of documents is not a reason to delay lodging the hard copy bundle. If necessary, documents may be added to the bundle.

Skeleton arguments, chronologies and the like

- Skeleton arguments, chronologies and similar documents prepared by advocates for hearings may be filed using CE-File or by email. Unless the court has ordered otherwise they should be filed two clear days before the hearing. Where the document relates to an application, a paper copy should be included in the hard copy hearing bundle.
- Statements of costs for summary assessment (form N260) must be filed using CE-File (where the party filing is legally represented).

1.5.5

- Unless the court otherwise orders, parties to the proceedings are entitled, without permission, to obtain a copy of certain documents filed in the SCCO in respect of those proceedings if they pay any prescribed fee and file a written request for the document. Persons other than parties have much more limited rights of obtaining documents from the court file (CPR Part 5 and the Part 5 Practice Direction). Those permitted to obtain copies of documents may request electronic copies of the documents to be sent by the Court by e- mail to an address they specify.

1.6 The RCJ Advice Bureau and Support through Court

The RCJ Advice Bureau helps people navigate the court system and the civil procedure rules. They provide free legal advice and assistance in relation to proceedings in the County Court, the High Court and the Court of Appeal: ttps://www.rcjadvice.org.uk/

Support Through Court (previously the Personal Support Unit) provides a free service offering support and guidance before, during, and after court for litigants in person.

Further information can be found on their website: https://www.supportthroughcourt.org

1.7 Contacting the SCCO by letter

Except where documents must be filed electronically (see para. 1.5 above) they may be delivered by hand during office hours to the Costs Office, by post or by DX. There is now no equipment for receiving faxes. All documents should be sent with a covering letter setting out any relevant SCCO references. If a fee is payable, the documentation should include a cheque or bankers draft made in favour of HM Courts and Tribunals Service. Solicitors can pay court fees through their PBA account if they have set one up. Parties who wish to pay court fees in cash must hand deliver the payment to the Fees Office, Room EB01 in the East Block in the Royal Courts of Justice. Letters and documentation, addressed to the Court Manager, may be sent by post or DX to the address on page 4.

1.8 Use of email in the SCCO

Except where they must be filed by uploading to CE-File, documents may be filed at the SCCO in or attached to a single email addressed to scco@justice.gov.uk provided that the email and attachments do not between them exceed, on printing, 10 A4 sides in a standard, legible font. Emails and attachments in excess of that length will not be printed or read by the judge. Attempts to circumvent these limits by sending multiple emails will not be accepted.

No document can be filed by sending an email direct to a Costs Judge or a Costs Officer.

Please do not submit by email documents which require payment of a fee, such as applications. Such e-mails will be deleted.

When sending an e-mail message to the court please clearly state in the subject header the SCCO reference number, parties' names and times/dates relating to any imminent hearing. Unless your email does so and otherwise complies with the requirements of Practice Direction 5B, the court may not respond. Please ensure that any email also complies with rule 39.8 of the Civil Procedure Rules, copy it to all other parties and clearly mark it as so copied. Please state what any attachment is and refrain from messages such as "Please see attached". If it is to be forwarded to a judge for a hearing please provide all relevant details.

1.9 Contacting the SCCO by telephone

(a) The SCCO can be contacted via the telephone numbers set out in the List of Costs Judges and Costs Officers (see page 4) or via the switchboard at the Royal Courts of Justice, the number of which is 020 7947 6000. Also, once a file has been opened and the SCCO has entered into correspondence the SCCO notepaper and compliments slips will show the telephone number and e-mail address of the relevant clerk. Parties should use this number when contact by letter or e-mail is not possible or not appropriate.

(b) In some cases, a hearing may be conducted by telephone. If it is a hearing at which more than one party may be represented, the court will give directions as to who must arrange the conference call (if it is not the Court) and the Costs Office number which should be used on that call. Many telephone hearings concern cases in which only one party is able or wishes to attend. In those cases, the court will give directions stating the Costs Office telephone number to be used, the date and time of the appointment and stating whether it should be by way of a conference call or an ordinary telephone call.
(c) Parties should note that the court does not make an audio recording of telephone hearings and is therefore unable to assist with any request for a transcription of a telephone hearing. The parties should direct any request for an audio recording or transcription of a telephone conference / hearing to the relevant telecommunications provider (see paragraph 6.10(1) of Practice Direction 23A), the contact details for whom should be provided by the legal representative who arranged the telephone conference / hearing.

1.10 SCCO page on the Gov.UK website

The SCCO page on the Gov.UK Website comprises a miscellany of information relating to the assessment of costs. https://www.gov.uk/courts-tribunals/senior-courts-costs-office is the address of the SCCO page.

1.11 Costs Practitioners Group

(a) This advisory group is run under the auspices of the SCCO. Two Costs Judges are members, one of whom acts as Chairman. The current Chairman is Costs Judge Rowley. The Senior Costs Judge sometimes attends as does the Principal Costs Officer. The Council of Circuit Judges, the Association of District Judges, the Bar Council, the Law Society, the London Solicitors Litigation Association, the Association of Personal Injury Lawyers (APIL), the Forum of Insurance Lawyers (FOIL) and the Association of Costs Lawyers are all represented.
(b) The group generally meets twice a year in the SCCO, its function being to comment upon and make recommendations for the improvement of the current and evolving practice of assessment of costs. Although it is an advisory group, as it consists of representatives of all the principal “users” it is intended to be influential and to afford a regular opportunity for informal exchanges of views on existing practice and how the same can be improved. Minutes are taken and circulated.
(c) Organisations and bodies wishing to apply for membership of the Costs Practitioners Group should write to its Chairman, care of the SCCO.

Section 2 - Entitlement to costs

2.1 The meaning of "costs"

The word "costs" is defined in CPR 44.1(1). Costs normally fall into two categories:

(i) expenses of a type which legal representatives frequently incur when acting on behalf of clients (such as counsel's fees, court fees, witness expenses etc). These are known as "disbursements".

(ii) the fees which legal representatives charge to their client. These are sometimes called "profit costs"

Costs payable by one party to another can, in appropriate circumstances, include costs incurred before the issue of proceedings (*In Re Gibson's Settlement Trusts* [1981] Ch 179).

2.2 Liability to pay costs

In litigation, no party has a right to costs. Costs are in the discretion of the court. If, however, the court sees fit to make an order as to the costs of the litigation, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party (CPR 44.2(2)(a)). The court may make an order for costs which reflects the extent to which each party has been successful in relation to different issues.

Costs as between legal representative and client are payable to the legal representative according to the terms of any contract he has made with the client or, alternatively, in the case of a legally aided client, according to the legal aid regulations.

2.3 Orders which the court may make

In deciding what order to make about costs the court is required to have regard to all the circumstances including the conduct of all the parties; whether a party's case has been successful in part, even if not wholly successful; and whether or not there has been an offer of settlement (CPR 44.2(4)).

The court has complete discretion as to what order for costs to make but those orders may include an order that a party must pay:

(i) a proportion of another party's costs;

(ii) a stated amount in respect of another party's costs;

(iii) costs from or until a certain date;

(iv) costs incurred before proceedings have begun;

(v) costs relating to particular steps in the proceedings;

(vi) costs relating only to a distinct part of the proceedings; and

(vii) interest on costs from or until a certain date: (CPR 44.2(6)).

Where the court orders a party to pay costs subject to detailed assessment it will order that party to pay a reasonable sum on account unless there is good reason not to do so. (CPR 44.2(8)).

The Part 44 Practice Direction (para 4.2) lists the more common costs orders which the court may make in proceedings before trial and explains their effect.

2.4 Bases of assessment

The court may order costs between the parties to be assessed on either the standard basis or the indemnity basis. On either basis, the court will not allow costs which have been unreasonably incurred or which are unreasonable in amount.

On the standard basis, the court will only allow costs which are proportionate to the matters in issue and will resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party: (CPR 44.3(2)).

Where the court assesses costs on the indemnity basis it will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party (CPR 44.3(3)).

In legally aided cases, costs are payable to solicitors and counsel on the standard basis subject to Regulations which prescribe the amounts to be allowed in certain cases.

In respect of costs payable to solicitors by their client, the basis of assessment is the indemnity basis to which certain presumptions and limitations apply (see CPR 46.9 and the Part 46 Practice Direction (para 6.1)).

2.5 Methods of assessment of costs

When the court makes an order about costs, it may carry out a summary assessment then and there and order the payment of a sum of money in respect of costs, or it may order a detailed assessment of the costs. If a detailed assessment is ordered the receiving party must, amongst other things, prepare a bill setting out the work done and, ultimately, the court will go through that bill, hearing argument from both sides as to what items and amounts should and should not be allowed.

The general rule is that the court will make a summary assessment of the costs at the conclusion of the trial of a case which has been dealt with on the fast track and at the conclusion of any other hearing which has lasted for not more than one day. In certain cases, the Court of Appeal will also carry out a summary assessment. Summary

assessment will be carried out unless there is good reason for not doing so, for example 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 (CPR 44.6; Part 44 Practice Direction (paras 8 and 9)).

2.6 The indemnity principle

The principle is that successful parties cannot recover from unsuccessful parties more by way of costs than they are liable to pay their own legal representatives: *Harold v Smith* [1865] H&N 381 at 385 and *Gundry v Sainsbury* [1910] 1KB 645 CA.

There are several exceptions to the principle including the statutory exceptions concerning legal aid, conditional fee agreements and damages based agreements. Where a party puts a statement of costs before the court for summary assessment that statement must be signed by the party or a legal representative. The form states: “The costs stated above do not exceed the costs which the [party] is liable to pay in respect of the work which this statement covers.”

The signature of a statement of costs or a bill for detailed assessment by a solicitor is in normal circumstances sufficient to enable the court to be satisfied that the indemnity principle has not been breached in respect of costs payable under a conventional bill: *Bailey v IBC Vehicles Ltd* [1998] 3 All ER 570 CA. However, the same may not be true in respect of costs payable under a conditional fee agreement: *Hollins v Russell* [2003] 1 WLR 2487.

2.7 Duty to notify clients of adverse costs orders

Where the court makes an order for costs against a person who is legally represented but is not present when the order is made, that party’s legal representative must notify the client in writing of the costs order no later than seven days after the legal representative receives notice of the order (CPR 44.8).

2.8 Some special cases

In certain cases, a right to costs on the standard basis arises even though the court does not make a specific order for costs. The occasions when this happens are under:

(i) CPR 3.7(4) (defendant’s right to costs where claim struck out for non-payment of fees);

(ii) CPR 36.10(1) (claimant’s right to costs upon accepting a defendant’s Part 36 offer); and

(iii) CPR 38.6 (defendant’s right to costs where claimant discontinues).

In any other case, where the court makes an order but does not mention costs, no party is entitled to costs in relation to that order (CPR 44.10(1)).

An appeal court may, unless it dismisses the appeal, make orders about costs of the proceedings in the lower court as well as the costs of the appeal (CPR 44.10(4)).

Where proceedings are transferred from one court to another, the court to which they are transferred may (subject to any order made by the transferring court) deal with all the costs, including the costs before the transfer (CPR 44.10(5)).

In a probate claim where a defendant's defence has given notice that the defendant requires the will to be proved in solemn form (as to which see CPR 57.7(5)), 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 CPR 57.1(2).

2.9 Qualified one-way costs shifting ("QOCS")

There are restrictions on enforcing orders for costs obtained against claimants in personal injury claims (including claims under the Fatal Accidents Act 1976 and claims arising out of death or personal injury which survive for the benefit of an estate under the Law Reform (Miscellaneous Provisions) Act 1934) (CPR 44.13). However, this protection for personal injury claimants does have exceptions under which orders for costs can be enforced, subject, sometimes, to the permission of the court being obtained:

(i) where the defendant's costs can be set off (CPR 44.14). At the conclusion of the case, costs orders against claimants can be set off against damages, interest and costs orders payable to them.

(ii) where the claim has been struck out on certain grounds (CPR 44.15).

(iii) claims falling within the transitional provisions concerning recoverable success fees or ATE premiums (CPR.44.17).

(iv) where the permission of the court is obtained after a finding on the balance of probabilities that the claim was "fundamentally dishonest" (CPR 44.16).

(v) where the permission of the court is obtained to enforce a claim which included a claim for the benefit of someone other than the claimant, or a dependant in a Fatal Accidents Act claim (this exception cannot be used against a person who supplied gratuitous care, or an employer who paid earnings or any person who paid medical expenses merely because the claimant is recovering damages in respect of that care, or those earnings or medical expenses (r.44.16(2)(a)).

(vi) where the permission of the court is obtained to enforce any non-personal injury or death claim which was included in the proceedings (CPR 44.16(2)(b)).

2.10 Costs where money is payable by or to a child or protected party

Where a child or protected party is ordered to pay money to another party the court may make a summary assessment of those costs or may order a detailed assessment.

Where a child or protected party is liable to pay money to their solicitor the court must order a detailed assessment of those costs (CPR 46.4) unless the case falls within one of those circumstances described in the Part 46 Practice Direction (para 2.1) (e.g. another party has agreed to pay a specified sum in respect of costs and the solicitor acting for the child or protected party has waived the right to claim further costs) or CPR 46.4(5) (the court has directed the summary assessment of a success fee payable to the child's or protected party's legal representative).

2.11 Costs of trustees and personal representatives

Trustees and personal representatives who are parties to litigation are generally entitled to their costs, so far as not recovered from any other party, out of any fund which they hold as trustee or personal representative. The costs are assessed on the indemnity basis. If a trustee or personal representative has acted for a benefit other than that of the fund the court may make a different order (CPR 46.3).

2.12 Mortgagees' costs

Depending on the terms of the mortgage, a mortgage lender is likely to be able to recover any costs incurred in litigation (except for costs which are unreasonably incurred or which are unreasonable in amount) as a matter of contract between the lender and the borrower. The Part 44 Practice Direction (paras 7.2 and 7.3) sets out the principles which apply to litigation costs relating to a mortgage (CPR 44.5).

2.13 Group litigation orders

CPR Part 19 deals with Group Litigation Orders. CPR 46.6 provides that unless the court otherwise orders, group litigants are severally (not jointly) liable for an equal proportion of the "common costs". ("Common costs" are defined in CPR 46.6(2).) In addition, a group litigant is liable for the individual costs of their own claim. A group litigant coming late to the group register may be ordered to be liable for a proportion of the costs incurred before that litigant's name is entered on the register (CPR 46.6(6)). The Part 19B Practice Direction (para 16.2) provides that the Costs Judge will apportion the amounts of common costs and individual costs, if the court has not already done so.

2.14 Costs in family proceedings

The Family Procedure Rules 2010 deal with costs at Part 28. In family proceedings CPR Parts 44, 46 (except rules 44.2(2) and (3), 46.11 to 46.13), and 47 and rule 45.8 apply to costs in family proceedings subject to certain modifications. The 2010 Rules also make provision for costs in Financial Remedy Proceedings. In those proceedings CPR 44.2(1), (4)

and (5) do not apply. CPR 44.2(6) to (8) and 44.12 apply to an order made under rule 28.3 of the 2010 Rules as they apply to an order made under CPR 44.2.

2.15 Success fees and insurance premiums

Sections 58 and 58A of the Courts and Legal Services Act 1990, which make provision for the regulation of conditional fee agreements and the recoverability of success fees, were amended by the Legal Aid, Sentencing and the Punishment of Offenders Act 2012 (LASPO 2012), as a result of which (subject to the transitional provisions) a success fee payable under a conditional fee agreement ("CFA") may no longer be recovered from a losing party in any proceedings, but, subject to certain limits in personal injury cases, is recoverable from the legal representatives' client.

Section 46 of LASPO 2012 repealed Section 29 of the Access to Justice Act 1999 (recovery of ATE insurance premiums) and made new provision relating to the recoverability of certain ATE premiums by inserting a new Section 58C into the Courts and Legal Services Act 1990. Section 58C(1) and (2) of the 1990 Act limits the recoverability of insurance premiums to clinical negligence proceedings and allows recovery of the premium only to the extent that it relates to the costs of any expert report.

The only experts' reports in respect of which an insurance premium may be recovered are those which relate to liability or causation. The amount of the premium recoverable is limited to that part of the premium which insures against the risk of incurring a liability to pay the costs of any such report. The cost of such premium is allowed under the Costs Order. (See the Part 48 Practice Direction (paras 4.1 and 4.2) and The Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No 2) Regulations 2013.)

2.16 Costs in relation to pre-commencement disclosure and orders for disclosure against a non-party

Sections 33 and 34 of the Senior Courts Act 1981 and Sections 52 and 53 of the County Courts Act 1984 give the court powers, exercisable before commencement of proceedings, in relation to disclosure, and the power to make an order against a non-party for disclosure of documents and inspection of property. The general rule is that the court will award the person against whom the order is sought, their costs of the application and of complying with any order which is made. If however that party has unreasonably opposed the application or failed to comply with any relevant pre-action protocol the court may well make a different order (CPR 46.1).

2.17 Costs orders in favour of or against non-parties

The court may order costs to be paid to or by a person who is not a party to the proceedings in which those costs have been incurred. Such an order is likely to be made only in exceptional circumstances. Where the court is considering making such an order, that person must be added as a party to the proceedings and must be given a reasonable opportunity to attend the hearing at which the court will consider the matter further (CPR 46.2) (and see CPR Part 19 as to adding a person as a party). When the court makes such an order, the costs awarded can only be those incurred in the proceedings before it.

Guidance as to the circumstances in which a non-party costs order may be made is provided in *Dymocks Franchise Systems (NSW) Pty Ltd v Todd* [2004] 1 WLR 2807. As to the liabilities of professional funders, who have financed part of a Claimant's costs of litigation, to pay a contribution towards the costs of a successful defendant see *Chapelgate Credit v Money* [2020] EWCA Civ 246.

2.18 Costs following acceptance of an offer to settle

Where a Part 36 offer is accepted within the relevant period for acceptance, the claimant is entitled to the costs of the proceedings up to the date on which notice of acceptance was served on the offeror. If a defendant's Part 36 offer relates to part only of the claim, and, at the time of serving notice of acceptance, the claimant abandons the balance of the claim, the claimant is entitled only to the costs of that part of the claim unless the court orders otherwise. Costs under these provisions will be assessed on the standard basis if the amount of costs is not agreed (CPR 36.13(1) to (3)).

Where a Part 36 offer that was made less than 21 days before the start of trial is accepted, or such an offer is accepted after expiry of the time specified for acceptance, the court will make an order as to costs if the parties do not agree the liability for costs. Where the offer is accepted after the expiry of the relevant period, unless the court considers it unjust to do so, the court will order that the claimant is entitled to the costs of the proceedings up to the date on which the relevant period expired; and the offeree is liable for the offeror's costs for the period from the date of the expiry of the relevant period to the date of acceptance. The claimant's costs include any costs incurred in dealing with the defendant's counterclaim if the Part 36 offer states that it takes the counterclaim into account (CPR 36.13(4) to (7)).

Where, upon judgment being entered, a claimant fails to obtain a judgment more advantageous than the defendant's Part 36 offer, the court will order (unless it considers it is unjust to do so), that the defendant is entitled to costs from the date on which the relevant period for acceptance expired; and interest on those costs.

Where the claimant does better than was proposed in the claimant's Part 36 offer, CPR 36.17(4)(d) provides an additional reward. In such circumstances, the court will, unless it considers it unjust to do so, award the claimant an additional amount which shall not exceed £75,000 calculated by applying the prescribed percentage to an amount which is:

(i) where the claim is or includes a money claim, the sum awarded to the claimant by the court;

(ii) where the claim is only for a non-monetary claim, the sum awarded to the claimant by the court in respect of costs.

Where the amount awarded by the court is up to £500,000 the prescribed percentage is 10% of the amount awarded. Where the amount awarded by the court is above £500,000 the prescribed percentage is 10% of the first £500,000 and (subject to the limit of £75,000) 5% of any amount awarded above that figure.

CPR 36.17(4)(d) applies only to Part 36 offers made after 1 April 2013, whether in proceedings commenced before or after that date.

2.19 Costs in small claims

In a case which has been allocated to the small claims track, the court may not order a party to pay costs to another party except in the limited circumstances set out in CPR 27.14(2). These include the fixed costs attributable to issuing the claim payable under CPR Part 45 Section I, and any costs which the court summarily assesses and orders to be paid by a party who has behaved unreasonably.

The court also has the power to order a party to pay court fees paid by another party and expenses which a party or a witness has reasonably incurred in attending court. The Part 27 Practice Direction (paras 7.2 and 7.3) set out the maximum amounts which the court may allow.

The limits on costs also apply to any fee or reward for acting on behalf of a party to the proceedings, charged by a lay representative exercising a right of audience (CPR 27.14(4)).

The effect on costs on allocation and reallocation to the small claims track is described in paragraph 2.21, below.

2.20 Costs in fast track cases

In fast track cases, the court's power to award trial costs is limited in accordance with CPR Part 45 Section VI. The trial costs which the court may award are fixed by reference to the value of the claim. The court may not award more or less than those amounts unless it decides not to award any trial costs or the circumstances set out in CPR 45.39 apply. The court has the power to apportion the amount awarded between the parties to reflect their respective degrees of success on the issues at trial (CPR 45.38(2)).

The exceptional cases in which higher costs may be ordered are set out in CPR 45.39. These cover additional legal representatives, separate trials, litigants in person, counterclaims and unreasonable or improper behaviour.

Where a fast track case settles before the start of the trial and the court is assessing the amount of costs to be allowed in respect of a party's advocate for preparing for trial, it may

not allow an amount exceeding the amount of fast track trial costs which would have been payable had the trial taken place (CPR 46.12).

2.21 Costs following allocation and reallocation

The special rules which apply to small claims and fast track trial costs do not apply until the claim is allocated to a particular track. Once the claim is allocated to a particular track those special rules apply to the period before as well as after allocation except where the court or a Practice Direction provides otherwise (CPR 46.11). Any costs orders made before a claim is allocated to the small claims or fast track will not be affected by the allocation (CPR 46.13(1)). Where a claim is allocated to one track and subsequently re- allocated to a different track then, unless the court orders otherwise, any special rules about costs applying to the first track will apply to the claim up to the date of reallocation, and the rules applying to the second track will apply from the date of reallocation (CPR 46.13(2)).

2.22 Time for complying with orders for costs

When the court makes an order for the payment of costs the paying party must make the payment within 14 days of the date of the order specifying the amount payable (CPR 44.7). The court may extend the time for payment, but if it does not do so and the costs are not paid within the 14 day period, the receiving party may take steps to enforce the order.

2.23 VAT

On an assessment of costs between the parties, the receiving party must ensure that no claim for VAT is made in the bill if that party is able to recover it as input tax. Disputes as to the recoverability of VAT in bills between the parties are usually resolved by the making of a certificate as to the VAT position by the legal representatives or auditors of the party receiving costs or by H M Revenue & Customs.

Cases in which the receiving party cannot recover VAT on the costs payable by the paying party include the following:

(i) the receiving party is a VAT registered taxable person and the supply of legal services was obtained for the purpose of the business;

(ii) the receiving party is domiciled outside the European Union;

(iii) the receiving party is domiciled outside the UK but is domiciled in the European Union and received the supply of legal services for the purposes of the business; or

(iv) the receiving party is a self-representing legal representative (the “self-supply” exception to VAT).

The Part 44 Practice Direction (para 2) sets out some special provisions relating to VAT.

Section 3 - Costs management orders and costs capping orders

3.1 Cases to which the costs management rules apply

All multi-track cases commenced on or after 1 April 2013 in the County Court or the Chancery Division or King's Bench Division of the High Court (except claims commenced on or after 22 April 2014 valued at £10 million or more and claims by children commenced on or after 6 April 2016) are subject to costs management, unless the proceedings are the subject of fixed costs or scale costs, or the Court orders otherwise. The Costs Management Provisions may also apply to any other proceedings, including applications where the Court so orders (CPR 3.12(1A)).

The purpose of Costs Management is that the Court should manage both the steps to be taken and the costs to be incurred by the parties to any proceedings so as to further the overriding objective. All parties, except litigants in person, must file and exchange budgets in accordance with the rules, or as directed by the Court. This must be done by the date not less than 21 days before the first case management conference (CPR 3.13) (unless the claim is less than £50,000 when the budgets must be filed and served with the directions questionnaires). Any party which fails to file a budget when required to do so, will be treated as having filed a budget comprising only the applicable Court fees (CPR 3.14).

The Court may make a Costs Management Order at any time. Such an order will record the extent to which budgets are agreed between the parties and, in respect of budgets which are not agreed, record the Court's approval after making appropriate revisions.

Once a Costs Management Order has been made, the Court will thereafter control the parties' budgets in respect of recoverable costs (CPR 3.15).

3.2 Effect upon subsequent assessment of costs where a CMO has been made

Where a Costs Management Order has been made, the Court, when assessing costs on the standard basis, will have regard to the receiving party's last approved or agreed budget for each phase of the proceedings, and will not depart from the approved or agreed budget, unless satisfied that there is good reason to do so (CPR 3.18).

3.3 Effect upon subsequent assessment of costs where no CMO has been made

Where the parties have filed budgets in accordance with Practice Direction 3E, but the Court has not made a Costs Management Order under Rule 3.15, the Part 44 Practice Direction (paras 3.1 to 3.7) applies.

If there is a difference of 20% or more between the costs claimed by the receiving party on detailed assessment, and the costs shown in a budget filed by that party, the receiving party must provide a statement of the reasons for the difference with the bill of costs.

If a paying party claims that they reasonably relied on a budget filed by the receiving party or wishes to rely upon the costs shown in the budget in order to dispute the reasonableness or proportionality of the costs claimed, the paying party must serve a statement setting out their case in this regard in the Points of Dispute.

On assessment, the Court may have regard to any budget previously filed by the receiving party or any other party in the same proceedings. The budget may be taken into account when assessing the reasonableness and proportionality of any costs claimed.

Where there is a difference of 20% or more between the costs claimed by a receiving party and the costs shown in a budget filed by that party and where it appears to the Court that the paying party reasonably relied on the budget, the Court may restrict the recoverable costs to such sum as is reasonable for the paying party to pay in the light of that reliance, notwithstanding that such sum is less than the amount reasonably and proportionately incurred by the receiving party.

Where it appears to the Court that the receiving party has not provided a satisfactory explanation for that difference, the Court may regard the difference between the costs claimed and the costs shown in the budget as evidence that the costs claimed are unreasonable and disproportionate (the Part 44 Practice Direction (paras 3.5 to 3.7)).

3.4 Costs capping orders

Section III of CPR Part 3 deals with costs capping. CPR 3.19, 3.20 and 3.21 set out the general principles, the procedure for applying for a costs capping order and for varying such an order.

Costs capping orders can be made only in respect of costs (including disbursements) to be incurred after the date of the costs capping order. Subject to that, the court may make a costs capping order in respect of the whole of the litigation, or any particular issue or issues ordered to be tried separately.

The criteria which have to be satisfied before the court will make a costs capping order are that: it is in the interests of justice to do so; or, there is a substantial risk that without such an order costs will be disproportionately incurred; and, it is not satisfied that that risk can be adequately controlled by case management directions and detailed assessment of the costs.

An application for a costs capping order must specify whether the order sought is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately, or (although the rule does not specifically so state), up to a particular point in the proceedings. The application must be accompanied by an estimate of costs setting out the costs and disbursements incurred by the applicant to date, and the future costs and disbursements of the proceedings which the applicant is likely to incur (CPR 3.20).

Section 4 - Court fees payable in the SCCO in civil cases

4.1 Introduction

The fees payable for civil proceedings within the SCCO are set out in the Civil Proceedings Fees Order 2008 (as amended). It sets out the fees payable in the Senior Courts and County Courts of England and Wales. Information as to the fees currently payable can be found on the SCCO website: https://www.gov.uk/guidance/senior-courts-costs-office-fees

4.2 Time for payment

Normally a request, an application or an appeal will not be accepted by the court office unless the appropriate fee is first paid. This should be in the form of a cheque payable to HM Courts and Tribunals Service. Solicitors may pay by a PBA account if they have set one up. In exceptional circumstances a costs officer may allow an application to be issued on an undertaking by the applicant's solicitors (or, exceptionally, the applicant) that the appropriate fee will be paid within a limited period thereafter.

4.3 Exemptions

Remission of all or part of a court fee is available to parties who are on a low income or in receipt of a qualifying benefit.

Information about the income and savings limits and the qualifying benefits eligible for fees remission are set out at: https://www.gov.uk/get-help-with-court-fees

The Lord Chancellor may, where it appears that the payment of any fee would, owing to the exceptional circumstances of the particular case, involve undue financial hardship, reduce or remit the fee in the particular case.

Where a fee has been paid which was not payable under the above provisions, or which has been reduced because of undue financial hardship, the fee will be refunded provided the party who paid the fee applies within three months of payment. The three month time limit may be extended if there is good reason for a refund being made after the end of the three month period.

4.4 Appeal fee

An appeal, whether from a Costs Judge or from a Costs Officer, attracts a fee. It is to be noted that informal appeals from Costs Officers to Costs Judges by letter are not permissible. The appropriate appeal notice must be used and the fee paid.

4.5 Fee for transcripts

Although proceedings in the SCCO are recorded, no transcripts of the recordings are made unless and until a party applies for a transcript using Form EX107 and pays the fee. Application must be made by letter or telephone call to the Courts Recording and Transcriptions Unit (CRATU) at the RCJ, who will release the recordings only to one of the official transcribers (a list of whom is available from CRATU). The amount of the fee payable for transcription will depend on the nature and length of the hearing. The recording of telephone hearings is undertaken by the company providing the conference (e.g. BT or Legal Connect) and not by CRATU.

4.6 Fee for providing copies

In certain circumstances parties and other persons can obtain copies of any document on the court file (see Section 6). The current fees are the following (paragraph references are to the Civil Proceedings Fees (Amendment No.2) Order 2013):

4.1 On a request for a copy of a document (other than where fee 4.2 applies):

(a) for ten pages or less; £5

(b) for each subsequent page. 50p

4.2 On a request for a copy of a document on a computer disk or in other electronic form, the fee for each such copy is £5.

Section 5 - Group listing

Please note

Group listing is currently suspended. The cases which would otherwise fall into these arrangements (shorter detailed assessments) are now listed in accordance with all other detailed assessments (see Section 12) before a Costs Judge or Deputy Costs Judge.

Section 6- Supplying copies from the SCCO court file

6.1 The supply of copies to parties to the proceedings

The right of parties to proceedings and their authorised legal representatives to receive copies from the court file is governed by the Part 5A Practice Direction (para 4.2A.)

In summary, permission from a costs judge is not needed to supply copies of the following documents to a party or their authorised legal representative, on payment of the prescribed copying fee:

- Bills of costs
- Breakdowns of costs
- Points of Dispute
- Replies to Points of Dispute
- Default costs certificates
- Interim costs certificates
- Final costs certificates
- Acknowledgements of service (and any documents filed with, attached to or served with them)
- Application notices (**but not** in relation to (i) applications by solicitors for a declaration that they have ceased to act or (ii) applications for orders that the identity of a party or witness should not be disclosed)
- Certificates of service (but not in relation to (i) applications by solicitors for a declaration that they have ceased to act or (ii) applications for orders that the identity of a party or witness should not be disclosed)
- Certificates of suitability of a litigation friend
- Judgments or orders (unless given or made in private)
- Notices of appeal (Appellant's or Respondent's)
- Notices of change of solicitor
- Notices of discontinuance
- Notices of funding
- Statements of case (including claim forms and any documents filed with, attached to or served with the claim form)
- Statements of costs
- Witness statements filed in relation to an application (but not in relation to (a) applications by solicitors for a declaration that they have ceased to act or (b) applications for orders that the identity of a party or witness should not be disclosed).

To obtain a copy of any document not listed in the Part 5A Practice Direction, a party to the proceedings or their authorised legal representative must obtain permission from a Costs Judge (for which he must make an application and pay the appropriate application fee).

6.2 The supply of copies to persons who are not parties to the proceedings

The supply of copies to people who are not parties to the proceedings is governed by CPR 5.4C.

In summary, subject to the exceptions mentioned below, permission from a Costs Judge is not needed to supply copies of these documents, on payment of the prescribed copying fee:

- Claim Forms (but not documents filed with, attached to or served with the claim form), provided that all of the defendants have filed an acknowledgement of service or a defence, or the claim has been listed for a hearing, or judgment has been entered
- Statements of Case (but not documents filed with, attached to or served with the statement of case), provided that all of the defendants have filed an acknowledgement of service or a defence, or the claim has been listed for a hearing, or judgment has been entered. **N.B. This does not include Bills of Costs, Points of Dispute or Replies to Points of Dispute.**
- Judgments or orders given or made in public (whether at a hearing or not) provided that all of the defendants have filed an acknowledgement of service or a defence, or the claim has been listed for a hearing, or judgment has been entered and subject to CPR 5.4C(1B) (exclusions in relation to mediation settlement enforcement orders, applications for disclosure/inspection of mediation evidence and orders for disclosure and inspection).

Different provisions apply to access by a non-party to statements of case filed before 2 October 2006. CPR 5.4C(1A) and the Part 5A Practice Direction make provision for such cases.

To obtain a copy of any document not provided for by CPR 5.4C, a person who is not a party to the proceedings must obtain permission from a Costs Judge (for which he must make an application and pay the appropriate application fee).

Section 7- Orders (including correcting accidental slips)

7.1 The slip rule

The court may at any time correct an accidental slip or omission in any certificate or order issued by the court and may vary any certificate, order or judgment in order to make the meaning and intention of the court clear: see CPR 40.12 (often known as the “slip rule”) and the Part 40 Practice Direction supplementing it. Although it is mainly used to correct typographical or arithmetical mistakes, the slip rule can also be used to correct other more substantial errors and omissions in expressing the intention of the court.

7.2 Applications for amendment

An application under the slip rule may be made informally (e.g. by letter) or formally, by application under Part 23 (as to which see Section 20). The application may be dealt with without a hearing if the applicant so requests, or with the consent of all parties, or where the court does not consider that a hearing would be appropriate. However, if the application is, or is likely to be, opposed, it should be listed for hearing before a Costs Judge.

Section 8 - Form and layout of paper bills

8.1 The introduction of the electronic bill

In October and November 2017 CPR 47 and the Part 47 Practice Direction were amended to provide that in all CPR Part 7 multitrack claims (except where the proceedings are subject to fixed costs or scale costs, the receiving party is a litigant in person or the court has otherwise ordered) bills of costs for costs recoverable between the parties must, for all work undertaken after 6 April 2018, be presented in electronic spreadsheet format, capable of producing essential summaries and performing essential functions compatible with Precedent S, annexed to the Part 47 Practice Direction.

Where the new provisions apply but work was done both before and after 6 April 2018, a party may serve and file either a paper bill or an electronic bill in respect of work done before that date but must serve and file an electronic bill in respect of work done after that date.

In all other circumstances bills of costs may be in the prescribed electronic form or on paper, as the receiving party prefers.

This section summarises the form and layout of paper bills prescribed by the Part 47 Practice Direction for costs recoverable between parties (for other cases, as where costs are payable from a fund, see the detail of the Part 47 Practice Direction). Section 9 of this Guide summarises the requirements for electronic bills. It should be borne in mind that the provisions summarised in this section continue to apply to electronic bills to the extent that they are not incompatible with the specific provisions introduced for such bills: see section 9 for more detail.

8.2 Essential ingredients

Each bill should start with the full title of the proceedings, the name of the receiving party and a description of the order for costs or other document giving the right to detailed assessment (as defined in the Part 47 Practice Direction (para 13.3)). The title page should include prescribed information as to VAT and Legal Aid information, where appropriate (see the Part 47 Practice Direction (para 5.10)).

The bill should then give some background information about the case including a brief description of the proceedings. If the only dispute between the parties concerns disbursements the remainder of the bill may comprise only a list of the disbursements and brief written submissions in respect of them. If there is also a dispute as to the profit costs (charges made by the legal representatives who conducted the litigation) the bill should continue as described below.

After the title and background information, the bill should incorporate a statement of the status of the fee earners in respect of whom profit costs are claimed, the rates claimed for each such person and a brief explanation of any agreement or arrangement between the receiving party and their legal representatives which affects the costs claimed in the bill.

It is then convenient to divide the paper into several columns headed as follows: item number, date and description of work done, VAT, disbursements, profit costs.

The bill should conclude with a summary showing the total costs claimed and with such of the certificates made by or on behalf of the receiving party as are relevant (see further, paragraph 8.6 below).

8.3 Dividing bills of costs into separate parts

Sometimes it is necessary or convenient to divide the bill containing the items of costs into separate parts, numbered consecutively. For example, division into parts is necessary where there has been a change of solicitor, or where there has been some other change in the funding arrangements (e.g. to show costs incurred before, during and after the currency of legal aid funding) to show costs claimed under different orders against different paying parties and to show costs before and after a change in the rate of VAT. (For a more comprehensive list see the Part 47 Practice Direction (para 5.8)).

Where the case commenced on or after 1 April 2013, and the bill covers costs for work done both before and after that date, and the costs are to be assessed on the standard basis, the bill must be divided into parts to distinguish between costs incurred for work done before 1 April 2013 and costs incurred after that date.

Where a Costs Management Order has been made, the costs are to be assessed on the standard basis, and the receiving party's budget has been agreed by the paying party or approved by the court, the bill must be divided into separate parts so as to distinguish between the costs claimed for each phase of the last approved or agreed budget, and within each such part of the bill must distinguish between the costs shown as incurred in the last agreed or approved budget and the costs shown as estimated.

Where a Costs Management Order has been made, the costs of initially completing Precedent H and the other costs of the budgeting and costs management process must be set out in separate parts.

Where a bill of costs is divided into parts, the summary at its conclusion must give totals for each part.

8.4 Dividing each part into separate items

In each part of a bill all the items claimed must be consecutively numbered and must be divided under such of the following heads as may be appropriate:

(1) Attendances on the court and counsel, in chronological order, 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 officers 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 which is not already covered in any of the heads listed above.

In the list of items above, “attendances” includes interviews and meetings and “communications” covers letters and e-mails sent and telephone calls.

In each part of a bill which claims items under head (1) (attendances on court and counsel) a note should be made setting out, in chronological order with dates, all the relevant events in the proceedings including events which do not constitute chargeable items and including all orders for costs which the Court has made (whether or not a claim is made in respect of those costs in this bill). Note that head (1) covers only attendances on the court and counsel. Communications with the court and counsel fall within head (6).

Under heads (2) to (10), claims in respect of routine communications should be claimed as a single amount at the end of each head (e.g. “29 routine letters out at £x each and 8 routine telephone calls at £y each ... £z”). If the number of attendances and non- routine communications under a head is less than 20, each of them should be set out, in chronological order with dates. However, if under any head the number of attendances and non-routine communications amount to 20 or more, the claim for the cost of those items in that part of the bill should be for the total only and should refer to a schedule in which the full record of dates and details is set out. Where bills contain more than one schedule, each schedule should be numbered consecutively.

See the Part 47 Practice Direction (para 5.22) for guidance on matters such as the court’s normal time allowance for routine items, treatment of electronic communications, local travelling expenses and photocopying costs.

8.5 Model forms of paper bills of costs

The Part 47 Practice Direction refers to the schedule of costs precedents which contains model forms of paper bills of costs. The use of one of the model forms is not compulsory but is recommended for paper bills and, when a different form is used, a short explanation of why it has been adopted should appear in the narrative towards the beginning.

Precedent A is the model which is most frequently used in practice (see Appendix A).

8.6 Certificates

The final part of the bill of costs should contain such of the prescribed certificates as are appropriate to the case and then the signature of the receiving party or their legal representative. These certificates give information on matters such as any rulings made as to entitlement to interest on costs, any payments made by the paying party on account of costs included in the bill and as to the receiving party's entitlement to recover VAT from the paying party on the costs claimed. (For the text of the certificates see Appendix F).

8.7 Electronic copies of paper bills

If a paper bill of costs is capable of being copied electronically, the paying party is entitled to request an electronic copy free of charge (Part 47 Practice Direction (para 5.6)).

Section 9 - The electronic bill

9.1 The introduction of the electronic bill

In October and November 2017 CPR 47 and the Part 47 Practice Direction were amended to provide that in all CPR Part 7 multitrack claims (except where the proceedings are subject to fixed costs or scale costs, the receiving party is a Litigant in Person or the court has otherwise ordered) Bills of Costs for costs recoverable between the parties must, for all work undertaken after 6 April 2018, be presented in electronic spreadsheet format, capable of producing essential summaries and performing essential functions compatible with Precedent S, annexed to the Part 47 Practice Direction.

Where the new provisions apply but work was done both before and after 6 April 2018, a party may serve and file either a paper bill or an electronic bill in respect of work done before that date but must serve and file an electronic bill in respect of work done after that date.

In all other circumstances bills of costs may be in the prescribed electronic form or on paper, as the receiving party prefers.

9.2 The Jackson Report and Precedent S

Jackson LJ's final report on civil costs, in January 2010, recommended a new format of bills of costs should be devised, which would be more informative and capable of yielding information at different levels of generality.

Software should be developed which would (a) be used for time recording and capturing relevant information and (b) automatically generate schedules for summary assessment or bills for detailed assessment as and when required. The long-term aim was to harmonise the procedures and systems used for costs budgeting, costs management, summary assessment and detailed assessment.

Jackson LJ set out specific criteria for a new bill format. In contrast to bills in the present format ("which are turgid to read and present no clear overall picture") the bill should provide a more transparent explanation about the work done in various time periods and why it was done. It should offer a user-friendly synopsis of the work done, how long it took and why. It should be inexpensive to prepare (hence the proposal for automatic generation).

Bills should be prepared by reference to phases, tasks and activities (the structure since adopted in Precedent H for budgeting purposes), summarising costs and disbursements by task and phase and setting out tasks in each phase in chronological order.

The Hutton Committee was created to devise a new form of bill, capable of being completed either manually or (preferably) automatically. To meet the Jackson criteria, the bill had to offer "high-level" summaries of the costs claimed along with the facility to "drill down" into as much detail as may be needed for detailed assessment.

This evolved through pilot schemes to become Precedent S, a bill in the form of a self-calculating spreadsheet incorporating the phase/task/activity structure. A link to a working spreadsheet Precedent S with sample data, can be found in the Appendix.

9.3 Phases, tasks, activities, standardised time recording and spreadsheets

Precedent S is intended, as Jackson LJ envisaged, to be completed automatically from electronic records, so ending the current labour-intensive practice of manually preparing bills without reference to existing electronic records.

A full list of phases, tasks and activities appears at Schedule 2 to the Part 47 Practice Direction. Since 2013, practitioners in costs managed cases have been required to aggregate costs information into the 10 phases set by Precedent H. Schedule 2 to the Part 47 Practice Direction recognises five more possible phases: interim applications (provided for by contingencies in precedent H), funding, budgeting, stand-alone costs management conferences and costs assessment.

Each phase includes defined tasks (for example, within the “Initial and Pre-Action Protocol Work” phase, “Factual investigation”). There are 41 tasks in total.

There are 10 activities such as “Appear for/Attend”, “Communicate (with client)” and “Billable travel time”. They are common to all tasks and phases.

The Part 47 Practice Direction does not require that a bill be in the form of Precedent S. It requires that the bill is in spreadsheet format and performs the same essential functions as Precedent S. It should, accordingly, report and aggregate costs based on the phases, tasks, activities and expenses defined in Schedule 2; offer summary totals in a form comparable to Precedent S; allow the user to identify, in chronological order, the detail of all work undertaken in each phase; automatically recalculate intermediate and overall summary totals if input data is changed; and contain all calculations and reference formulae in a transparent manner so as to make its full functionality available to the court and all other parties.

9.4 The content of Precedent S

Precedent S comprises a series of “worksheets” (spreadsheet pages) containing, apart from familiar items such as the cover sheet and certificates, summaries designed to facilitate negotiation, assessment and budget comparison, supported by full details of the costs claimed.

Each worksheet is divided into “cells”, into which the figures making up the bill are entered. Spreadsheet cells can interact with each other to perform complex calculations: built-in mathematical formulae and “pivot tables” (summaries automatically derived from the detailed data entered into the spreadsheet) ensure that adjustments made to the detail of the bill, whether on assessment or for the purposes of negotiation, feed through to the

summaries, disposing of the need for manual recalculation of the bill on assessment or in negotiation.

Precedent S is not tied to any proprietary format: any spreadsheet format in use since about 2007 should be capable of performing its built-in functions.

Spreadsheets place more emphasis on function, and less on presentation and printing, than do word processing applications. The new bill format has been designed to cope with the largest bills of costs and it may be impracticable to print out the full detail of a large bill and to work on that detail on paper. It is designed for management on screen. Spreadsheets are however designed to present very large amounts of information in any number of ways, in as much or as little detail as is needed. Once familiar with the bill's structure and with certain spreadsheet management techniques parties and judges can navigate through the bill, cut worksheets down to size, isolate required information, make unwanted information disappear, address the issues in dispute and have the bill automatically perform such calculations as may be required for the purposes of assessment.

Only the worksheet containing the full bill detail should prove impracticable to print. The summaries can be printed, and a reduced, printable version of the bill detail is included in Precedent S for the purposes of physical (as opposed to electronic) service.

9.5 The structure of Precedent S

Precedent S comprises 17 worksheets, the last three of which contain only reference data. This is a short summary of the content and some of the uses of the 14 "active" worksheets shown in the working "example data" version of Precedent S included with the online version of the Part 47 Practice Direction, which can be selected and worked through on screen.

Worksheets 1 and 2

These are the bill's cover sheet and certificates.

Worksheet 3: Synopsis

Worksheet 3 is reserved for the "synopsis" of the case.

Worksheet 4: Chronology

Worksheet 4 is reserved for a chronology of the litigation. The spreadsheet format does not lend itself to the incorporation of a chronology within the body of the bill.

Worksheet 5: Legal team and rates

Worksheet 5 provides details of the receiving party's legal team ("LTM" = legal team member), each team member's hourly charging rates for given periods and, given that counsel's fees are to be treated as a disbursement, any success fee applicable to counsel's fees (solicitors' success fees are recorded elsewhere).

This is the first worksheet from which changes by the parties in negotiation or by the assessing judge, for example to a solicitor's hourly rate, will feed through to the relevant parts of the bill. In cases where a Costs Management Order has been made, a receiving party preparing the bill may wish to make separate provision for the hourly rates claimed for

budgeted and non-budgeted costs, so as to avoid any reduction in the hourly rates for non-budgeted costs being applied automatically to both.

Worksheet 6: The funding and parts table

The Funding and Parts Table allows the bill to perform calculations which in paper bills can only be performed by physical division of the bill into parts. Where for example different VAT rates apply during periods covered by the bill, an identification code ("Part ID") will

be created for each relevant period and entered in the Funding and Parts Table. Those drawing up the bill will apply the appropriate code to each item of cost. The bill will then automatically calculate the correct VAT rate on each item and send that to the summaries. If individual items are adjusted on assessment, the VAT will be recalculated automatically.

Similarly, if a success fee applies only to a given period the bill will automatically apply the success fee to appropriate items and include the correct total success fee in the bill summaries. If the parties or the assessing judge adjust either individual entries or the overall success fee (the latter can be done simply by changing the level of success fee shown in the Funding and Parts Table) the bill will recalculate accordingly.

Worksheet 7: Summarily assessed costs

This shows all costs awarded to the receiving party on summary assessment. The bill calculates any success fees due on those costs (and the VAT on those success fees) and sends them on to the appropriate summaries.

Worksheet 8: Main summary by phase

This worksheet summarises base costs and disbursements by phase. These summaries are pivot tables, derived from the information entered elsewhere in the bill.

To demonstrate the way in which the bill recalculates summaries when individual items change, one can note the summary of the total bill at worksheet 8, then return to worksheet 5 (Legal Team and Rates) and change any of the hourly rates. Using the spreadsheet's "data/refresh" function (this may vary depending upon the type and design of spreadsheet) will automatically update the profit costs and bill totals at spreadsheet 8.

Worksheet 9: Summary by task, activity and expenses

This worksheet provides a detailed summary of the base costs claimed broken down into task, activity and disbursement. Users can use the + buttons to "drill down" to identify the work done by each grade of fee earner. This summary, showing in one place (unlike the current bill format) who spent how much time on what, should provide a valuable focus for negotiation.

Worksheet 10: Budget comparison

This worksheet summarises the costs claimed under each phase and (where appropriate) contingency against the last approved or agreed budget, identifying departures from the budget.

Worksheet 11: Main summary by part

This worksheet replaces the summary currently shown for each part of any paper bill divided into parts.

Worksheet 12: Summary of communications

Filtering is a useful function of the spreadsheet, allowing the information shown to be limited to an area under discussion. This summary, for example, can be filtered to identify and assess email communications with a given party.

Relevant worksheet columns are headed (just below and to the right of the description of the column's contents) by a small grey arrow pointing down. Left - clicking on the arrow offers filtering options. Here for example, at column C, the filter may be applied to show only communications with the client. At column D a filter may be applied to reduce that, again, to email communications.

There are a number of ways to remove the filters once they are no longer of use. One is to right-click on each arrow again and click "select all". Most spreadsheet formats will also have a quick procedure for the immediate removal of all filters from a given worksheet.

You could use the "back" button, provided you do not inadvertently undo any changes you have made.

Worksheet 13: Bill detail (print version)

This is a reduced version of the full bill detail worksheet 14 (see below), suitable for printing and designed for service of a paper copy of the bill.

Worksheet 14: The bill detail

The parties, on assessment, may well have to spend much time on this page, containing as it does the detail of every time entry and disbursement. This is also where adjustments should be made on assessment (overwriting the summaries on other pages may erase the bill's built-in formulae and stop it functioning as it should).

The court is however only likely to need to consider a few of its columns and the filtering techniques explored below can be used to isolate, from the mass of detail, the relevant information needed for decisions to be made and carried through to the bill's summaries.

Users may also find it useful to "hide" the columns in any worksheet that are of no immediate use. On assessment, the columns of most importance will usually be:

Column D - Date the work was undertaken

Column E - The description of the work undertaken

Columns F - The Legal Team Member

Columns G and H - The time spent and whether it is estimated.

Column T - The external party name, if any

Other columns, however, may assist when it comes to isolating work that is in issue. Filtering is likely to be particularly useful in worksheet 14 and here the phase, task and activity columns may assist.

Here are some examples.

The filter arrow at column D can be used to put every individual item in the bill into date order, earliest first. To see, in date order, all the work undertaken within the disclosure phase (phase 4 - see Schedule 2 to the Part 47 Practice Direction) the filter arrow at column N can then be used to select “P4” only.

Further filtering at column F can then isolate, in date order, all the time spent by Mr Taylor, a fee earner shown in the bill as WT1 and WT2 (depending on hourly rate) during the disclosure phase. That can be filtered further, for example using the filter arrow at column P to select activity A10 (“Plan, Prepare, Draft, Review”- Schedule 2) to identify all document time claimed by Mr Taylor on disclosure. Further filtering by reference to task, in column O, can identify document time spent by Mr Taylor on his own client’s or other parties’ disclosure. The “description of work” at column E will show, in each instance, exactly what was done.

Starting instead by using only the filter arrow at column P to select activity A10 will produce a traditional “documents schedule” in date order, should that be desired. Further filtering can then isolate useful information: for example, using the filter arrow at column F will show, in date order, all the document time spent by Mr Taylor, which can be filtered further, e.g. by phase or task, if desired.

Alternatively the user could start at column F, to view only the time spent by Mr Taylor throughout the case. Further filters can be used at column O (task) to see how much of his time was spent in relation to taking, preparing and finalising witness statements (task T13) and again at column P (activity) to see how much of that time was spent drafting (activity A10).

During this process, time shown can be disallowed or reduced and the bill’s “data/refresh” or (depending on the design of the spreadsheet) similar updating function will recalculate the summaries to reflect the decisions made.

N.B. to illustrate the tie-in with Schedule 2 to the Part 47 Practice Direction the above examples use filters in the Phase, Task and Activity “Code” columns N, O and P to isolate relevant phase/task/activity information. Should the user find it cumbersome to cross-refer to Schedule 2 to identify phase, task and activity codes the same results can be achieved by filtering the Phase, Task and Activity “Name” columns Y, Z and AA.

Worksheets 15 to 17

These worksheets contain reference data and will not be needed on assessment.

9.6 Form and procedure

The requirements of the Part 47 Practice Direction summarised in section 8 of this Guide (paper bills) continue to apply to electronic bills to the extent that they are not incompatible with the specific provisions introduced, in November 2017, for electronic bills, though in provisional assessments it is not necessary to file more than one paper copy of an electronic bill.

When electronic bills are served or filed at the court, they must be served or filed in hard copy, in a manageable paper format as shown in the pdf version of Precedent S referred to

at paragraph 5.A1 of the Part 47 Practice Direction. The word “manageable” refers, for example, to the fact that it may be impracticable to print the full bill detail at page 14, so that the “print version” at page 13 should be used instead.

A pdf copy of Precedent S is included with the online version of the Part 47 Practice Direction but any accurate, manageable printed copy will be acceptable. A copy of the full electronic spreadsheet version must at the same time be provided to the paying party and filed at the court by email or other electronic means. The email address for filing electronic bills at the SCCO is sccoebills@justice.gov.uk

Where the Part 47 Practice Direction requires or recommends division of a paper bill into parts, electronic bills (unless the format of the bill already provides the requisite information, for example in identifying the costs within each phase) should incorporate a summary in a form comparable to the “Funding and Parts Table” in Precedent S to provide the information that would otherwise be provided by its division into parts.

The requirement, where a costs management order has been made, to file and serve a breakdown of the costs claimed for each phase of the proceedings is not required if the same information is already fully provided in an electronic bill.

9.7 Legal Aid

The use of electronic bills is not required other than for costs recoverable between the parties in the categories of cases specified in the Part 47 Practice Direction.

Where costs are recoverable both against another party and against the Legal Aid Agency or Lord Chancellor the solicitor of the assisted person or legally aided client or person to whom civil legal services are provided is required by the Part 47 Practice Direction (para 13.2) to file a legal aid schedule. If an electronic bill of costs is served on the other person an electronic schedule of the costs recoverable against the Legal Aid Agency or Lord Chancellor may be prepared and filed as if it were an electronic bill.

The electronic schedule must (as with a paper schedule) set out by reference to the item numbers in the bill of costs, all the costs claimed as payable by another person, but the arithmetic in the schedule should claim those items at prescribed rates only (with or without any claim for enhancement).

Paper schedules are required to be divided so as to correspond with any divisions in the bill of costs and, where there has been a change in the prescribed rates during the period covered by the bill of costs, so as to deal separately with each change of rate. If

the schedule is an electronic schedule, unless the format of the schedule already provides the requisite information it should incorporate a summary in a form comparable to the “Funding and Parts Table” in Precedent S to provide the information that would otherwise be provided by its division into parts.

Part B
Detailed assessment proceedings



Section 10 - Commencement of detailed assessment proceedings

10.1 Earliest time for commencement

Except where a summary assessment is carried out by the court, costs payable between the parties are not assessed until the conclusion of the proceedings out of which the order for costs arises, unless the court expressly orders an earlier detailed assessment (CPR 47.1). A Costs Judge or District Judge may make an order allowing detailed assessment proceedings to be commenced where there is no realistic prospect of the claim continuing (Part 47 Practice Direction, para 1.4). The court may order or the parties may agree in writing that, although the proceedings are continuing, they will nevertheless be treated as concluded (Part 47 Practice Direction para 1.2.)

Similarly, where costs are payable by the Legal Aid Agency, detailed assessment should not be sought until the conclusion of the proceedings or until the discharge of the civil legal aid certificate.

Costs payable to solicitors by their clients are assessed if and when an order for detailed assessment is made (see further Section 26).

An appeal against an order for costs or an order for detailed assessment does not by itself operate as a stay of those proceedings unless the court so orders (CPR 47.2). An application for such a stay may be made either to the court whose order is being appealed or to the court which will hear the appeal.

10.2 Latest time for commencement

Detailed assessment proceedings must be commenced within three months after the judgment, order or event giving rise to the right to costs (CPR 47.7). Regulation 13(2) of the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005 reduces the time limit to two months in civil recovery proceedings. The parties may agree between themselves to extend or shorten the time specified by the rule for commencing detailed assessment proceedings. A party may apply to the appropriate office (see 10.7 below) for an order to extend or shorten the period of three months, but permission is not required to commence detailed assessment proceedings out of time.

If the receiving party fails to commence detailed assessment proceedings within the period specified by the rule, or by order of the court, the paying party may apply for an order under CPR 47.8(1) requiring the receiving party to commence the proceedings within a specified time. The court may direct that unless the receiving party does commence the detailed assessment proceedings within the time specified by the court, all or part of the costs will be disallowed.

Where the receiving party commences proceedings for detailed assessment out of time but the paying party has not made an application under CPR 47.8(1), the court may disallow all or part of the interest otherwise payable to the receiving party but the court will not impose any other sanction unless there has been misconduct (CPR 47.8(3)).

10.3 Serving a notice of commencement

Detailed assessment proceedings in respect of an order for costs between the parties are commenced by the receiving party serving on the paying party a notice of commencement in Form N252 and a copy of the bill of costs. The notice of commencement must be completed to show the total amount of costs claimed in the bill and the extra sum which will be payable by way of fixed costs and court fees if a default costs certificate is obtained (CPR 47.6).

The notice of commencement must be served on the paying party and on any other relevant persons, i.e.,

(i) any person who has taken part in the proceedings which gave rise to the assessment and who is directly liable under an order for costs that has been made;

(ii) any person who has given to the receiving party notice in writing that he has a financial interest in the outcome of the assessment and wishes to be a party accordingly;

(iii) any other person whom the court orders to be treated as a relevant person (Part 47 Practice Direction para 5.5).

10.4 Documents to accompany the notice of commencement

The receiving party must serve, in addition to the notice of commencement and the bill of costs, copies of the fee notes of counsel and of any expert, in respect of fees claimed in the bill, written evidence as to any other disbursement claimed which exceeds £500, and a statement of parties giving the name and address for service of any person upon whom the receiving party intends to serve the notice of commencement (Part 47 Practice Direction (para 5.2)).

If a costs management order has been made the receiving party must also serve a breakdown of the costs claimed for each phase of the proceedings (Part 47 Practice Direction (para 5.2)). Precedent Q is a model form of breakdown of the costs and is found in the Schedule of Costs Precedents (Practice Direction to Part 47) and in the Appendix to this guide.

10.5 Procedure where costs are agreed

If the paying party and the receiving party agree the amount of costs, either may apply for a costs certificate (either interim or final) in the amount agreed (see Section 20.4).

10.6 Cases in which notices of commencement are unnecessary

In the following cases detailed assessment proceedings are commenced by the filing in court of a request for a detailed assessment hearing:

(i) costs of a party funded by legal aid which are payable only by the Legal Aid Agency (CPR 47.18 and see Form N258A).

(ii) Costs payable out of a fund other than the Legal Aid Fund (CPR 47.19 and see Form N258B).

(iii) Costs to be assessed pursuant to an order under Part III of the Solicitors Act 1974 (CPR 46.9 and see Form N258C).

In these cases there is no requirement to serve a notice of commencement on any party and there is no entitlement to the issue of a default costs certificate in respect of the assessment.

10.7 Venue for detailed assessment proceedings

The Part 47 Practice Direction (para 4.1) supplements CPR 47.4 and defines the "appropriate office" where all applications and requests in detailed assessment proceedings must be made or filed.

The District Registry or the County Court hearing centre in which the case was being dealt with when the judgment or order was made or to which the case was subsequently transferred is the appropriate office. Where the County Court hearing centre is one of the courts in the Greater London area, the appropriate office is the SCCO. For a full list of those County Court hearing centres in the Greater London area, see Part 47 Practice Direction (para. 4.2(1)).

Where a tribunal, person or other body makes an order for detailed assessment, the appropriate office is a County Court hearing centre other than a County Court hearing centre in the Greater London area. For all other cases, including Court of Appeal cases, the appropriate office is the SCCO.

Default costs certificates should be issued and applications to set aside default costs certificates should be issued and heard in the relevant County Court hearing centre (including those within the Greater London area).

Section 11 - Points of dispute and reply

11.1 Time for points of dispute and consequences of not serving

Any party served with notice of commencement and the bill of costs may dispute any item in the bill by serving points of dispute on the receiving party and every other party to the detailed assessment proceedings. This must be done within 21 days after the date of service of the notice of commencement (CPR 47.9(2)), unless the parties agree to extend or shorten the time specified by the rule. A party may apply to the court for the time to be extended or shortened.

Where a notice of commencement is served on a party outside England and Wales the period within which that party should serve points of dispute is to be calculated by reference to CPR Part 6 Section IV (special provisions about service out of the jurisdiction) as if the notice of commencement was a claim form and as if the period for serving points of dispute were the period for filing a defence.

A receiving party who is not served with any points of dispute and the period for doing so has expired, may apply for a default costs certificate (see Section 21).

11.2 Form and contents of points of dispute

Points of dispute should be short and to the point and should follow as closely as possible Precedent G of the Schedule of Costs Precedents annexed to the Part 47 Practice Direction. (See Appendix G and *Ainsworth v Stewarts Law LLP* [2020] EWCA Civ 178).

If there are any matters of principle which require decision before individual items in the bill are addressed, these should be identified and then any specific points should be set out, stating concisely the nature and grounds of dispute. Once a point has been made it should not be repeated but the item numbers where the point arises should be inserted in the left hand box as shown in Precedent G.

Points of Dispute prepared in response to electronic bills should, so far as practicable, categorise the items objected to (for example by reference to particular Legal Team Members, tasks, activities, or communications) so as to enable the court to use the bill's filtering function to isolate those items and make decisions quickly and efficiently. If the points of dispute do not do this, the court may, in the exercise of its case management powers, order them to be redrawn to avoid a disproportionately long and expensive assessment exercise.

The paying party must state in an open letter accompanying the points of dispute, what sum, if any, that party offers to pay in settlement of the total costs claimed. The paying party may also make an offer under Part 36 (CPR 47.20).

11.3 Time limit for replies and their format

On receipt of points of dispute, the receiving party may serve a reply within the next 21 days. There is no obligation on a receiving party to serve a reply.

A reply must be limited to points of principle and concessions only and should not contain general denials, specific denials or standard form responses (Part 47 Practice Direction, (para. 12.1)).

Whenever practicable, the reply must be set out in the form of Precedent G (Part 47 Practice Direction (para. 12.2)).

Section 12 - Requests for a detailed assessment hearing

12.1 Forms of request

There are four forms of request:

(i) N258: request for detailed assessment hearing (general form).

(ii) N258A: request for detailed assessment (legal aid only).

(iii) N258B: request for detailed assessment (costs payable out of a fund other than the Legal Aid Fund).

(iv) N258C: request for detailed assessment hearing pursuant to an order under Part III of the Solicitors Act 1974.

The request should be filed in the District Registry or County Court in which the case was being dealt with when the judgment or order for costs was made or when the event occurred which gave rise to the right to assessment, or to which it has subsequently been transferred; in all other cases the request must be filed in the SCCO (CPR 47.4).

Special provisions apply to cases proceeding in the London County Courts (see under the following heading).

In cases in which Form N258 is appropriate, the request should be filed within six months after the judgment, order or event giving rise to the right to costs. In cases in which any of the other three forms of request is appropriate, the request should be filed within three months after the judgment, order or event giving rise to the right to costs. As to the making of agreements or applications for an extension of this time limit, see section 20 (applications).

12.2 Detailed assessment by the SCCO of the costs of proceedings in the County Court in London

Where there is an order or judgment for costs in civil proceedings in the courts listed below, or the case was being dealt with by that court when the event occurred that gave rise to the right to assessment (or was transferred to it subsequently), the receiving party must file the request for detailed assessment in the SCCO. All applications and requests must be made there. The relevant courts are: Barnet, Brentford, Bromley, Central London, Clerkenwell and Shoreditch, Croydon, Edmonton, Ilford, Kingston, Mayors and City of London, Romford, Uxbridge, Wandsworth and Willesden.

12.3 Documents to accompany the request

Each form of request contains a series of tick boxes which give guidance as to the documents which should accompany the request. Litigants and their representatives should refer to the full list of documents which is set out in the Part 47 Practice Direction (para 13.2.)

The need to pay a fee or seek remission when filing a request is dealt with in Section 4.3.

12.4 Allocation to a Costs Officer or Costs Judge

As a general rule, bills not exceeding £50,000 (excluding VAT) will be allocated to a Costs Officer. Larger bills will be allocated to a Costs Judge. Costs Judges also assess bills with a value below £50,000, excluding VAT, where they are linked to other bills which exceed that sum, involve complex legal argument, or involve an assessment under the Solicitors Act 1974. Where the total costs claimed in a bill between parties do not exceed £75,000 the bill will be assessed provisionally (see Section 13).

On receipt of a form of request for a detailed assessment hearing, duly completed, the court clerk will enter the case on the court's case management system, give it a reference number and then assign the case to a Costs Officer or Costs Judge. The court clerk will then prepare an acknowledgment of the request which gives details of the reference number and the Costs Officer or Costs Judge to whom it has been assigned.

Where the parties are agreed that the detailed assessment should not be made by a Costs Officer the receiving party should so inform the court clerk when filing the request. The court clerk will then assign the case to a Costs Judge.

After a case has been assigned to a Costs Officer, a party who objects to the detailed assessment being made by a Costs Officer must apply to a Costs Judge under CPR 23 setting out the reasons for the objection. If sufficient reason is shown the court will direct that the bill should be assessed by a Costs Judge.

12.5 Fixing the date for the detailed assessment hearing

On receipt of the request for a detailed assessment hearing, except where the bill is to be assessed provisionally (see Section 13), the court will fix a date for the detailed assessment hearing, or, if the costs officer or Costs Judge so decides, will give directions or fix a date for the first appointment.

The court will give at least 14 days' notice of the time and place of the detailed assessment hearing to every person whose name and address appears on the statement of persons to whom notice should be given which accompanies the request. If the case settles before the hearing the parties should notify the court immediately, preferably by email.

Listing times vary according to the numbers of cases received and the resources available to the court. Historically cases assigned to costs officers have usually been given a date for hearing not more than 12 weeks later than the date the request for a hearing was filed.

Cases assigned to Costs Judges have usually been given a date for hearing not more than eight months later than the date upon which the request for a hearing was filed. When filing the request, the receiving party should also file a note of any dates upon which, to the knowledge of that party, a detailed assessment hearing would be inconvenient for any party likely to attend.

As to the making of an application to change the date for hearing once fixed, see section 20 (applications).

Section 13 - Provisional assessment of bills not exceeding £75,000

13.1 Provisional assessment generally

Where the costs claimed in a between the parties bill do not exceed the amount specified in the Part 47 Practice Direction (para 14.1), currently £75,000, the bill will be referred for provisional assessment by either a Costs Officer or a Costs Judge, unless the Court decides that it is unsuitable for provisional assessment. In a provisional assessment the Court will, in the first instance, assess the bill without an oral hearing. If a party wishes to challenge any of the decisions made on the provisional assessment that party must request an oral hearing within 21 days of receiving notice of the provisional assessment. If no request is made within that period the decisions made on the provisional assessment will, save in exceptional circumstances, be binding on the parties.

13.2 Requesting an assessment

When the receiving party files a request for a detailed assessment of a bill not exceeding £75,000, that party must also file the documents listed in the Part 47 Practice Direction (para 14.3) namely:

(a) the request in Form N258;
(b) the documents listed in the Part 47 Practice Direction at paragraphs 8.3 (open offers) and 13.2 (documents to accompany N258);
(c) an additional copy of the bill;
(d) a statement of the costs claimed in respect of the detailed assessment proceedings (drawn on the basis that there will be no oral hearing following the provisional assessment);
(e) the offers made (those marked “without prejudice save as to costs” or made under Part 36 must be contained in a sealed envelope marked “Part 36 or similar offers”, but not indicating which party or parties have made them);
(f) a copy of the points of dispute and any reply in the form of Precedent G. Parties are invited to supply the court with an email address to which details of the provisional assessment may be sent and, where supplied, these should be set out in the statement of parties (required by the Part 47 Practice Direction (para 13.2(j))).

In the SCCO the request for detailed assessment must be electronically filed (please see 1.5).

The Costs Judge or Costs Officer will have regard to the papers filed in support of the bill (that is, the papers listed in the Part 47 Practice Direction (para 13.12)) when conducting the provisional assessment. They may request additional documents from the receiving party in order to deal with a particular point.

The court may give notice of the date on which the bill is intended to be provisionally assessed. However, the parties should not attend on that date. The court will use its best endeavours to undertake a provisional assessment within 6 weeks.

An application for an interim costs certificate which is made in a case proceeding to a provisional assessment will not be listed for hearing on a date before the provisional assessment takes place unless some good reason for such an early listing is shown.

13.3 After the provisional assessment

The court will record the decisions made on the provisional assessment either on Precedent G (the points of dispute and any reply) or on the bill or both and copies will be sent to the parties. Where possible the court will send the copies electronically to the email addresses provided in the statement of parties.

Within 14 days of receipt of the marked Precedent G (or the bill where the decisions have been recorded on the bill) the parties must agree the total sum due to the receiving party on the basis of the court's decisions. If they cannot agree the arithmetic, they must refer the dispute to the court for a determination on the basis of written submissions.

If a party wishes to make submissions as to the order to be made in respect of the costs of the provisional assessment, the court will invite each party to make written submissions and the question of what costs order should be made will be determined without a hearing.

In proceedings which do not go beyond provisional assessment, the maximum amount the court will award to any party as costs of the assessment is £1,500 together with any VAT payable and any court fees paid by that party.

13.4 Procedure if a party wishes to challenge any aspect of the provisional assessment

The court will send to each party with the provisionally assessed bill or Precedent G a notice stating that any party who wishes to challenge any of the decisions made by the court on the provisional assessment must file and serve on all other parties a written request for an oral hearing within 21 days of receipt of the notice. If no request is filed within that period the provisional assessment will be binding upon the parties, save in exceptional circumstances.

The written request must identify the item(s) which the requesting party wishes to challenge and provide a time estimate for the hearing. The court will give at least 14 days' notice of the hearing.

Unless the court orders otherwise, the party who has requested the hearing will pay the costs of and incidental to the hearing unless that party achieves an adjustment in its own favour by 20 per cent or more of the sum provisionally assessed.

Section 14 - Lodging and removing documents for hearings

14.1 Introduction

Documents in support of the receiving party's bill of costs may be lodged with the court either electronically or in paper form. The SCCO encourages the use of electronic bundles of documents whether or not the party's legal representatives have been working paperlessly.

14.2 Lodging the core bundle

Whether the supporting papers are being lodged electronically or on paper, there needs to be a core bundle of documents filed electronically in accordance with the Part 51O Practice Direction (paragraph 10). For the purposes of that paragraph, the detailed assessment should be considered to be an application.

The practice direction also requires a paper copy to be filed with the court. That is not the case in the SCCO, unless the Costs Judge gives a direction for a paper bundle.

The bundle must be a single pdf document with bookmarks as appropriate to locate documents and it must be the subject of optical character recognition.

14.3 Lodging other supporting papers electronically

Papers in support of bills of costs are to be lodged with the court no later than seven days (nor more than fourteen days) before the hearing.

There are three ways in which documents in addition to those in the core bundle can be filed electronically with the court.

1. Using CE File in the same way as all other documents including the core bundle have been filed. There is a size limit of 50MB in respect of any one document. Up to 10 documents may be filed on CE File in any filing (with each one not exceeding 50MB).

2. Using the HMCTS document upload centre. This requires the permission of the court but where granted, it enables professional court users to upload documents of any size for use at a hearing. The documents can only be accessed by the filing party and the court.

3. Using a Third Party online file-sharing platform if the court agrees. Costs Officers are not allowed to access third party systems.

A core bundle is almost always helpful in identifying the most relevant documents. But a single pdf, suitably bookmarked, which includes all the receiving party's documents may take the place of the core bundle in appropriate circumstances.

14.4 Lodging supporting papers other than electronically

A party who wishes to rely on paper documents in support of their bill of costs still needs to file an electronic core bundle (see 14.2).

The remaining papers in support are to be lodged with the court no later than seven days (nor more than fourteen days) before the hearing. If delivered in person, they will be received in room 7.09 in the Thomas More Building.

Papers sent by post or DX will be delivered to the central Post Room of the Royal Courts of Justice. They must be marked clearly with the hearing dates and that the papers relate to hearings in the SCCO. There is no guarantee that papers delivered to the Post Room will be collected by the SCCO on the same day and, as such, papers need to be delivered in good time for all hearings.

14.5 Removing supporting papers

Once the detailed assessment hearing has ended it is the responsibility of the receiving party and of any legal representative appearing for that party to remove any papers lodged in support of the bill. If it is not possible to remove the papers immediately after the hearing they may, by permission of the court, be left with a court clerk for collection at a later date within the next seven days.

14.6 Obtaining papers from other courts

Where the County Court (outside London as defined in the Part 47 Practice Direction (paragraph 4.2)) has directed that the detailed assessment hearing shall be at the SCCO, the County Court will send their court file to the SCCO. The parties will be notified of the transfer and the SCCO reference. All documents that need to be lodged with the court from that point will need to be filed in accordance with the Part 51O Practice Direction.

Where a District Registry transfers the case, there is no court file to be transferred since the District Registry will also be using CE File.

Section 15 - Detailed assessment hearings

15.1 The conduct of the hearing

The general rule is that all hearings are in public (CPR 39.2). However, the court is not required to make special arrangements for accommodating members of the public who wish to attend and, therefore, members of the public have no right to admission if their admission is impracticable. The court may, if appropriate, adjourn the proceedings to a larger room or court in order to make their admission practicable.

A hearing or any part of it may be private, for example if it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality. Other examples are set out in Part 39.2(3). At the start of a public hearing, or during it, either party may request the court to rule that, thereafter, the hearing or part of the hearing should be conducted in private. Any judgment or order given or made in private must be published on the website of the Judiciary of England and Wales (which may be found at www.judiciary.uk) unless and to the extent that the court otherwise directs.

No person other than the receiving party, the paying party and any party who has served points of dispute may be heard at the detailed assessment hearing unless the court gives permission (CPR 47.14(5)). As to the rights of audience of persons claiming to represent such parties, see Section 1.

The court will endeavour to keep the hearing as informal as is consistent with the need to see that justice is done to all parties. The parties are limited to the points of dispute and the replies and are not permitted to introduce fresh points unless the court permits them to do so.

15.2 The decisions made at the hearing

A hearing will usually be recorded digitally by the court. Parties are not permitted to record hearings. A party may obtain a transcript of such a recording on payment of the proper transcribing charges (see Section 4.5). It is still important that the parties and/or their representatives keep a careful note of the submissions and the decisions which are given as the hearing proceeds. Audio recordings are not released to parties or their representatives other than following a formal request for a transcript.

Having considered the evidence, both oral and written, and having heard argument, the court will normally give a decision orally in respect of each item as and when it deals with it. On any complicated matter that may arise, the Costs Officer or Costs Judge may reserve their decision and, if they do so, that decision may be delivered either at a subsequent hearing or in writing.

Often, the final matter dealt with at the hearing is the award of the costs of the detailed assessment proceedings (see Section 16).

Some information about the possibility of bringing an appeal against any decision made, and the time limit in which to do so, is given in Section 30.

15.3 Relevance of costs budgets

When assessing the costs in a case in which a costs management order has been made under CPR 3.18 the court will:

(a) have regard to the receiving party's last approved or agreed budgeted costs for each phase of the proceedings;
(b) not depart from such approved or agreed budgeted costs unless satisfied that there is good reason to do so; and
(c) take into account any comments pursuant to rule 3.17(3) and recorded on the face of the order.

15.4 Hearings outside London

If it is appropriate to do so, arrangements can be made for a Costs Judge to hear a detailed assessment in a court room outside London.

Section 16 - Costs of detailed assessment proceedings

16.1 Entitlement

As a general rule the receiving party is entitled to the costs of the detailed assessment proceedings (CPR 47.20). Special rules are applicable to assessments under the Solicitors Act 1974 (see Section 26), as a result of offers to settle (see under the next heading) and in respect of findings of delay and misconduct (see Sections 24 and 25).

In deciding whether to depart from the general rule, where it applies, the court must have regard to all the circumstances including the conduct of the parties, the amounts, if any by which the bill of costs has been reduced and whether it was reasonable for a party to claim or dispute any item.

The costs of the detailed assessment proceedings are usually assessed summarily at the end of the hearing, but, in an exceptional case, may be subject to detailed assessment at a subsequent hearing.

Where a party entitled to costs is also liable to pay costs, the court has power to assess such costs, set them off and order payment of the balance. The court may also delay the issue of a party's costs certificate pending payment by that party of any amount for which it is liable (CPR 44.12).

16.2 Open offer with points of dispute

The Part 47 Practice Direction (para 8.3) requires the paying party, on serving Points of Dispute to state in an open letter what sum, if any, that party offers to pay in settlement. If no open offer is made, the receiving party may request one in writing and, if it is still not forthcoming, may, if appropriate, apply to the court for an order compelling compliance with the Practice Direction.

16.3 Offers to settle

CPR 36 ("Part 36") applies to detailed assessment proceedings by virtue of CPR 47.20(4). In order to align the terminology in Part 36:

(a) the receiving party = the claimant
(b) the paying party = the defendant
(c) the detailed assessment hearing = the trial
(d) the amount of the bill as assessed = the judgment

The detailed provisions of Part 36 and the accompanying Practice Direction fall outside the scope of this Guide. Any person wishing to make a Part 36 offer should refer to those

provisions (and where applicable CPR 44 Part II and the Practice Direction dealing with Qualified One-Way Costs Shifting). A short summary of the relevant provisions of Part 36 is as follows:

(i) Either party may, at any time, make a formal settlement offer in accordance with Part 36. If the paying party makes such an offer and it is accepted by the receiving party within the specified period for acceptance, the receiving party will also receive the costs of assessment to the date of acceptance.

(ii) If the receiving party does not accept and the bill is assessed at no more than the paying party's Part 36 offer, the normal rule will be that the receiving party must meet the paying party's costs of assessment, with interest, from the end of the specified period for acceptance. If the receiving party accepts the offer after the period for acceptance expires, the receiving party will normally have to pay the paying party's costs from that point.

(iii) If the receiving party makes a Part 36 offer, the paying party does not accept and the bill is assessed at as much as or more than that offer, the paying party will normally have to pay, from the end of the specified period for acceptance, interest at up to 10% above base rate on the bill as assessed, the costs of assessment on the indemnity basis and interest on those costs, again at up to 10% above base rate unless it is established that it is unjust to do so. Similarly, the paying party will have to pay an extra 10% of the bill as assessed (reduced to 5% for any amount over £500,000 and capped at £75,000 in total).

(iv) A Part 36 offer may not be accepted after the commencement of the detailed assessment hearing except by agreement (CPR 36.11(3)).

16.4 Where an offer to settle is accepted

If, because of acceptance, the whole of the detailed assessment proceedings are settled, the receiving party must give notice of that fact to the court immediately, (see Section 1 for details as to how to communicate with the Court).

Once a Part 36 offer is accepted the assessment is stayed and the agreed sum is payable within 14 days. If payment is not made, the receiving party may apply for a final costs certificate for the unpaid sum (CPR 47.20 (4)(d)).

Where the accepted offer was not a Part 36 offer, either party may apply for a costs certificate under CPR 47.10. This should be done by consent, but if necessary, a receiving party can apply for a certificate under CPR 23 (see Section 20).

16.5 Where an offer to settle is not accepted

The existence of a Part 36 Offer (or any other offer to settle, other than an open offer) must not be communicated to the Costs Officer or Costs Judge conducting the hearing until the question of costs of the detailed assessment proceedings falls to be decided.

16.6 Provisional assessments

In provisional assessments (see Section 13) costs awards are limited to £1,500 plus any VAT and the appropriate Court fee. A statement of the receiving party's costs, for provisional assessment purposes, is filed with the bill. Offers must be filed in sealed marked envelopes and considered as necessary at the conclusion of the assessment (see the Part 47 Practice Direction (para 14) and CPR 47.15).

A request for an oral hearing which relates only to the costs of the provisional assessment will be determined on written submissions (Part 47 Practice Direction (para 14.6)), the costs of that procedure being in the court's discretion.

If an assessment hearing is requested, the requesting party must (unless otherwise ordered) achieve an adjustment of at least 20% in its favour, failing which it will bear the costs of and incidental to that hearing (CPR 47.15(10)).

16.7 Fixed costs

CPR 45 makes special provision for cases in which a party is at liberty to seek costs other than the fixed costs provided for by that rule (see, in particular CPR 45.13, CPR 45.29).

Section 17 - Interest on costs

17.1 Entitlement to interest on costs

In respect of costs payable by order and included in a bill of costs for detailed assessment, the receiving party may be entitled to interest under Section 17 of the Judgments Act 1838 or, in County Court cases, under Section 74 of the County Courts Act 1984. If so the entitlement to interest begins on the date upon which the order for costs was made (not the date upon which the costs were assessed). However, under CPR 40.8 and CPR 44.2(6)g the court has power to order interest on costs to run from a date other than the date of judgment.

In respect of the costs of the detailed assessment proceedings, the interest begins to run from the date of the default, interim or final costs certificate, as the case may be. For certificates issued from 1 April 2013, the court may order otherwise under CPR 47.20(6).

In respect of costs payable by contract (e.g. costs payable to a solicitor by a client or former client) the entitlement to interest normally depends upon the terms of that contract. Also, a statutory right to interest may arise under the Solicitors (Non-Contentious Business) Remuneration Order 2009 or the Late Payment of Commercial Debts (Interest) Act 1998.

17.2 Effect on final costs certificates

If the amount of costs payable under an order for costs proceeds to a detailed assessment, the final costs certificate issued will record the date of entitlement to interest and the effect of any rulings which the court has made as to interest. Where a bill of costs 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 into separate parts so as to enable such interest to be calculated. If not so divided the date of entitlement to interest recorded in the certificate will be the latest of the relevant dates.

Only in an exceptional case (e.g. where enforcement proceedings on a final costs certificate are to be taken abroad) will a final costs certificate record the amount of interest accrued up to the date of the certificate and/or the daily rate of interest accruing thereafter. In order to obtain such a certificate, the receiving party should apply, on notice to the paying party, justifying the rate of interest claimed and, where payments on account have been made, explaining the effect which such payments have had on the calculation of interest.

In respect of costs payable to a solicitor by a client or former client the final costs certificate will record neither the date of entitlement to any interest nor the amount of any interest accrued or accruing.

Section 18 - Production of confidential documents in detailed assessment hearings

18.1 Receiving party's duty to lodge documents

Unless the court directs otherwise, the receiving party must file with the court the papers in support of the bill not less than 7 days before the date of a detailed assessment hearing and not more than 14 days before that date.

The Part 47 Practice Direction (para 13.12) gives further details about "*the papers in support of the bill*". In respect of each item of costs claimed in the bill the papers in support include all of the papers relevant to that item, whether they are favourable to the receiving party's case or unfavourable, and whether or not they are confidential or privileged. The lodging of documents as required by the Practice Direction does not amount to a waiver of any privilege in those documents.

18.2 Court's power to order production of documents

Because many of the documents in support of a bill are confidential and/or privileged there is no disclosure stage in detailed assessment hearings as there is in other civil proceedings.

The court may direct the receiving party to produce any document which, in the opinion of the court, is necessary to enable it to reach its decision. These documents will in the first instance be produced to the court, but the court may ask the receiving party to elect whether to disclose the particular document to the paying party in order to rely on the contents of that document, or whether to decline disclosure and instead rely on other evidence (Part 47 Practice Direction (para 13.13)). The court will exercise its discretion to put the receiving party to an election having regard to the requirements of fairness and justice. In particular, it may consider whether the production could be made to the paying party's legal representatives only, and whether any confidential matter which is irrelevant can be excluded from the production. No production of documents is appropriate where the court determines that the point of dispute raised is spurious or vexatious only.

If, in respect of any privileged documents, the receiving party elects to waive its privilege by showing them to the paying party, that waiver is for the purposes of the detailed assessment only. When showing documents to the paying party it may be permissible to blank out parts of the disclosed documents on the ground that they are irrelevant to the issue of costs.

It is standard practice for the client care letter (redacted where appropriate) to be shown to the paying party. The Court of Appeal has held that it should be the usual practice for a

conditional fee agreement (redacted where appropriate) to be disclosed for the purpose of costs proceedings in which a success fee is claimed.

18.3 Avoiding or minimising the expense and delay of production

The production of documents at a detailed assessment hearing may well cause substantial delay to that hearing and may prejudice or embarrass any appeal made in the proceedings in which the costs were awarded or in any similar proceedings between the same parties. Receiving parties should therefore consider in advance what voluntary disclosure to their opponents they are willing to make and how such disclosure can be achieved before the detailed assessment hearing without substantially damaging any privilege they wish to retain. If necessary, directions can be made by consent. Directions can also be made providing split hearing dates or times so as to facilitate the orderly disposal of the points in dispute. If production of documents may substantially prejudice or embarrass any appeal or linked proceedings, orders can be made adjourning the detailed assessment proceedings pending the determination of the other proceedings and directing the payment of interim costs certificates in the meantime.

Section 19 - Final costs certificates

19.1 Completing the bill of costs

At the detailed assessment hearing, the court will note (paper bill) or amend (electronic bill) all items allowed, disallowed or reduced, or direct the parties to make such a note / amendment. Where an electronic bill has been used, the figures allowed should be available immediately.

Where a paper bill has been used, the receiving party must, after the hearing, make clear the correct figures agreed or allowed in respect of each item and re-calculate the summary of the bill. The receiving party must file the completed bill of costs at the SCCO no later than 14 days after the detailed assessment hearing.

The court will issue a final costs certificate and serve it on the parties once a completed bill is filed with the court, unless the court has ordered no certificate be issued until other costs have been paid. The period for filing the completed bill is 14 days after the end of the detailed assessment hearing. When filing the completed bill, the receiving party must also lodge receipted fee notes and accounts in respect of all disbursements. However, there is no obligation to produce receipted fee notes or accounts in respect of disbursements (other than those relating to counsel's fees) which individually do not exceed £500 if the bill includes a certificate that such disbursements have been duly discharged, or where the court has given a direction to dispense with the need to file some or all of the receipted fee notes or accounts.

19.2 Failure to file completed bill of costs

If the receiving party fails to file the completed bill of costs within 14 days of the detailed assessment hearing, the paying party may make an application for such directions as may be appropriate under the court's general powers of management. As to applications generally, see Section 20.

19.3 Effect of final costs certificate

A final costs certificate will include an order to pay the costs to which it relates, unless the court orders otherwise (CPR 47.17).

If the receiving party has failed to comply with the obligation to produce receipted fee notes and receipted accounts in respect of disbursements which have been allowed, the final costs certificate will be for an amount not exceeding the amount (if any) allowed in respect of profit costs and the amount of allowed disbursements in respect of which receipted fee notes or receipted accounts have been produced to the court but only to the extent indicated by those receipts.

As a general rule the amount shown as payable in a final costs certificate will be the amount payable after taking into account the amount payable under any interim certificate already given and/or the amount payable under any order to pay costs on account. However, if the court is satisfied that no payments have been made in respect of previous certificates or orders, the certificate may include an order to pay the gross amount of costs payable. The text of such a certificate should, after stating the amount of the total costs, contain an endorsement such as:

> "and, no sums having been paid under the order of Mr Justice X dated ……, or under the interim certificate issued herein dated …

The paying party must comply with the order for the payment of costs within 14 days of the date of the certificate or within such later date as the court may specify (CPR 44.7).

19.4 Order to stay enforcement

Any application to stay enforcement of an interim or final costs certificate issued by the SCCO must be made to a Costs Judge or to a court which has jurisdiction to enforce the certificate.

19.5 Enforcement of certificate

Proceedings for enforcement of an interim or final costs certificate may not be issued in the SCCO.

Part C
Applications



Section 20 - Applications in detailed assessment proceedings

20.1 Applications generally

Detailed assessment proceedings are commenced by the receiving party serving on the paying party a notice of commencement, a copy of the bill of costs and certain other documents. After that date, and sometimes even before that date, applications relating to the proceedings or intended proceedings can be made by any party.

An application can be made in the Senior Courts Costs Office if that is the “appropriate office” for the purposes of CPR 47.4. In order to make an application, the party must file in court a notice of application, copies of any documents relied on in support and the appropriate court fee, or a fee exemption certificate. CPR 23 sets out general rules about applications.

The notice of application should be in Form N244. Note that the use of such a form and the requirement to pay a court fee may be avoided in some cases: if the SCCO has previously made an order or given directions in the detailed assessment proceedings, that order may include “permission to apply” which entitles the parties seeking a further order or directions to write to the court requesting it to restore the previous application instead of issuing a new one.

20.2 Evidence in support of applications

All evidence relied on in support of an application must be filed at court, ideally at the same time the application notice is filed.

Form N244 requires the applicant to specify the evidence relied on in support of the application. The applicant can rely upon written evidence set out in the notice or in a separate witness statement. In either case such evidence must contain a statement of truth. In a witness statement, the statement of truth is in the following form:

> “I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.”

A similar statement needs to be completed if evidence in the application notice is used. The statement of truth must be signed by the applicant, the litigation friend, or legal representative or witness, as may be.

Other documents, not especially prepared for the purpose of the application, may also be relied on as evidence, eg, copies of letters received and letters sent.

20.3 Examples of the types of applications which may be made

Extension of time for commencing detailed assessment proceedings, serving of points of dispute and extending other time limits

The time limit for commencing detailed assessment proceedings and serving points of dispute is summarised in Sections 10 and 11. The parties may agree to extend this time. Alternatively, the receiving party can make an application for an order extending the time limit. Note that permission to commence detailed assessment proceedings out of time is not required. Note also that failure to serve points of dispute in time may lead to the receiving party obtaining a default costs certificate (as to which see Section 11).

In any case directions of the court may impose further time limits for the taking of certain steps, e.g. the service of witness statements. All these time limits may be extended by the agreement of the parties or, alternatively, by an order made upon an application.

Changing the date fixed for a detailed assessment hearing

A date fixed for the hearing of a detailed assessment cannot be changed or cancelled merely by the agreement of the parties unless the parties agree a compromise and the detailed assessment proceedings are settled. If detailed assessment proceedings are settled the receiving party must give notice of that fact to the court immediately (see Section 1 for details as to how to communicate with the SCCO). In all other cases, if one or all parties wishes to vary a fixed date, they must make an application in Form N244 or request the court to restore a previous application for hearing, if “permission to apply” has previously been given.

Amending bills of costs, points of dispute or replies

If parties wish to vary their bill of costs, points of dispute or reply, an amended or supplementary document must be filed with the court and copies of it must be served on all other relevant parties. Note that permission is not required but the court may later disallow the variation or permit it only upon conditions, including conditions as to the payment of any costs caused or wasted by the variation.

Case management directions

Where appropriate any party can apply for case management directions, for example the exchange of witness statements and attendance for cross examination, or directions concerning the detailed assessment of “linked bills”, ie other bills of costs made in the same proceedings.

In the case of bills of costs exceeding £500,000, timetable directions may be given fixing a series of dates for the detailed assessment hearing. For example, if the estimated hearing time is five days, a one-day appointment may be given for preliminary issues to be resolved, e.g., solicitor’s hourly rates, and all fees claimed in respect of the trial. A further appointment for the remaining points of dispute to be resolved will be listed some weeks later. By determining selected issues at the first appointment, the parties may be able to agree the remaining points so obviating the need for the later appointment.

20.4 Agreed costs certificates

Parties may agree all or part of the costs before or after the court has become involved in the detailed assessment proceedings. An interim or a final certificate can be issued.

In the course of proceedings, a receiving party may claim that the paying party has agreed to pay costs but will neither pay those costs nor join in a consent application. The receiving party may apply under Part 23 for an interim or final certificate to be issued. The application must be supported by evidence and will be dealt with by a Costs Judge.

20.5 Change of legal representative

Where a solicitor's business address has been properly given as the address for service of a party, that solicitor is said to be "on the record" as acting for that party and, as such, will continue to be served with documents and will be expected to attend court hearings until such time as it is "off the record". That will not occur until a notice of change of legal representative is filed by or on behalf of the party pursuant to CPR 42.2, or, in the case of a legally aided party funded case, until the firm files a notice of discharge or revocation of the funding certificate, or until the solicitor obtains an order for the removal of its name from the record pursuant to CPR 42.3.

Often, when legal representatives and their clients part company, the clients do not instruct anyone else to represent them. In that case the former legal representatives will often prepare a notice of change and either obtain their former client's signature to it and file it at court or will send it to the former client for them to sign and file with the court. The former legal representative will usually warn the client that if they (the client) refuse or unreasonably fail to serve and/or file the notice they (the legal representative) will apply for an order that the solicitor has ceased to act together with an order for the costs of the application.

An application for an order declaring that a legal representative has ceased to represent a party should be made under Part 23 and should be supported by evidence. The notice of application and evidence should not be served on other parties to the proceedings but should be served on the former client unless the court directs otherwise.

Applicants for an order declaring that they have ceased to be the legal representative acting for a party should consider whether they wish the application to be dealt with without a hearing. As a general rule the court will make an order without a hearing (adding permission to apply to stay, set aside or vary the order) if satisfied that the application is made by consent, is unopposed or appears overwhelmingly strong.

20.6 Stay of detailed assessment proceedings

The bringing of an appeal against an order for costs does not stay the detailed assessment of those costs unless the court so orders (CPR 47.2). An application to stay the detailed assessment pending an appeal may be made either to the court whose order is being appealed or to the court who will hear the appeal. The application should not normally be made to the SCCO.

20.7 Stay of enforcement of costs certificates

Applications for an order staying enforcement of a default costs certificate, an interim costs certificate or a final costs certificate issued by the SCCO may be made either to the SCCO or to a court which has general jurisdiction to enforce the certificate. In the SCCO the application will be heard by a Costs Judge. The application should usually be accompanied by evidence of the paying party's income, assets, other liabilities and proposals for payment. The usual form of order granting a stay is on terms requiring the paying party to pay off the certified costs by specified instalments.

If the certificate relates to the costs of a County Court case transferred to the SCCO for assessment which nevertheless remains a County Court case, the paying party may, as an alternative to applying for a stay of enforcement, apply to the SCCO or the County Court for an order varying the certificate into an order for payment by instalments. Instalment orders are not commonly made in High Court or Court of Appeal cases.

20.8 Other applications

The sections mentioned below contain notes on the following applications in detailed assessment proceedings:

- for assessment before conclusion of main proceedings (Section 10)
- for an order setting aside a default costs certificate (Section 22)
- for an interim costs certificate (Section 23)
- for permission to appeal (Section 30)
- for correcting accidental slips or omissions in certificates (Section 7)
- for sanctions for failure to commence in time (Section 24), and
- for a wasted costs order (Section 25)

Section 21 - Obtaining a default costs certificate

21.1 When and how to apply

In most cases, the deadline for serving points of dispute is 21 days after the date of service of the notice of commencement. A receiving party who is not served with points of dispute on or before that deadline can request the issue of a default costs certificate (CPR 47.9(4)) (unless the case is one of those described under the next heading.)

A request for a default costs certificate must be made in Form N254 and must be accompanied by a copy of the order for costs or other document giving the right to detailed assessment (as to which, see the Part 47 Practice Direction (para 13.3)). The form must be signed by or on behalf of the receiving party. A court fee is payable.

The request in Form N254 must be filed in the District Registry or County Court in which the case was being dealt with when the judgment or order for costs was made or when the event occurred which gave rise to the right to assessment, or to which it has subsequently been transferred: in all other cases, the request must be filed electronically in the SCCO (please see 1.5).

21.2 Cases in which the default costs certificate procedure does not apply

If there is more than one paying party, the receiving party has no right to a default costs certificate if one or more of the paying parties serves points of dispute. However, the paying parties who serve points of dispute late or who fail to serve them at all have no right to be heard at the subsequent detailed assessment unless the court gives permission (CPR 47.9 and CPR 47.14).

The default costs certificate procedure does not apply to costs of a party funded by legal aid, costs payable out of a fund other than the Legal Aid Fund, or costs to be assessed pursuant to an order under Part III of the Solicitors Act 1974.

21.3 Form of default costs certificate

A default costs certificate will be in Form N255. It will include an order to pay the costs to which it relates, the fixed costs payable in respect of a legal representative's charges on the issue of a default costs certificate and the fee paid on the request for the issue of a default costs certificate. The receiving party will need to draw up a default costs certificate and deliver it to the court together with the request.

21.4 Effect of a default costs certificate

The amount certified in the default costs certificate must be paid within 14 days of the date of the certificate unless, upon an application made by either party, whether before or after the issue of the certificate, the court has specified some other date (CPR 44.7).

An application to stay enforcement of a default costs certificate issued by the SCCO may be made to a Costs Judge or to a court which has jurisdiction to enforce the certificate. Proceedings for enforcement of a default costs certificate may not be issued in the SCCO (Part 47 Practice Direction (para 10.6)).

Default costs certificates are addressed to the paying party. Where the receiving party is funded by legal aid, the issue of a default costs certificate does not prohibit, govern, or affect any detailed assessment of the same costs which may have to be made to determine the sum payable by the Legal Aid Agency (Part 47 Practice Direction (para 10.4)).

Default costs certificates are registerable in the Register of Judgments, Orders and Fines pursuant to the Register of Judgments, Orders and Fines Regulations 2005. The details needed for registration must be sent to the Register by the SCCO. These details include the postal address of the paying party's usual or last known residence or place of business, even if that is not the paying party's address for service. It is not possible to register a default costs certificate if, for example, the only address supplied to the SCCO is the address of a legal representative acting for the paying party.

Section 22- Applying to set aside a default costs certificate

22.1 Application by receiving party

The court will set aside a default costs certificate if the receiving party was not entitled to it. A court officer may set aside a default costs certificate at the request of the receiving party under rule 47.12.

22.2 Application by paying party

In order to obtain an order setting aside a default costs certificate, a paying party should apply on notice in Form N244 together with a copy of the bill of costs, a copy of the default costs certificate and a draft of the points of dispute he proposes to serve if the application is granted, and any other evidence supporting the application.

The court may set aside or vary a default costs certificate to which the receiving party was entitled if it appears to the court that there is some good reason why the detailed assessment proceedings should continue (CPR 47.12(2)).

In deciding whether to grant the application the court will consider, amongst other things, whether the application was made promptly and whether the applicant has shown some good reason why the order should be made. Where appropriate the court may make an order subject to conditions (such as a condition requiring the applicant to make a payment on account of the costs in question), or may instead of setting aside the certificate vary it (eg, to specify some other sum payable or some other date for payment).

A Costs Judge or a District Judge may exercise the power of the court to make an order under CPR 44.2(8) (which enables the court to order a party whom it has ordered to pay costs to pay an amount on account before the costs are assessed) although they did not make the order about costs which led to the issue of the default costs certificate (Part 47 Practice Direction (para 11.3)).

22.3 Orders and directions on set aside applications

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

The Appendix to this Guide contains standard forms of order commonly made on set aside applications in the SCCO; a conditional order, an unconditional order, an order adjourning the application and an order dismissing the application (see Appendix AC).

Section 23 - Obtaining a payment on account or an interim costs certificate

23.1 When to apply

Whenever a court makes an order for costs to be assessed by a detailed assessment it should consider making a further order that a sum on account of those costs should be paid out straightaway. Indeed, the rule (CPR 44.2(8)) expects an order to be made unless there is a good reason not to do so.

A request for an interim costs certificate may be made once a request for a detailed assessment hearing has been filed with the court (CPR 47.16(1)).

There is no specific provision in the rules for a payment on account of costs to be ordered after the order for costs was originally made but before a request for an interim costs certificate can be made. A party wishing to apply for an interim payment on account of the costs to be assessed needs to make an application in accordance with CPR Part 23 (see Section 20). The court has jurisdiction to make an order for a payment on account of costs in such circumstances: see Global Assets Advisory Services Ltd & Anor v Grandlane Developments Ltd & Ors [2019] EWCA Civ 1764.

23.2 Form of interim costs certificate

An interim costs certificate will be in Form N257.

23.3 Agreement

If the parties agree that a payment on account of costs should be made, a draft consent order signed by the parties should be lodged with the court together with the court fee if no formal application has yet been made.

If the parties agree that an interim costs certificate should be given, the receiving party should e-file a copy of the certificate in Form N257. The form must be signed by or on behalf of the receiving party and a fee is payable. If the parties are not required to use CE-File, then 3 copies of the draft certificate should be filed with the Form N257 and fee.

23.4 Time for payment and enforcement

The amount ordered on account of costs or certified in the interim costs certificate must be paid within 14 days of the date of the order / certificate unless, upon an application made by either party, the court has specified some other date (CPR 44.7). This is the same time period as for any other order or certificate.

Section 24 - Application concerning delay in commencing detailed assessment proceedings or in requesting a detailed assessment hearing

24.1 Sanction for delay in commencing detailed assessment proceedings

Under CPR 47.7 detailed assessment proceedings must be commenced within three months of the date of the order for costs or other event under which the right to costs arose (see table at CPR 47.7). The receiving party commences proceedings by serving on the paying party the documents referred to in CPR 47.6(1) (see Section 10).

Permission to commence detailed assessment proceedings out of time is not required but if the receiving party has failed to commence detailed assessment proceedings within the deadline, the paying party may apply for an order under CPR 47.8(1) requiring the paying party to commence detailed assessment proceedings by a specified date. When making such an order, the court may direct under CPR 47.8(2) that if proceedings are not commenced by the specified date, all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.

An application for an order under Rule 47.8(1) must be made in writing and issued in the appropriate court office.

If the receiving party commences proceedings for detailed assessment late but before the paying party makes an application under CPR 47.8(1) the court may disallow all or part of the interest on costs that would otherwise be payable but must not impose any other sanction except in accordance with CPR 44.11(powers in relation to misconduct, see section 25).

24.2 Sanction for delay in requesting a detailed assessment hearing

CPR 47.14 governs delay in requesting a detailed assessment hearing. It very much follows the approach in CPR 47.7 regarding delay in commencing detailed assessment proceedings outlined at 24.1.

A detailed assessment hearing must be requested within three months of the expiry of the period within which detailed assessment proceedings were commenced. If the receiving

party does not do this, the paying party may make an application to compel the receiving party to do so.

If the receiving party does not file a request with the court by the time the application is heard, the court may order that some or all of the costs claimed will be disallowed unless a request is made within a further, specified period.

If the receiving party requests a hearing date outside the time allowed by the rules for doing so, but in the absence of any application by the paying party, the only sanction the court may apply is the disallowance of interest at a subsequent hearing (unless there has been misconduct (see section 25).

Section 25 - Applications concerning misconduct or wasted costs

25.1 Misconduct by litigants or legal representatives

The court may make an order under CPR 44.11 where -

(i) a litigant or its legal representative, in connection with a summary or detailed assessment, fails to comply with a rule, practice direction or court order; or

(ii) it appears to the court that the conduct of a party or its legal representative, before or during the proceedings or in the assessment proceedings, was unreasonable or improper.

The sanctions which the Court can impose are:

(i) disallowance of all or part of the costs which are being assessed; or

(ii) ordering the party at fault or its legal representative to pay the costs which the misconduct has caused any other party to incur.

Before making such an order the Court must give the party or the legal representative in question a reasonable opportunity to make written submissions, or if requested to attend a hearing, to give reasons why such an order should not be made.

Where the court makes an order under CPR 44.11 against a legally represented party and that party is not present when the order is made, that party's solicitor must notify the client in writing of the order no later than seven days after the legal representative receives notice of the order.

25.2 Personal liability of legal representatives for costs - wasted costs orders

In addition to the court's powers under CPR 44.11, the court can also order a legal representative to pay a specified sum of costs to a party or disallow a specific sum where costs have been wasted (CPR 46.8).

The court may make a wasted costs order only if:

(i) The legal representative has acted improperly, unreasonably or negligently;

(ii) The legal representative's conduct has caused a party to incur unnecessary costs or has meant that costs previously incurred have been wasted; and

(iii) it is just in all the circumstances to order the legal representative to compensate that party for the whole or part of those costs.

25.3 Principles on which wasted costs orders are made

The Court of Appeal laid down guidelines in *Ridehalgh v Horsefield* [1994] Ch 205, CA to assist the court in deciding whether a legal representative has acted improperly, unreasonably or negligently:

(i) acting "improperly" includes conduct which would ordinarily be held to justify disbarment of barristers, striking off from the roll of solicitors, suspension from practice or other serious professional penalty;

(ii) acting "unreasonably" describes conduct which is vexatious, or designed to harass the other side rather than advance the resolution of the case;

(iii) acting "negligently" denotes, in an untechnical way, failure to act with the competence reasonably expected of ordinary members of the legal profession.

In general, wasted costs applications should be left until after the end of the hearing. It is usual for the aggrieved party rather than the Court to raise the issue of wasted costs, but the Court can make a wasted costs order against a legal representative of its own initiative.

25.4 Procedural steps on applications for a wasted costs order

A party may apply for a wasted costs order by filing an application notice in accordance with Part 23 (see Section 20) or by making an application orally in the course of any hearing (Part 46 Practice Direction (para 5.4)).

A Part 23 application must be supported by evidence which:

(i) sets out what the legal representative has done or failed to do; and,

(ii) identifies the costs that it may be ordered to pay or which are sought against the legal representative.

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

25.5 Deciding whether to make a wasted costs order

As a general rule, the court will consider whether to make a wasted costs order in two stages (Part 46 Practice Direction (para 5.7)):

Stage One - The Court must be satisfied that it has before it evidence or material, which, if unanswered, would be likely to lead to a wasted costs order being made, and that the wasted costs proceedings are justified notwithstanding the likely costs involved. If not so satisfied the Court will decide that further proceedings are not justified.

Stage Two - The Court will give the legal representative an opportunity to give reasons why a wasted costs order should not be made before deciding whether to do so.

If an application is made under Part 23 the Court can proceed direct to Stage Two if it is satisfied that the legal representative has already had a reasonable opportunity to make representations.

Part D
Specific proceedings



Section 26 - Solicitor and client assessments

26.1 Introduction

An application may be made under Section 70 of the Solicitors Act 1974 ("the Act" in this section) for an order for the detailed assessment of a solicitor's bill of costs. The application can relate to the whole bill, or can be limited to the profit costs only or to the disbursements only. Most such applications are made by the client or former client of the solicitor who delivered the bill. Solicitors may make the application for assessment of their own bills and may do so for the purposes of ascertaining a liquidated debt and then taking enforcement action. More often, solicitors who have bills that are unpaid, bring debt proceedings instead and, if prevented from obtaining a default judgment, seek summary judgment for an amount "to be assessed". The court may then make an order that the bill(s) are to be assessed under the Act and that the solicitors will be entitled to judgment for any sum certified as being due at the conclusion of that process.

An application may also be made under s71 of the Act where a bill of costs is payable by a party who is not the client of the solicitors. For example, beneficiaries under a will or a borrower whose mortgage or charge obliges them to pay the legal costs of the lender (usually a bank or a building society).

The application is heard by a Costs Judge. If an order for detailed assessment is made, that detailed assessment will also be heard by a Costs Judge.

26.2 Detailed assessment as of right or on terms

If the application is made within one calendar month of receipt of the bill, the Costs Judge must order detailed assessment.

If the application is made more than one calendar month, but less than a year from receipt of the bill (and the bill has not been paid), the Costs Judge may impose conditions, for example, that the amount of the bill should be paid into court and to remain there until the result of the detailed assessment is known.

No order will be made, except in special circumstances, if:

(i) 12 months have elapsed from the delivery of a bill which has not been paid or

(ii) The bill has been paid less than 12 months before the date upon which the application was issued or

(iii) Judgment has been obtained for the recovery of the costs covered by the bill.

If the bill has been paid more than 12 months before the date upon which the application was issued the Costs Judge has no power to order that the bill be assessed.

26.3 The forms to use

An application for the detailed assessment of a solicitor's bill of costs is made by a claim form to which CPR Part 8 applies. (For the specimen form see Appendix J). This form is also used for other applications under the Act.

If an order for detailed assessment is made, there are two standard forms of order: see precedents L and M in the Appendix depending upon whether the solicitors or the client issued the application.

26.4 Commencing the application

Applicants must send or bring to the SCCO:

(i) Three copies of the claim form with draft order sought.

(ii) A cheque for the fee made payable to HMCTS or HM Courts and Tribunals Service

(iii) The original bill(s) or copies of the original(s) which are certified by or on behalf of the applicants as being true and complete copies.

Once the payment of the fee has been processed, the application will be passed to the application clerk in Room 7.12 Thomas More Building, Royal Courts of Justice. The clerk will put the file before a Costs Judge who will allocate a date for a directions hearing. The court will send out the application to the parties unless, for example, the applicant requests permission to serve it. The application will usually be listed for a short appointment (15 minutes). If a second hearing is needed the matter will be adjourned to a new date with a longer time estimate.

The application notice must be supported by a statement of truth, but in most cases, witness statement evidence is not required unless the application is contested. This may occur where the applicant needs to show special circumstances under s70(3) of the Act or where the Costs Judge directs.

26.5 The hearing of the application

Where an application is made by a litigant in person, an order for detailed assessment will not normally be made in the absence of the parties. The litigant in person must attend in order that the Costs Judge may explain the effect of s70(9) of the Act ("the one-fifth rule", as to which, see the next heading).

If no-one attends on behalf of the respondent, the Costs Judge may make the order sought, conditional upon adequate proof of service of the application.

It is now common practice for a timetable to be incorporated into the order, based upon Rule 46.10 dealing with service of a breakdown of the bill, service of points of dispute, any reply and the request for a hearing date. (For a specimen order see Appendix L).

The costs of the application may, depending on the circumstances, be treated as part of the costs of the detailed assessment and dealt with at the conclusion of the detailed assessment hearing but if the application is unsuccessful, the applicant will usually be ordered to pay the costs.

The order is usually drawn up by the court, and a copy sent out to all parties. The Costs Judge may direct that the order be drawn up by the successful party. In that event, three copies of the order must be lodged with the clerk to the Costs Judge. Sealed copies will then be served on the parties.

26.6 The costs of the assessment

Statutory provisions apply to the costs of the assessment where costs are assessed under s70 or s71 of the Act. Ordinarily, if the bill or bills are reduced by one fifth or more, the solicitors will be ordered to pay the costs of the detailed assessment. If the bill or bills are reduced by less than one fifth the other party will be ordered to pay the costs of the detailed assessment (see s70(9)). However, if the Costs Judge is satisfied that there are special circumstances relating to the bill or to the assessment, they may make such order about the costs of the assessment as they think fit.

Section 27 - Court of Protection cases

27.1 Introduction

Section 45 of the Mental Capacity Act 2005 created the Court of Protection which amongst other things exercises jurisdiction in respect of the protection and management of the property and affairs of persons who lack the capacity of managing their own affairs (known as Protected Parties or "P").

The relevant statutory provisions are the Mental Capacity Act 2005 ("the MCA" in this section) and the Court of Protection Rules 2017 ("the CoP Rules" in this section). The Act and the Rules can be found in standard practitioners' texts and on the internet including the http://www.legislation.gov.uk website. The Practice Directions can be found on the Court of Protection pages of the Gov.uk website. Guidance and explanatory leaflets can be found on the Office of the Public Guardian ("OPG") pages on the Gov.uk website.

27.2 Orders and directions as to costs

All orders as to costs are at the discretion of the Court of Protection and nothing in this guidance should be interpreted as removing or restricting the Court's discretion in any way.

There are three methods of quantifying costs:

- Agreed costs
- Fixed costs
- Summary or detailed assessment of costs

27.3 Agreed costs

Agreed costs are not generally available in the Court of Protection. As a general principle, all bills of costs must be assessed, except where fixed costs are available.

It is possible for a deputy to agree costs with the trustee or administrators of the estate of a deceased P, or to agree costs with a P who has regained capacity. However, if P is still living and still lacks capacity a solicitor or deputy cannot simply agree their costs with P's representatives. If P is the subject of an ongoing order from the Court of Protection, and costs are to come out of P's Estate, then detailed assessment must follow.

The CoP Rules require that the costs of P must be assessed except in the very limited circumstances set out at CPR 46.4(3) and (5) and the Practice Direction to Part 46.

Where a solicitor is content to take the amount of costs agreed with the defendant, without deduction from P's damages, then they may settle with a waiver as to further costs.

Invariably, if the solicitor wishes to claim any further costs from P, they must submit the costs for detailed assessment unless the claim for costs fits within one of the above exceptions.

Although CPR 46.4(5) enables a court to assess summarily a claim solely for a success fee, such an order is unlikely to be made in higher value claims. In order to assess the success fee, the court has to form a view about the base costs (both as to hourly rate and time spent / work done) as well as the level of success fee set (and hence the risk assessment). In a larger or more complicated case, the assessment of the work involved usually takes such claims outside the scope of summary assessment.

Attention is drawn to the Practice Note on Approval of costs settlements, Assessments under CPR 46.4(2), and deductions from damages - Children and protected parties, issued in December 2021. At Appendix 3 to this Practice Note there is a set of standard directions for use in cases where a shortfall is being sought. The Practice Note can be found online at https://www.judiciary.uk/announcements/practice-note-by-the-senior-costs-judge-deductions-from-damages and the directions can be found at (AG) in the Appendix to this Guide).

27.4 Fixed costs

Practice Direction 19B (Fixed Costs in the Court of Protection) supplementing Part 19 of the COP Rules 2017 sets out fixed costs that may be claimed by solicitors and office holders in public authorities appointed to act as deputy for P. However, the court may direct that its provisions shall also apply to other professionals acting as deputy including accountants, case managers and not-for-profit organisations.

Where the proceedings concern P's property and affairs, the general rule is that the costs of the proceedings should be paid by P or charged to the estate. The provisions of Practice Direction 19B apply where the professional deputy is entitled to be paid out of P's estate. They do not apply where the Court Order provides for one party to receive costs from another.

Usually, the Court Order or Direction will state whether fixed costs or remuneration applies, or whether there is to be a detailed assessment by a Costs Officer. Where a Court Order or Direction provides for a detailed assessment of costs, professional deputies may elect to take fixed costs or remuneration instead of detailed assessment. The fixed costs can be found online at https://www.judiciary.uk/publications/fixed-costs-in-the-court-of-protection.

The categories of fixed costs include the following:

Solicitors' costs in court proceedings

Category I: Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs - an amount not exceeding £950 (plus VAT).

Category II: Applications under s36(9) or s54 of the Trustee Act 1925 or s20 of the Trusts of Land and Appointment of Trustees Act 1996 for the appointment of a new trustee in the place of "P" and applications under s18(1)(j) of the Act for authority to exercise any power

vested in P, whether beneficially, or as a trustee, or otherwise - an amount not exceeding £500 (plus VAT).

Category I and II apply to all orders appointing a deputy for property and affairs or to all applications for appointment of a new trustee made on or after 1 April 2017.

Remuneration of solicitors appointed as deputy for P

The following fixed rates of remuneration will apply where the court appoints a solicitor to act as deputy (but not where an office holder of a public authority is appointed and employs a solicitor, or a solicitor employed by a public authority is appointed as an office holder of a public authority):

Category III: Annual management fee where the court appoints a professional deputy for property and affairs, payable on the anniversary of the court order.

(a) for the first year - an amount not exceeding £1,670 (plus VAT).
(b) for the second and subsequent years - an amount not exceeding £1,320 (plus VAT).
(c) Where the net assets of P are below £16,000.00, the professional deputy for property and affairs may take an annual management fee not exceeding 4.5% of P's net assets on the anniversary of the court order appointing the professional as a deputy.

Category IV: Where the court appoints a professional deputy for health and welfare, the deputy may take an annual management fee not exceeding 2.5% of P's net assets on the anniversary of the court order appointing the professional as deputy for personal welfare up to a maximum of £555.

Category V: Preparation and lodgment of the annual report or annual account to the Public Guardian - an amount not exceeding £265 (plus VAT).

Category VI:

(a) Preparation of a Basic HMRC income tax return on behalf of P - an amount not exceeding £250 (plus VAT).
(b) Preparation of a Complex HMRC income tax return on behalf of P - an amount not exceeding £600 (plus VAT).

In cases where fixed costs are not appropriate, professional deputies may, if preferred, apply to the SCCO for a detailed assessment of costs. However, this does not apply if P's net assets are below £16,000 where the option for detailed assessment will only arise if the court makes a specific order.

Public authority deputies

Practice Direction 19B (Fixed Costs in the Court of Protection) also provides for remuneration of public authority deputies. They follow similar categories but are significantly lower than the rates for solicitors. If a public authority deputy outsources work to a solicitor's firm, it is expected still only to be claimed at the lower rate (Practice Direction 19B paragraph 19).

Fixed or assessed costs?

In straightforward or routine cases, solicitor deputies will often opt to take fixed costs because they can be paid quickly and easily. However, the court recognises that in some

cases this will not be appropriate, therefore in all categories of work solicitor deputies may, if they prefer, apply for an assessment of their costs.

27.5 Commencing a detailed assessment

The detailed assessment of costs under orders or directions of the Court of Protection is dealt with in accordance with the CPR. Professional deputies should lodge a request for detailed assessment at the SCCO (not the Court of Protection or the OPG) using form N258B if payable out of a fund, or form N258 if payable by one party to another. The form should be accompanied by the following documents:

(i) a copy of the bill of costs;

(ii) the document giving the right to detailed assessment;

(iii) copies of all orders made by the Court relating to the costs which are to be assessed;

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

(v) written evidence as to any other disbursement which is claimed and which exceeds £500;

(vi) a statement signed by the receiving party giving their name, address for service, reference and telephone number;

(vii) a statement of the postal address of any person who has a financial interest in the outcome of the assessment;

(viii) if a person having a financial interest is a child or protected party, a statement to that effect;

(ix) the relevant lodgment fee;

(x) in relation to a claim for General Management charges, a copy of Form OPG 102 together with the relevant Professional fees insert of Form OPG105 relating to the year or years covered by the claim.

Attention is drawn to paragraph 17.2(2) of the Part 47 Practice Direction. In cases which are to be dealt with by a Costs Officer (normally bills totalling £100,000.00 or less) the relevant papers in support of the bill are as described in the Part 47 Practice Direction (para 13.12). In cases over £100,000.00, complex or other cases to be dealt with by a Costs Judge, the relevant papers in support of the bill must only be lodged if requested by the Costs Judge. In certain circumstances the Court may allow the Deputy's electronic file to be lodged in support of the bill. The Deputy should first check with the Costs Judge or nominated Costs Officer before submitting their electronic file.

27.6 Bill format

The bill of costs should be prepared in accordance with the model form set out in the Part 47 Practice Direction except where the short form bill (described below) is appropriate.

From 1 January 2020 bills in the SCCO, including in relation to CoP cases, must be filed electronically using CE-File. At present it is not possible to for practitioners to lodge their files of papers electronically.

A voluntary Pilot Scheme permitting the use of an electronic bill for Court of Protection work ran successfully from November 2022 to 31 March 2023. Professional deputies, their legal representatives and other legal professionals may file their bills in respect of general management and other applications may provide bills in electronic spreadsheet form using the approved template. More information can be found at https://www.judiciary.uk/guidance-and-resources/use-of-electronic-bills-in-court-of-protection-cases/.Practitioners may continue to use a paper bill. The bill should state the correct title of the matter, the name and address, telephone number and reference of the professional deputy. The bill should list each chargeable item of work in chronological order with dates. It should also show any relevant events, even if they do not constitute a chargeable item. If the bill is for general management, it should state the year covered (e.g. from 21 December 2015 to 20 December 2016).

Where the amount of the bill does not exceed £3,000 excluding VAT and disbursements, professional deputies may request the SCCO to assess the costs using a short form bill.

The procedure is the same as that for an application for detailed assessment except that professional deputies may use a simplified form of bill which will not require the services of a costs draftsman or costs lawyer. The costs of drawing a long form bill will not usually be recoverable in cases where a short form bill is appropriate. (For a copy of the model short form bill see Appendix AA).

27.7 Hourly Rates

Work done up to 31 December 2017

Bills for work done up to 31 December 2017 will continue to be assessed by Costs Officers on the basis that, save in exceptional circumstances, the 2010 Guideline Hourly Rates ("GHR") will continue to apply.

Work done between 1 January 2018 and 30 September 2021

In *PLK and others* [2020] EWHC B28 (Costs) (*"PLK"*) Costs Judge Whalan considered hourly rates for work done by deputies and their staff in relation to general management charges for dealing with P's affairs.

The judgment in PLK recognises that Costs Officers should exercise "some broad, pragmatic flexibility" when applying the 2010 GHR during this period and that "if the rates claimed fall within approximately 120% of the GHR they should be regarded as prima facie reasonable" [para 35].

The judgment does not disapply or abrogate the principle that a practitioner cannot bill more per hour, than the rates provided for within the practitioner's contract with the client ("retainer"). As such, if the retainer provides for the 2010 GHR alone, the practitioner cannot claim any higher rate until such time as the retainer is updated.

If the retainer is silent as to hourly rate, or if there is no written retainer, Costs Officers will apply the 2010 GHR until 30 September 2021, and the 2021 GHR thereafter.

Work done from 1 October 2021

If the retainer provides for the 2010 GHR alone, or if it provides for a *PLK* claim for 120% of the 2010 GHR, the practitioner cannot claim any higher rate until such time as the retainer is updated to allow for a claim for the 2021 GHR.

Costs Officers will have regard to the practitioner's terms and conditions of business, any correspondence regarding hourly rates with the Court of Protection or Office of the Public Guardian, Form OPG105 (available online at the Gov.uk website) lodged with the bill and the certificate on the bill, signed by the solicitor confirming that the bill does not seek to recover more than the client (P) is contractually obligated to pay. However, it is for practitioners to ensure that their retainer is kept up to date if they wish to benefit from rate increases.

A practitioner who wishes to withdraw, amend, or substitute a bill to vary the hourly rates must (unless P has capacity to agree to such withdrawal, amendment or substitution) apply to a Costs Judge, on form N244 supported by evidence to show that the retainer permits a claim at the rates sought.

Deputies are entitled to seek informal reconsideration of bills already provisionally assessed by a Costs Officer before the issue of a Final Costs Certificate (see Detailed Assessment below at 27.9). They should note that any request for reconsideration to claim rates higher than those claimed in the bill as drawn, is unlikely to succeed. Any application or appeal made after the issue of a Final Costs Certificate must be made to a Costs Judge.

27.8 Authorities to assess costs

The Costs Officer will treat the costs of the application for appointing a deputy for property and affairs, as ending on the issue date of the order appointing the deputy (which may be some time after the actual date of the order). The Costs Officer will treat any costs incurred after the issue of that order as general management costs.

If the order provides for fixed costs but a professional deputy elects for assessment, it is not necessary to apply to the Court of Protection for an amended direction. Professional deputies may elect for assessment simply by lodging a bill with the SCCO.

If the application is for an assessment of general management costs, the Costs Officer will need to know that the Court has agreed that the professional deputy is to be paid general management costs. When lodging the first year's general management bill, the deputy should send a copy of the order authorising them to be paid professional costs. The SCCO keeps a record, so it is not necessary to send a copy of that order in subsequent years.

Unless there are any special circumstances, general management costs should be claimed annually, usually after the passing of the annual account.

In all cases where fixed costs are available, professional deputies should confirm when lodging their bill for assessment that they have not taken fixed costs for the work (they can take fixed costs or they can seek assessment: they cannot do both). The simplest way of doing this is to endorse a statement to this effect on the bill.

27.9 The detailed assessment

The SCCO will deal with most assessments on a provisional basis on paper. If the deputy is not satisfied with the assessment, he must inform the Costs Officer within 14 days of receipt of the provisional assessment.

It has been the practice of the SCCO for some time to carry out an informal review of a provisional assessment where the deputy is not satisfied with one or more items in the bill. Again, in practice, the Costs Officer will deal with any enquiries by telephone or letter.

If the deputy remains dissatisfied after any informal review takes place (which review will be carried out at the sole discretion of the Costs Officer), the SCCO will then fix a date for an oral hearing before a Costs Judge. The SCCO will send an appointment for the hearing to all parties. CPR 47.19 provides that a trustee, receiver or any other party managing the patient's fund or litigation is a person who will be treated as having a financial income interest in the outcome of a detailed assessment.

Attention is drawn in particular to the Part 47 Practice Direction (para 18.2) with regard to the definition of "financial interest". Where a professional deputy considers that there is or may be a person with a financial interest in the outcome of the assessment, that person's name, address and reference must be provided to the Court by the deputy in case the Costs Officer decides they should be sent the bill of costs or Notice of Assessment. As a matter of good practice, solicitors must serve a copy of the bill on the deputy (if they are not themselves acting in that capacity) prior to lodgment, as this will help to allay disputes which sometimes arise where the deputy is unaware that costs have been claimed from P's estate until receipt of the Final Costs Certificate.

After completion of the assessment, the professional deputy must complete the summary on the bill certifying the castings as correct and return the original bill to the SCCO for the issue of the certificate. There is no fee for sealing the certificate.

27.10 Employment of a solicitor by two or more persons

Where two or more persons having the same interest in relation to a matter act in relation to the proceedings by separate legal representatives, they shall not be permitted more than one set of costs for the representation of P unless and to the extent that the court certifies that the circumstances justify separate representation.

27.11 Incidence of costs - the general rule

Where the proceedings concern P's property and affairs, the general rule is that the costs of the proceedings or of that part of the proceedings concerning P's property and affairs shall be paid by P or charged to the estate.

Where the proceedings concern P's personal welfare, the general rule is that there will be no order as to the costs of the proceedings, or of that part of the proceedings that concerns P's personal welfare.

Where the proceedings concern both property and affairs and personal welfare the court, insofar as practical, will apportion the costs as between the respective issues.

The court may depart from these general principles if the circumstances justify. The court will have regard to all the circumstances including:

(a) the conduct of the parties;
(b) whether a party succeeded on part of their case, even if they were not wholly successful; and
(c) the role of any public body involved in the proceeding.

Unless the court directs otherwise, assessment of costs is on the standard basis although the court retains the discretion to order costs on the indemnity basis. Professional deputies may apply to the court for an order for costs on the indemnity basis if they consider the circumstances of the case justify such an order. However, professional deputies undertaking work in expectation of receiving costs on the indemnity basis do so at their own risk that such an order may not be made.

It is not possible to define exactly what circumstances might persuade the court to agree to an assessment on the indemnity rather than the standard basis. There are an infinite variety of situations that might justify the making of such an order and the Judge has wide discretion in relation to the ordering of costs. The onus is therefore on the solicitor deputy to persuade the Court that costs should be paid on the indemnity basis.

27.12 Non-professional deputies

Deputies who are not a professional person, are nevertheless required to carry out the full range of deputy duties. These duties are set out in the Deputies Handbook published by the Public Guardianship Office.

27.13 Where proceedings concern P's property and affairs

If the Costs Officer disallows an item that the professional deputy considers is properly chargeable as work relating to property and affairs, the deputy should raise this on review of the provisional assessment. Neither the Court of Protection nor the OPG can intervene in the assessment process since this function is reserved to the SCCO by virtue of the Court of Protection rules.

On occasions, some activity which does not relate to P's property and affairs, such as visits to clients or attendances at case conferences, may be necessary in order to safeguard P's property. In such cases, the Costs Officer may accept well-founded arguments that such general management costs should be allowed on assessment. If the circumstances of the case are unusual and require the deputy to be actively involved in the management of P's day to day affairs, then the deputy should draw this to the Costs Officer's attention in a covering letter submitted with the bill. The Costs Officer would also expect that any deputyship work, be it legal or non-legal, be undertaken by an appropriate grade of fee earner in the firm which may not necessarily be a deputy.

27.14 Remuneration of a deputy, donee or attorney

Where the Court orders that a deputy, donee or attorney is entitled to remuneration out of P's estate for discharging their function as such, the court may make such order as it thinks fit, including an order that:

(a) a payment of a fixed amount is made;
(b) payment is made at a specified rate, or
(c) the amount of the remuneration should be determined in accordance with the schedule of fees set out in the relevant Court of Protection Practice Direction,
(d) any amount permitted by the court shall constitute a debt due from P's estate and the court may order a detailed assessment of the remuneration by a Costs Officer.

27.15 Costs of sale or purchase of property

The assessment of costs of sale or purchase of a property will normally take place at the conclusion of the transaction unless the court has made other directions. Any estate agents' charges should appear in the completion statement and not as a disbursement to the bill.

If the sale was by trustees of a jointly owned property, the SCCO will assess the costs of the application to appoint new trustees as the conveyancing costs can only be approved by the trustees.

The following fixed rates apply (except where the sale is by trustees): a value element of 0.15% of the consideration with a minimum sum of £400 and a maximum of £1,670 plus disbursements.

27.16 Costs following P's death

An order or direction that costs incurred during P's lifetime be paid out of or charged on the estate may be made within six years after P's death.

If P dies when the assessment of costs is pending, a professional deputy should inform the SCCO which will suspend the assessment of any costs incurred after the date of P's death, until after the COP gives a final direction.

It is a matter for the deputy (not for the SCCO) to apply for that direction, but to save time and expense a letter or email from the COP will suffice if a sealed Order is not available.

The deputy must serve a copy of the bill for any costs post P's death upon the personal representatives, upon resumption of the assessment process.

As P is no longer alive, if the deputy is able to agree these costs with the personal representatives, that is permissible (see Practice Direction 24B at paragraph 10), failing which the direction above referred-to must be provided as authority to assess the post-death costs.

Costs up to the date of P's death are covered by the existing deputyship order but following P's death these may also be agreed and if not, can still be assessed under the existing deputyship Order.

27.17 Payments on account

Attention is drawn to section 6 of the Court of Protection Practice Direction 19B which allows professional deputies who elect for detailed assessment of their annual management charges to take payments on account for the first, second and third quarters of the year which are both proportionate and reasonable in relation to the size of the estate and the functions they have performed. Interim quarterly bills must not exceed 25% of the estimated annual management charges, that is to say, not more than 75% for the whole year.

Interim bills are not to be submitted to the SCCO. At the end of the relevant management period the deputy must submit their annual bill for detailed assessment and adjust the final total to reflect payments on account already received.

Section 28 - Criminal fees appeals

28.1 Introduction

Costs Judges have jurisdiction to hear appeals from the decisions of Determining Officers of the Crown Court, the Divisional Court of the Queen's Bench Division, the Administrative Court and the Court of Appeal (Criminal Division) in each of the following cases:

(i) Appeals by parties awarded costs out of Central Funds (as to which see the Costs in Criminal Cases (General) Regulations 1986 as amended by The Legal Aid, Sentencing and Punishment of Offenders Act 2012).

(ii) Appeals by solicitors and advocates entitled to remuneration under the Criminal Legal Aid (Remuneration) Regulations 2013 (as amended) ("the Regulations"), which contain the Advocates' and Litigators' Graduated Fee Schemes.

(iii) Appeals by solicitors and advocates entitled to remuneration under the Criminal Procedure Rules (which are updated annually).

(iv) Appeals by litigants in person having the benefit of costs orders under any of the above enactments.

28.2 The Criminal Costs Practice Direction

Detailed guidance as to the SCCO practice on criminal fee appeals and the procedure on further appeals to a High Court Judge is set out in the Practice Direction (Costs in Criminal Proceedings).

28.3 The Notice of Appeal

The Notice of Appeal must be in writing and must be filed using CE File (see 1.5) together with the fee (currently £100) and the additional material referred to in the Regulations and in the Criminal Costs Practice Direction within 21 days of receipt of the reasons given for the decision or within such longer time as the Costs Judge may direct.

The Notice of Appeal should follow the form in Schedule 3 to the Criminal Costs Practice Direction (see Appendix AE). It is important that the Notice of Appeal should clearly identify (i) the matters which are being appealed to the Costs Judge and (ii) the amount in dispute in relation to each item.

Notices of Appeal must be signed by advocates personally or by a partner in the appellant firm of Solicitors.

It occasionally happens that appellants fail to serve the appropriate officer at the Legal Aid Agency with a copy of the Notice of Appeal. The Regulations are mandatory in this respect

and failure to do so may result in the appeal being dismissed without the merits being considered.

28.4 The grounds of appeal

Points raised in the Notice of Appeal which are not supported by grounds may be dismissed.

If for some reason the grounds of appeal cannot be prepared within the time allowed for lodging the Notice of Appeal, an application for an extension of time should be made.

This need not be a formal application. A letter or e-mail should be sent to the Clerk of Appeals who will pass it to a Costs Judge for their consideration.

It is important to be both concise and specific in the grounds of appeal. Particular attention should be paid to the provisions of the Criminal Costs Practice Direction.

The Appellant must also lodge the written reasons given by the appropriate officer for their decisions upon re-determination.

Only in exceptional cases will a Costs Judge consider material not before the appropriate officer (leave is required under Reg. 29(11) of the 2013 Regulations; Reg. 9(11) of the 1986 Regulations or Reg 76.12(4) of the 2013 Criminal Procedure Rules). Requests to consider such material should always be included in the Notice of Appeal.

28.5 Supplementary grounds of appeal

Occasionally, the appropriate officer does not give written reasons in respect of all matters which the appellant wishes to bring before the Costs Judge. In that situation, provided the appellant has raised them at the re-determination stage, and in the request for written reasons, the appellant should ask the appropriate officer for supplementary written reasons and may then lodge supplementary grounds of appeal.

28.6 Lodging of documents in support of appeal

It frequently happens that far more material is lodged in support of the appeal than is either necessary or desirable. For instance, in a case of a multi-handed appeal by a number of Counsel it is not normally necessary to lodge more than one set of instructions etc. Liaison between appellants is important.

Before lodging substantial volumes of papers, it is advisable to contact the Clerk of Appeals who will if necessary, liaise with the Costs Judge as to what documents are required.

The relevant documents should be lodged no more than 10 days prior to an oral hearing. In the case of appeals to be dealt with on paper only and without an attendance, all relevant papers should be lodged with the Notice and grounds of appeal.

28.7 Appeals on paper only

Appeals made on paper only and without an attendance may be dealt with more quickly than appeals dealt with by way of a hearing. All appellants should give careful consideration, at the stage of lodging their appeals, to the question of whether or not they consider it necessary to attend.

An appellant seeking the costs of an appeal to be dealt with on paper only, should specify the particular sum claimed in a document accompanying the Notice of Appeal or in a covering letter. If no sum is claimed, the Costs Judge will normally only order refund of the appeal fee paid if the appeal is successful.

28.8 The hearing of an appeal

All hearings may be attended by the counsel or representatives of the solicitors concerned in the matter or a duly authorised agent on their behalf, who may include another solicitor, another counsel or a costs lawyer. Such oral hearings are informal but are conducted in open court. They are seldom of lengthy duration but where an appellant considers that an unusually lengthy hearing is necessary this should be indicated in a covering letter with the Notice of Appeal. It is not unusual for a solicitor or counsel instructed by the Legal Aid Agency to attend the hearing on behalf of the Lord Chancellor to oppose an appeal.

28.9 Multi-handed appeals

Wherever possible, appeals in relation to the same case by all or many of the advocates and/or litigators concerned are listed together or at short consecutive intervals on the same day. Where this presents problems to individual appellants, representations should be made to the Clerk of Appeals who will consult the Costs Judge as to whether an exception can be made to this general rule. It may however be possible to hear all the appeals of advocates in one particular case on the same day and all the appeals of the litigators in relation to the same case on another day.

28.10 Appeals by the same advocate

Where counsel, particularly from out of London, have a number of separate appeals every effort will be made to list these together to avoid unnecessary journeys.

28.11 Appeals by telephone or video link

All Costs Judges are prepared to hear criminal appeals by telephone or video link, especially where the sums involved are small or disproportionate to the costs of travel to London. Requests for any such hearing should be made to the Clerk of Appeals when lodging the appeal.

Telephone hearings should be set up and recorded in the same way as a telephone hearing under the Civil Procedure Rules (see CPR Practice Direction 23A Part 6). Any appellant who wishes to arrange a telephone hearing must comply with the steps set out in the guidance note, 'Criminal Costs Appeals in the SCCO - Telephone Hearings', which can be obtained from the SCCO Clerk of Appeals.

28.12 Procedure subsequent to the appeal

In every case the Regulations require that the Costs Judge should give their decision in writing.

Therefore, it is unusual for the Appellant to be notified of the outcome of the appeal on the day of the hearing. There is inevitably a time lag between the oral hearing and the dispatch of the written decision. Only rarely will the Costs Judge consider material submitted after the hearing.

Successful appellants are entitled to ask for their costs in connection with the appeal which are normally assessed by the Costs Judge at the end of the hearing. It is important that appellants should submit details to the Costs Judge at the hearing of travelling expenses or any unusual expenditure in relation to the appeal.

In all cases where an appeal is successful the court fee paid (currently £100) is added to the sums allowed, unless the Costs Judge otherwise directs.

28.13 Further appeal

The Lord Chancellor has a right of appeal against any decisions adverse to the Legal Aid Fund or Central Funds and in those cases no leave from the Costs Judge is required.

In other cases, whether Central Funds or legal aid cases, a further, and final, appeal is possible where the Costs Judge has certified that a point of principle of general importance is involved. It is necessary to apply within 21 days of receipt of the Costs Judge's written reasons for a certificate to be granted and, in accordance with the Criminal Costs Practice Direction, the form of certificate sought should wherever possible be submitted with the application.

If the Costs Judge grants a certificate, the appeal lies to a Judge of the High Court, King's Bench Division, who will normally sit with an assessor.

If the Costs Judge refuses a certificate no further appeal is possible.

The decision of the High Court Judge is final, and no further appeal is permitted.

28.14 Time limits

The time limits laid down by the Regulations and the Practice Direction should always be complied with. It is not a sufficient reason for granting an extension of time that the

appropriate officer took many months to produce the written reasons which are being appealed to the Costs Judge. Further it is not sufficient to justify an extension of time that all the papers needed to support the appeal were not immediately available.

It not infrequently happens, particularly at Christmas, Easter and holiday times that it is difficult to comply with the strict 21-day time limit laid down in the Regulations. In those situations, an appellant should always apply in writing before the relevant time limit expires seeking a short extension and giving grounds in support of that application.

Where the 21-day time limit has expired, an application for leave to appeal out of time should be mounted at the first possible opportunity thereafter and should initially be submitted in writing. The letter should always be signed by the appellant, not by a clerk, or another solicitor within the office. It should give a full explanation for the delay and justification advanced for granting leave out of time.

Such applications are in the first instance dealt with by one of the Costs Judges on the papers. Where such an application is refused the appellant may renew the application by asking for an oral hearing before the Costs Judge. Permission is sometimes granted subject to a percentage penalty reducing the amount of any increase in costs which would otherwise have been obtained on the appeal.

Where such oral hearings take place the Costs Judge will try to dispose of the substantive appeal immediately after the leave application. Those attending such applications should come prepared to address the merits of the substantive appeal, having lodged all the relevant papers. An additional fee of £100 is payable, where such leave is granted.

28.15 Divisional court/administrative court central funds assessments

All such determinations are currently dealt with by a Costs Judge nominated by the Senior Costs Judge. They are treated as the Determining Officer in accordance with the 1986 Regulations. A dissatisfied party may ask for a re-determination of those costs and thereafter for written reasons. Any party still dissatisfied may then appeal to the Senior Costs Judge who will follow the same procedure as in an appeal from a Determining Officer in the Crown Court or Court of Appeal.

Section 29 - Appeals from costs officers

29.1 Route of appeal

There is a right of appeal from a decision of a Costs Officer to a Costs Judge. This is so whether the costs proceedings are in the High Court or the County Court.

A second appeal (from the Costs Judge's decision) can be made to a High Court Judge or Circuit Judge if permission is obtained (see section 30). But there is no further right of appeal to the Court of Appeal from the decision on a second appeal.

29.2 Seeking permission to appeal

No permission to appeal is required from any decision made by a Costs Officer.

29.3 Time limits for appeals

An intending appellant must file an appeal notice within 21 days after the date of the decision they wish to appeal against (CPR 47.23(1) and 52.12(2)(b)). This is so notwithstanding that no permission to appeal is required. If a party has good reason for seeking a longer period in which to appeal they should apply for an extension of time, either on the occasion when the decision is made, or by including such an application in the appeal notice.

If a detailed assessment is carried out at more than one hearing the time for appeal will not start to run until the conclusion of the final hearing unless the court orders otherwise (CPR 47.14(7)).

29.4 Documentation on appeals

Form N161 is the prescribed form of notice for all costs appeals. On an appeal from a Costs Officer the notice, once filed, will be served on other parties by the court office.

Form N161 summarises the documents which should be prepared in support of the appeal. In particular, the appellant must supply a suitable record of the judgment being appealed, i.e. an approved transcript or a written judgment signed by the Costs Officer. Alternatively, the Costs Officer's comments written on the bill may be used.

Form N162 is the prescribed form of respondent's notice for all costs appeals. However, a respondent is not required to serve a respondent's notice if they intend to rely solely upon the decision of the Costs Officer for the reasons given by that Costs Officer.

29.5 Conduct of the appeal

On an appeal from a Costs Officer, the Costs Judge will rehear the proceedings which gave rise to the decision appealed against and may make any order and give any directions which are considered appropriate.

Section 30 - Appeals from costs judges

30.1 Routes of appeal

From a decision of a Costs Judge in a High Court matter parties may, if permission is granted, bring an appeal to a High Court Judge with a further appeal to the Court of Appeal.

The route of an appeal from a decision of a Costs Judge in a County Court matter depends upon whether the Costs Judge heard the matter whilst sitting as a Judge of the County Court. If they did so, the parties may, if permission is granted, bring an appeal to a Circuit Judge in the County Court with a further appeal to the Court of Appeal.

In London County Court cases, which are not transferred to the SCCO so as to become High Court cases, the appeal from a Costs Judge lies, if permission is granted, to the Designated Civil Judge, sitting at the County Court in Central London. The Designated Civil Judge may hear the appeal or may nominate another Circuit Judge to do so.

30.2 Seeking permission to appeal

From any decision of a Costs Judge (including decisions made on an appeal from a Costs Officer) permission to appeal is required. The general test for permission is whether the appeal has any real prospect of success. The permission should normally be sought orally at the time of the hearing. If refused, or if not sought then, the intending appellant must include an application for permission in its appellant's notice.

In order to bring a further appeal to the Court of Appeal from the decision of a High Court Judge or Circuit Judge permission is required from the Court of Appeal (CPR 52.3). The general test for permission in such a case is whether the appeal would have a real prospect of success and raise an important point of principle or practice or where there is some other compelling reason for the Court of Appeal to hear it.

Permission to appeal may limit the issues which may be raised on the appeal and may be made subject to conditions.

The Costs Judge, upon hearing an application for permission to appeal against their judgment should state in the judgment or order:

(a) whether the court gives permission to appeal; and
(b) to which appeal court an appeal lies from the judgment or order;
(c) if permission is refused, the appropriate appeal court to which any further application for permission may be made and the level of judge who should hear the application.

Where permission is refused, the Costs Judge will either record the above information in an order following the hearing or will complete form N460 setting out the reasons for refusal.

The form N460 will either be handed to the appellant at the hearing, if completed at the time, or will be retained on the court file pending an appeal to the appellate court.

30.3 Time limits for appeals

An intending appellant must file an appeal notice within 21 days after the date of the decision it wishes to appeal against (CPR 47.23 and 52.12). If a party has good reason for seeking a longer period in which to appeal it should apply for an extension of time, either on the occasion when the decision is made, or by including such an application in its appeal notice.

If a detailed assessment is carried out at more than one hearing, the time for appeal will not start to run until the conclusion of the final hearing unless the court orders otherwise (CPR 47.14(7)).

30.4 Documentation on appeals

Form N161 is the prescribed form of notice for all costs appeals. On an appeal from a Costs Judge the appellant must arrange service of a copy of the notice on each respondent as soon as practicable and, in any event, within seven days after filing.

Form N161 summarises the documents which should be prepared in support of the appeal. In particular, the appellant must supply a suitable record of the judgment being appealed, i.e. an approved transcript or a written judgment signed by the Costs Judge.

Alternatively, a note of the judgment which is agreed by the respondent and/or approved by the Costs Judge.

Form N162 is the prescribed form of respondent's notice for all costs appeals. However, a respondent is not required to serve a respondent's notice if it intends to rely solely upon the judgment of the court below for the reasons given by that court.

30.5 Conduct of the appeal

An appeal from the decision of a Costs Judge is limited to a review of that decision, unless the court considers that it would be in the interests of justice to hold a rehearing.

On an appeal from a decision of a Costs Judge it is customary for the court to sit with one or two assessors: a Costs Judge and, if there is a second assessor, a practising barrister or solicitor.

Section 31 - Costs only proceedings

31.1 Introduction

Where, before court proceedings are commenced, the parties to a dispute reach agreement on all other issues, either party may bring “costs only” proceedings (CPR 46.14).

It is not appropriate for either party to bring such proceedings unless:

(i) the parties have reached an agreement on all the issues, including which party is to pay the costs;

(ii) that agreement has been made or confirmed in writing; and

(iii) no proceedings must have been started and the parties have failed to agree the amount of the costs.

Two distinct steps are required: first an application under CPR Part 8 seeking an order for costs and secondly detailed assessment of those costs.

31.2 The application under CPR Part 8

The claim should be issued in the court in which the main proceedings would have been heard if they had been necessary. If this would have been the High Court in London, then the appropriate court is the SCCO.

The Part 8 claim form (form N208) must:

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

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

(iii) set out a draft of the order sought;

(iv) state the amount of the costs claimed; and

(v) state whether costs are claimed on the standard or the indemnity basis.

The evidence filed in support of the claim must include copies of the documents relied upon to prove the agreement to pay costs.

31.3 Obtaining the order for costs

The court will usually make an order in the terms of the claim without the necessity of a hearing if:

(i) the defendant fails to file an acknowledgment of service within the time

(ii) allowed to do so and the claimant has written to the court requesting an order; or

(iii) the defendant files an acknowledgment of service stating that he does not contest the making of an order in the terms of the claim; or

(iv) a consent order under CPR 40.6 is filed which is signed by or on behalf of all parties provided that none of them is a litigant in person and the approval of the court is not required by any other rule.

In costs only proceedings to which CPR 45 Sections II or III apply, the court must assess the costs in the manner set out in those sections. This means that only certain fixed recoverable costs and disbursements will be allowed unless an application for greater amounts is made and the court considers that there are exceptional circumstances making it appropriate to allow such costs.

If the defendant opposes the claim, the defendant must file a witness statement in accordance with CPR 8.5(3). The court will then give directions. The claim is likely to be dismissed if there are issues in dispute between the parties going beyond the amount of costs to be allowed. A claim will not be treated as opposed and therefore dismissed merely because the defendant states in an acknowledgment of service that he disputes the amount of the claim for costs.

A standard form of order commonly made in the SCCO under CPR 46.14 is illustrated in Appendix AB.

31.4 Conducting the detailed assessment proceedings

An order for costs made under CPR 46.14 is an order for the payment of costs the amount of which is usually to be determined by detailed assessment but, where appropriate, may be a summary assessment or an assessment of fixed costs.

Once an order for detailed assessment has been made, the court will expect the parties to conduct the detailed assessment proceedings in accordance with Part 47 and will not usually set out case specific directions.

Where a case is governed by CPR 45.14 and 45.15, the claimant will suffer a costs penalty if he fails to persuade the court to increase the fixed costs allowed by more than 20%.

The claimant will be awarded only the fixed recoverable costs (unless in fact a lower sum has been assessed), plus disbursements and will be ordered to pay the defendant’s costs of the proceedings.

Section 32 - Litigants in person

32.1 Introduction

A person is a “litigant in person” during any stage of proceedings in which they are not represented by a “legal representative” within the meaning of CPR 2.3(1). For this purpose, the term “litigant in person” may include a company or other corporation, a barrister, a solicitor, a solicitor’s employee or other legal representative who is acting for themselves. However, attention is drawn to the proviso in Rule 46.5(6)(b) where the litigant in person is represented by a firm in which that person is a partner.

Litigants in person have rights of audience in all detailed assessment proceedings. As to their entitlement to have a McKenzie Friend present, see Section 1.

The costs recoverable by parties in respect of periods when they are or were litigants in person are governed by the Litigants in Person (Costs and Expenses) Act 1975 (“the Act” in this Section) and by CPR 46.5. This section of the Guide is intended to help parties understand the position. Reference must be made to the Act and the CPR if there is any doubt.

The staff of the SCCO are not permitted to give rulings or legal advice on the Act or on the CPR nor to enter into any lengthy or technical advice as to the meaning of this Guide nor to recommend any law firms or costs lawyers who may be willing to give advice or assistance.

Advice and assistance may be available from the Citizen’s Advice Bureau in the Royal Courts of Justice. Further information as to this is given in Section 1.

A litigant in person who is unable to obtain copies of any prescribed form needed may ask the SCCO for help. Most forms mentioned in this Guide can be supplied free of charge.

In addition to the Citizens Advice Bureau (see para. 1.6 above), litigants in person can obtain help from Support Through Court, who can provide volunteers to attend court. They can be contacted in Room M21 (ground floor), Royal Courts of Justice, Strand London WC2A 2LL; by telephone on 020 4520 5959 or by email to londoncivil@supportthroughcourt.org.

32.2 Costs recoverable by litigants in person

The costs of litigants in person can be divided into four categories:

(1) Out of pocket expenses (such as court fees, fares for travelling to court, witness fees, etc) if they relate to work or disbursements which would have been done or made by a legal representative if one had acted for the litigant in person.

(2) Payments made to obtain expert assistance in connection with assessing the claim for costs. For this purpose a person is an expert if he is a barrister, solicitor, Fellow of

the Chartered Institute of Legal Executives, a Costs Lawyer, or a law costs draftsman who is a member of the Academy of Experts or The Expert Witness Institute.

(3) Costs for work done by the litigant in person which caused them pecuniary loss (for example, a litigant in person who is employed losing a day's pay through attending a court hearing or through going on a long journey to interview an essential witness).

(4) Costs for work done by a litigant in person which did not cause them any pecuniary loss (e.g, the examples just given if the work was done during leisure time).

32.3 Procedure on detailed assessment

The procedure by which a litigant in person seeks to obtain costs from another party is the same as for represented parties and is as set out generally in this Guide (briefly, service of a bill plus notice of commencement and certain other documents, obtaining a default costs certificate or, if points of dispute are served, serving a reply and/or filing a request for a detailed assessment hearing).

Where a litigant in person wishes to prove that he or she has suffered financial loss they should produce to the court any written evidence relied upon to support that claim and must serve a copy of that evidence on the paying party at the same time as serving the notice of commencement.

32.4 Calculation of charges for time spent by a litigant in person preparing the case

In order to determine charges for time spent, the Costs Officer or Costs Judge must decide four questions:

(i) What items of work were done and what time was actually spent on those items?

(ii) In respect of each item, how long was it reasonable and proportionate for the litigant in person to spend?

(The time allowed may be less than the time actually spent by the litigant in person and more than the time that would have been spent by a lawyer, had a lawyer been employed to undertake that item.)

(iii) What hourly rate or other rate is it reasonable to apply in respect of time reasonably spent by the litigant in person?

(Unless financial loss can be shown, the rate allowed is £19 per hour under the Part 46 Practice Direction (para 3.4).

(iv) If all the items of work for which costs are recoverable had been undertaken by a legal representative, what would a legal representative's reasonable charges have been for doing such work?

The evidence to be served in support of a claim to prove financial loss should include what work a litigant carried out during the case, what employment the litigant may have taken up but for the case and what job offers were received and/or refused on account of the case (see *Mainwaring v Goldtech Investments Ltd*) [1997] 1 Costs LR 143 at page 156).

There is an overall limit on charges for time spent preparing the case which can never be exceeded. The Costs Officer or Costs Judge cannot allow more than two thirds of the sum which a legal representative could reasonably have charged for doing the work (CPR 46.5(2)).

32.5 Calculation of disbursements

A litigant in person will be allowed all of their reasonable disbursements (such as court fees, out of pocket expenses) in full if the Costs Officer or Costs Judge decides all of the following questions in the litigant in person's favour:

(i) Were these disbursements actually incurred?

(ii) If so, at the time they were incurred, did it then appear reasonable and proportionate to incur them?

(iii) Are the sums claimed for each disbursement reasonable and proportionate in amount?

If, in respect of any disbursement the answers to questions (i) or (ii) is no, the amount claimed for that disbursement will be wholly disallowed.

If, in respect of any disbursement, the answers to questions (i) and (ii) are yes but the answer to question (iii) is no, the Costs Officer or Costs Judge may allow a reduced amount for that disbursement.

Section 33 - Legal Aid cases

33.1 Introduction

The Legal Aid Sentencing and Punishment of Offenders Act 2012 abolished the Legal Services Commission ("LSC") and gave control of legal aid to the Lord Chancellor, who operates the scheme via the Legal Aid Agency (an executive agency of the Ministry of Justice). Cases started under the LSC scheme continue largely as before but, on conclusion, will be paid for by the Lord Chancellor pursuant to the 2012 Act out of funds made available to the Legal Aid Agency for this purpose. In this Guide those funds are referred to as "the legal aid fund" and a person to whom legal aid has been granted is referred to as a "legally aided party".

33.2 Costs payable by another person as well as out of the legal aid fund

Where the costs are payable by another person as well as out of the legal aid fund, the rules governing commencement of detailed assessment proceedings, points of dispute and replies are the same as those which apply to between the party's cases generally.

The Schedule of Costs Precedents includes model forms of bills for use in such cases (Precedents C and D).

The request for a detailed assessment hearing must (in addition to the items set out in Section 10) be accompanied by:

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

(ii) a certificate in Precedent F(3) and where appropriate a certificate in Precedent F(4) of the Schedule of Costs Precedents (see Appendix F);

(iii) if the legally aided party has a financial interest in the detailed assessment hearing and wishes to attend, the postal address of that person to which the court will send notice of any hearing;

(iv) if the rates payable out of the legal aid fund are prescribed rates, a schedule (the "Legal Aid /LSC Schedule") setting out all the items in the bill which are claimed against other parties calculated at the legal aid prescribed rates. (See Appendix E for the precedent schedule which should be followed as closely as possible);

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

The legally aided party should not be served with a copy of the notice of commencement and should only be served with a copy of the bill if he or she has a financial interest in the detailed assessment.

33.3 Procedure where costs are payable by another person as well as out of the legal aid fund

Unless the legal aid/LSC only sections of the bill are comparatively small or otherwise easy to deal with, the detailed assessment will be conducted in two stages.

(i) In the first stage the court will consider only the between the parties' sections of the bill, the points of dispute thereon and any replies made.

(ii) In the second stage the court will consider the legal aid/LSC only sections of the bill and the Legal Aid/LSC Schedule.

The Legal Aid/LSC Schedule is of no concern to the party against whom costs have been awarded between the parties and indeed that person should not normally attend the second stage of the detailed assessment.

The legally aided party's legal representative will have prepared the Legal Aid/LSC Schedule in advance of the detailed assessment. It may therefore be necessary to begin the second stage of the detailed assessment by altering the Schedule so as to update it, taking account of the decisions made during the first stage of the detailed assessment (subject to the need to notify a legally aided party who has a financial interest in the assessment).

In respect of any item appearing in the Legal Aid/LSC only sections of the bill, the court will consider what sum, if any, it is reasonable to allow in respect of that item.

In respect of any item deleted or reduced in the Legal Aid/LSC Schedule so as to take into account decisions made during the first stage of the detailed assessment, the court may be requested to consider whether any part of that item can be restored via an appropriate alteration to the Legal Aid/LSC only sections of the bill.

33.4 Costs of detailed assessment proceedings

Costs incurred on behalf of a legally aided party in respect of a detailed assessment between the parties are treated in the same way as other costs incurred on their behalf, and whether or not they are payable by the other party, may also be claimed against the legal aid fund. In general, the party whose bill is the subject of detailed assessment is entitled to the costs of the detailed assessment proceedings. However, the court may make some other order in relation to all or part of the costs of the detailed assessment proceedings (see Section 16).

The legally aided party will not be required to make any contribution to the legal aid fund on account of the costs of the detailed assessment proceedings and the statutory charge does not apply in relation to any resulting increase in the net liability of the fund arising from the costs of the detailed assessment proceedings. The cost of drawing up a bill of costs is however not included as part of the costs of the detailed assessment proceedings (Civil Legal Aid (General) Regulations 1989, Regulation 119 as amended).

33.5 Costs payable only out of the legal aid fund

Where costs in civil proceedings are payable only out of the legal aid fund, after 17 August 2020 the assessment of those costs may be carried out by the Legal Aid Agency or by the SCCO. Where the costs are payable by another person as well as the legal aid fund, the bill will be assessed by the court.

Claims for costs under representation orders granted by the High Court will also continue to be assessed by the SCCO.

33.6 Duty to inform counsel

It is the duty of the legally aided party's legal representative to notify counsel in writing within 7 days after the detailed or provisional assessment where the fees claimed on counsel's behalf have been reduced or disallowed on assessment and the legal representative must endorse the bill with the date on which such notice was given or that no such notice is necessary. If the bill is endorsed with the date upon which notice was given to counsel the court may not issue the certificate until 14 days have elapsed from the date so endorsed (see Civil Legal Aid (General) Regulations 1989, Regulation 112 and Precedent F(4) of the Schedule of Costs Precedents (see Appendix F).

33.7 Completing the bill and the legal aid assessment certificate

It is the responsibility of the legal representative to complete the bill by entering in the bill the correct figures allowed in respect of each item, recalculating the summary of the bill appropriately and completing the Legal Aid Assessment certificate in Form EX 80A.

33.8 Agreement of between the parties' costs

In cases where the Civil Legal Aid (Remuneration) Regulations 1994 apply (cases in which the legal aid certificate was issued on or after 25 February 1994) the Civil Legal Aid (General) Regulations 1989, Regulation 106A permits the legally aided party's legal representative to apply for an assessment limited to legal aid/LSC only costs provided the between the parties' costs have been both agreed and paid.

33.9 Costs appeals

The legal representative for a legally aided party may appeal against a decision of a Costs Judge or District Judge in detailed assessment proceedings in accordance with rules of court (i.e. CPR Part 52) and if counsel acting for the legally aided party notifies the legal representative that they are dissatisfied with the decision the legal representative must appeal on counsel's behalf. The costs of any such appeal will only be payable out of the

legal aid fund to the extent that the court hearing the appeal so orders. For the detailed Regulations relating to appeals involving legally aided parties see Civil Legal Aid (General) Regulations 1989, Regulation 113 as amended.

33.10 VAT on costs payable out of the legal aid fund

VAT will be payable in respect of every supply made pursuant to a legal aid/LSC certificate where:

(i) the legal representative and/or other person making the supply is a taxable person; and

(ii) the legally aided party -
  (a) belongs in the United Kingdom; and
  (b) is a private individual or receives the supply for non-business purposes.

Where the legally aided party belongs outside the United Kingdom, VAT is generally not payable unless the supply relates to land in the United Kingdom.

For the purpose of sub-paragraphs (a) and (b), the place where a person belongs is determined by section 9 of the Value Added Tax Act 1994.

VAT on legal services rendered to a legally aided party is payable out of the legal aid fund even if the legally aided party is registered for VAT and the legal services were supplied in connection with that person's business.

Any summary of costs payable out of the legal aid fund 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. The different calculations of VAT will also be shown separately in any costs certificate payable out of the legal aid fund.

Section 34 - Costs orders against legally aided parties and/or the Lord Chancellor

34.1 The Legal Aid Sentencing and Punishment of Offenders Act 2012 and the regulations

On 1 April 2013 s26 of the Legal Aid Sentencing and Punishment of Offenders Act ("the Act" in this section) replaced s11 of the Access to Justice Act 1999. S26(1) of the Act provides that costs ordered against an individual who is a legally aided party in relevant civil proceedings must not exceed the amount (if any) which it is reasonable for that party to pay having regard to all the circumstances, including:

(i) the financial resources of all the parties to the proceedings; and

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

The Civil Legal Aid (Costs) Regulations 2013 ("the Regulations") are Regulations made in accordance with the Act and provide a procedure to determine whether or not a costs order could and should be made against the Lord Chancellor and/or a legally aided party.

Part 2 of the Regulations deals with costs protection, which only applies to costs incurred by the receiving party in relation to proceedings which are, as regards the legally aided party, relevant civil proceedings (or contemplated proceedings) before the court.

34.2 Orders which the court awarding costs may make

If the court decides to make an order for costs against a legally aided party, it may either make an order that the amount of the costs payable by the legally aided party is to be determined by a Costs Judge or District Judge, or make an order which specifies the amount which the legally aided party is required to pay.

If the court decides to make an order that the amount payable by the legally aided party is to be determined by a Costs Judge or District Judge, it may also state the amount that that person would have been ordered to pay had costs protection not applied, i.e. the full costs which would be determined by summary assessment. Alternatively, the court may make findings of fact, e.g., about the conduct of all the parties which must be taken into account by the Costs Judge or District Judge in the subsequent determination proceedings.

The court will not make an order which specifies the amount which the legally aided party is to pay, unless it considers it has sufficient information before it to decide what amount is reasonable and either the order also states the amount of the full costs (i.e. the amount

which that person would have been ordered to pay had costs protection not applied) or the court is satisfied that the full costs would exceed the amount which it has specified the legally aided party must pay.

If the legally aided party does not have costs protection in respect of all of the costs (e.g. the certificate was not in force during the whole of the proceedings) the order must also identify the sum payable in respect of which the legally aided party had costs protection and the sum payable in respect of which he did not have costs protection.

A specimen order for costs made against a claimant, who is a legally aided party, is set out in Appendix AD.

34.3 Costs against the Lord Chancellor

If an application for an order for costs against the Lord Chancellor (to be paid out of the legal aid fund) is made, the criteria set out in Part 3 of the Regulations apply. The following conditions must be satisfied before an order against the Lord Chancellor may be made:

(i) a s26(1) order is made against the legally aided party in the proceedings and the amount (if any) which the legally aided party is required to pay is less than the amount of the full costs;

(ii) the proceedings must have been finally decided in favour of the non-legally aided party;

(iii) the non-legally aided party makes a request for a hearing to determine the amount to be paid by the legally aided party within three months of the date on which the Section 26(1) costs order is made; or after the expiry of the time limit where there is good reason for the delay in the request being made;

(iv) in the case of costs incurred in a court at first instance and the proceedings were instituted by the legally aided party, the non-legally aided party is an individual, and the court is satisfied that the non-legally aided party will suffer financial hardship unless the order is made; and

(v) in any case the court is satisfied that it is just and equitable in the circumstances that provision for the costs shall be made out of public funds.

Where the non-legally aided party is acting in a representative, fiduciary or official capacity and is entitled to be indemnified in respect of costs from any property, estate or fund, the court must, for the purposes of determining whether the above conditions are satisfied, have regard to the value of the property, estate or fund and the resources of any person who has a beneficial interest in that property, estate or fund.

Where the application for funded services was made on or after December 2001 the three months' time limit referred to above may be extended if there is a good reason for the delay.

34.4 Orders which a costs judge or district judge may subsequently make

An order for costs to which s26 of the Act applies may specify the amount of full costs and may specify the amount payable by the legally aided party. Where appropriate a request may be made to the District Judge or Costs Judge of the relevant court to determine:

(i) the amount of full costs;

(ii) the amount payable by the legally aided party;

(iii) the amount payable by the Lord Chancellor.

The procedures for determining the liability of a legally aided party under a s26(1) costs order and for obtaining a costs order against the Lord Chancellor are set out at paragraphs 9 to 20 of the Regulations which are briefly summarised below.

34.5 Form of request

A request for an order must be made in the appropriate court office and must be accompanied by:

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

(ii) the receiving party's statement of resources (defined below);

(iii) if the receiving party intends to seek costs against the Lord Chancellor, written notice to that effect.

The request may be made formally (Form N244, in respect of which a court fee is payable) or informally (by way of a letter to the court).

34.6 The response by the legally aided party

Within 21 days of being served with the application, the legally aided party must respond by filing a statement of resources (defined below) and serving a copy of it on the receiving party and where relevant the Lord Chancellor. The legally aided party may also, within the same time limit, file and serve written points disputing the bill of costs.

The 21-day time limit mentioned above may be extended by agreement between the parties and/or by order of the court.

34.7 Effect of non-compliance by the legally aided party

If the legally aided party fails to file the statement of resources without good reason the court will determine their liability (and the full amount of costs if relevant) and need not hold an oral hearing for any such determination.

34.8 Further procedure where a statement of resources by the legally aided party is filed or is not required

When the legally aided party files a statement of resources the court will fix a hearing date and give the relevant parties at least 14 days' notice. If the application is made only against the Lord Chancellor, the court may fix a hearing date at the time of issue of the request.

The request which proceeds to a hearing to determine liability of the legally aided party will, in the first instance, be listed as a hearing to be held in private. At the start of the hearing or during it any party may request the court to rule that thereafter the hearing should be conducted in public.

34.9 Response by the Lord Chancellor

Where a costs order may be made against the Lord Chancellor, either the Lord Chancellor or a representative may appear at that hearing.

34.10 Costs of request

When dealing with the request, the court has a discretion as to whether the costs of the request or application are payable by one party to another, the amount of those costs and (if relevant) when they are to be paid.

34.11 Statement of resources

A "statement of resources" should set out the details of the financial resources and expectations of the maker of the statement and of any "partner" (a person with whom the legally aided party

lives as a couple). The resources of a partner are not treated as the legally aided party's resources if the partner has a contrary interest in the proceedings.

The full definition of "statement of resources" is given in paragraph 14 of the Regulations. In order to comply with that paragraph, the party making a statement of resources may be able

to adapt the text of Form N9A, a copy of which is obtainable from the court office or from a Citizens Advice Bureau.

The Regulations provide for the filing of statements of resources not only by the legally aided party, but also by the receiving party. As regards costs incurred in appeal proceedings, applications are often made by large commercial companies or litigants who are insured or who are publicly funded and so are not expecting to receive any costs from the legally aided party. In such cases a statement of resources stating merely “the applicant is able to pay costs out of its own resources” or “is insured” or “is a publicly funded body” will suffice. In such cases the court will assume that the applicant will not suffer any financial hardship if the application against the legally aided party fails.

Where the court is determining a request for a costs order against the Lord Chancellor and the costs were incurred in appeal proceedings, a statement of resources does not have to be filed by the non-legally aided party.

34.12 Specimen forms of order

Appendix AD is a specimen order for costs against a claimant who is a legally aided party and also a specimen order for use by a Costs Judge or District Judge when determining the amount of costs payable by a legally aided party.

Section 35 - Cases transferred from other courts

35.1 Assessment of costs awarded in the High Court and County Court

Bills of costs in proceedings in the District Registries of the High Court and the County Court are frequently transferred to the SCCO either at the request of the parties or of the transferring Court's own initiative. This is likely to occur when a District Judge considers the size and complexity of the bill warrants such a transfer.

When bills are transferred from a District Registry or a County Court Hearing Centre by an order of that Court, the parties will be served with a copy of that order. Sometimes such an order is made immediately prior to the date fixed for detailed assessment at the local Court, which itself may be some time after the parties first requested a hearing date. Every effort is made by the SCCO to list the transferred case at the earliest opportunity.

When, however, the parties have already waited for a significant time for their bill to be assessed by the local Court, they should notify the SCCO of this fact immediately after the order transferring the case is made, so that a hearing date which is as early as possible can be given. Otherwise, the parties may find themselves at the end of the queue of cases awaiting a hearing date at the SCCO.

35.2 Assessment of costs awarded by other tribunals and bodies

Various statutes give the SCCO jurisdiction to assess costs in litigation including the following:

(i) Election petitions

(ii) Proceedings under the Arbitration Acts

(iii) Proceedings before National Health Service Committees, Tribunals and other similar bodies

(iv) Proceedings before the Employment Appeal Tribunal

(v) Proceedings before VAT tribunals

(vi) Determinations by the Secretary of State for Environment or any appointed local planning inspectors as a result of local planning inquiries

(vii) Proceedings before the Solicitor's Disciplinary Tribunal

(viii) Proceedings before the Copyright Tribunal.

(ix) Competition appeals.

(x) Proceedings under the Justices and Justices' Clerks (Costs) Regulations 2001

(xi) Proceedings under the General Commissioners of Income Tax (Costs) Regulations 2001.

Section 36 - Supreme Court

36.1 Introduction

Assessments of costs in the Supreme Court are conducted by the Costs Officers appointed by the President. One must be a Costs Judge; the second must be the Registrar of the Supreme Court. The Costs Officers normally sit together as a Court of two or three. The current panel of Costs Judges sitting in the Supreme Court are Costs Judges Gordon-Saker (the Senior Costs Judge), Leonard and James.

Assessments of costs of an application, appeal or other matter before the Judicial Committee of the Privy Council ("JCPC") are conducted by the Senior Costs Judge or a Costs Judge nominated by him.

Assessments are conducted in public, usually in one of the court rooms in the Supreme Court's building on Parliament Square.

Assessments in the Supreme Court are governed by the Supreme Court Rules 2009 and the Practice Directions, in particular Practice Direction 13 which supplement the Rules; they are available on the internet and can be accessed via the Supreme Court website.

The assessment of costs in the JCPC is governed by the relevant provisions of the Judicial Committee (Appellate Jurisdiction) Rules 2009 (in particular Part 6) supplemented by Practice Direction 8 (on costs) and other Practice Directions issued to the Judicial Committee; these are available on the internet and can be accessed via the JCPC website.

Both in the Supreme Court and in the JCPC, wherever the Rules or Practice Directions do not cover a situation, the Rules and Practice Directions relating to Parts 44-47 of the Civil Procedure Rules are applied by analogy at the discretion of the Costs Judge, with appropriate modifications for appeals from Scotland and Northern Ireland, or, in the case of the JCPC, from foreign jurisdictions. The legal principles applied are those also applicable to assessments between parties in the High Court and the Court of Appeal in England and Wales.

36.2 Filing and service of bill of costs

The claim for costs must be in Form 5 specified in Section 2 of the respective Practice Directions of the Supreme Court and the JCPC. It must be filed within three months of the date on which the relevant costs order was made and must, at the same time, be served on the other parties. There is provision in the Supreme Court (PD 13 para 8) and JCPC (PD 8 para 6) to seek an extension or to file out of time, but time limits in the Supreme Court and JCPC are enforced more strictly than under the CPR and (unlike in the CPR) there is no onus on the Paying Party to take the issue.

The following documents only must be filed with the Court's clerk (SC PD 13 at 7.2, JCPC PD 8 at 5.2):

(i) Two copies of the Bill of Costs (Form 5);

(ii) Counsel's fee notes, which must be receipted (except in the case of Legal Aid Bills) and, where Counsel's fees exceed guideline rates set out in the Practice Directions, a detailed note explaining why; and

(iii) Receipts or other evidence of disbursements of £500 or more.

All the above papers may be filed by email with the Costs Clerk at the Supreme Court. Other papers on which the parties intend to rely may be brought to the hearing or filed with the Costs Clerk as thought appropriate. Where a Bill is complex or large, any papers the Costs Officers need to pre-read should be filed at least seven days before the hearing.

Points of Dispute may, and if the Bill is above £5,000, must, be filed with the Costs Clerk and served on the Receiving Party within 21 days of service of the Bill of Costs. The Receiving Party may within 14 days from service of the Points of Dispute respond to the Points if it thinks it appropriate to do so. Any requests for an extension of time to file Points of Dispute or Replies must be made to the Costs Clerk within the relevant time period, or, after expiry of that limit, by application in accordance with the appropriate Practice Direction.

36.3 Provisional assessment

Where a Paying Party does not file Points of Dispute, a Provisional Assessment will be conducted.

A Provisional Assessment will also be carried out where one of the parties requests such an assessment or where the costs claimed are £75,000 or less. A Provisional Assessment will also be carried out in the Supreme Court in cases involving public funding, except where a Legal Aid provider requests a hearing or where the size or complexity of the Bill requires a Detailed Assessment hearing.

36.4 Fees

The fee on filing a Bill of Costs is 2.5% of the amount claimed (including VAT).

The fee payable on assessment of the Bill is 2.5% of the amount allowed (including the costs of assessment and VAT).

Where a Bill of Costs is agreed fewer than 21 days prior to assessment, the assessment fee is payable on the amount agreed between the parties.

36.5 Review of costs officer's decision

The Rules regarding the review of a Costs Officer's decision in the JCPC differ slightly from the Rules of the Supreme Court but they are set out separately below for ease of reference.

The provisions for review of a Costs Officer's decision in the Supreme Court are governed by paragraph 12 of Practice Direction 13. Any party to an assessment who is dissatisfied with all or part of the decision of the Costs Officers may apply in accordance with Rule 53 for that decision to be reviewed by a single Justice. The application must be made in Form 2 and served on the other parties. An application may only be made on a question of principle and not in respect of the amount allowed on any item; PD 13 at 12.2. It must be made within 14 days of the end of the Detailed Assessment or such longer period as may be fixed by the Court. The application must also include written submissions stating concisely the grounds of the objections and must be served on the other parties. A party who objects to the application may, within fourteen days of service or such longer period as may be fixed by the Court, file a Notice of Objection in Form 3 which must be served on parties.

The matter is then referred to a single Justice nominated by the presiding or senior Justice who heard the appeal or application for permission to appeal. The single Justice will decide whether the matter should be referred to a panel of Justices. If the single Justice is of the opinion that the matter should not be referred to a panel, the decision of the Costs Officer is affirmed. If the matter is referred to a panel of Justices, the panel may decide the matter with or without an oral hearing and may direct a further oral hearing by the full court.

In the JCPC an application for review must be made in accordance with Rule 51 for that decision to be revised by the Judicial Committee. The application must be made in Form 2 and served on the other parties; JCPC PD 8 at 10.1. An application may only be made on a question of principle and not in respect of the amount allowed on any item; PD 8 at 10.2. It must be made within 14 days of the end of the Detailed Assessment or such longer period as may be fixed by the Costs Officer or by the Registrar; PD 8 at 10.3. An application for review must include written submissions stating concisely the grounds of objections and must be served on the other parties; PD 8 at 10.4. A party who objects to the application may within 14 days of service file a Notice of Objection which must be served on the other parties; PD 8 at 10.5.

The matter is then referred to a member of the Board nominated by the Senior Member of the Board who heard the appeal or application for permission to appeal. The nominated member of the Board will decide whether the matter should be referred to the Judicial Committee and, before he makes a decision, he may consult the other members of the Board who heard the appeal or application. If the nominated Member of the Board is of the opinion that the matter should not be referred, the decision of the Costs Officer is affirmed.

If the matter is referred, the Judicial Committee decides the matter with or without an oral hearing.

36.6 Guideline fees

Both the Supreme Court and the JCPC adopt Guideline hourly rates for solicitors and guideline figures for Counsel's fees as set out in the respective Practice Directions. Any requests for an increase on the Guideline rates should be included and explained with the bill.

Section 37 - Assessment of costs ordered to be paid by the Upper Tribunal

The Upper Tribunal was established by the Tribunals, Courts and Enforcement Act 2007. Its power to make orders for costs is governed by Rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008/2698.

Where the Upper Tribunal makes an order for costs, the amount to be paid (if not agreed) may be summarily assessed by the Tribunal. Alternatively, the Tribunal may make an order for detailed assessment on the standard or on the indemnity basis. If it does, the Tribunal may order that an amount be paid on account.

Following an order for assessment, the paying party or the receiving party may (in England and Wales) apply to the High Court or the SCCO (as specified in the order) for a detailed assessment of the costs. The CPR applies, with necessary modifications, to that application and assessment as if the proceedings before the Tribunal had taken place in a court to which the CPR applies.

Section 38 - Assessment Under the High Court Enforcement Officers Regulations 2004

38.1 Introduction

Enforcement of certain civil judgments is the responsibility of High Court Enforcement Officers ("enforcement officers") who are appointed by the Lord Chancellor. They were previously called sheriffs. Further details about them can be found in s99 of the Courts Act 2003 (and Schedule 7) and the High Court Enforcement Officers Regulations 2004 (SI No.2004/400).

Once appointed and assigned to a district, an enforcement officer must undertake enforcement action for all writs of execution received which are to be executed at addresses which fall within that assigned district.

38.2 Prescribed fees chargeable by Enforcement Officers

Schedule 3 to the High Court Enforcement Officers Regulations 2004 sets out the fees which may be charged by enforcement officers.

In respect of executions against goods, the main fees are a percentage of the amount recovered (Fee 1), mileage (at 29.2 pence per mile) in respect of one journey to seize goods and, if appropriate, one journey to remove the goods (Fee 2) and, if goods are sold by auction, further percentage fees to cover auctioneer's expenses (Fee 6). There are also several nominal fees for administrative steps: for example, a sum not exceeding £2 for making enquiries as to claims for rent or to goods, including giving notice to parties of any such enquiries (Fee 4(1)) and a further sum not exceeding £2 for all expenses actually and reasonably incurred in relation to such work including any postage, telephone, fax and e-mail charges (Fee 4(2)).

A particular fee which sometimes leads to disputes is Fee 12, which states as follows:

> "*Miscellaneous* For any matter not otherwise provided for, such sum as a Master, district judge or costs judge may allow upon application."

Where a High Court writ for execution against goods is completed by sale, fees 1, 2, 3, 4, 5, 6(1) and 7 may be levied by deducting them from the proceeds of sale.

38.3 Applications for detailed assessment of fees charged by Enforcement Officers

An enforcement officer, or a party liable to pay any fees under Schedule 3 of the Regulations mentioned above, may apply to a Costs Judge or a District Judge of the High Court for an assessment of the amount payable by the detailed assessment procedure in accordance with the Civil Procedure Rules 1998.

The application notice should be in Form N244 seeking "an order for detailed assessment pursuant to Regulation 13 of the High Court Enforcement Officers Regulations 2004".

The application should be electronically filed (see 1.5) together with copies of any relevant documents (such as the bill delivered by the enforcement officer) and the appropriate court fee or fee exemption certificate (see Section 4 above).

Once the formalities of filing have been completed, the application will be listed for a first hearing and each side will be given at least 14 days' notice of the hearing date.

The first hearing is a directions hearing only: the Costs Judge will decide whether to make an order for detailed assessment and, if he or she does so, will give timetable directions which, as far as possible, are convenient to all parties. The parties should attend the first hearing ready to inform the Costs Judge of any dates within the next 4 months upon which they will not be available to attend a detailed assessment.

38.4 Procedure where detailed assessment is ordered

If detailed assessment is ordered the Costs Judge will usually identify the document to be subject to detailed assessment, and give directions which:

(i) dispense with the requirement for filing a Notice of Commencement,

(ii) dispense with the requirement to serve Points of Dispute (if, for example, these have already been set out clearly in an earlier document),

(iii) specify the dates by which the parties must exchange any witness statements or other evidence they wish to rely upon at the detailed assessment,

(iv) specify the date by which the enforcement officer must serve any reply to the points of dispute he wishes to rely upon, and

(v) specify a later date upon which the enforcement officer must file a request for detailed assessment

The directions will also include provision for either side to request further orders or directions if their opponent fails to comply with the timetable set down, or if there is any substantial change of circumstances warranting some further or other directions.

Appendix - Some standard forms and precedents



Schedule of Costs Precedents

(A) Model form of bill of costs

(B) Model form of bill of costs (additional liability only)

(C) Model form of bill of costs (payable by Defendant and Legal Aid Agency)

(D) Model form of bill of costs (single column for amounts claimed)

(E) Legal Aid Schedule of costs

(F) Certificates for inclusion in bill of costs

(G) Points of Dispute and Reply

(H) Costs Budget

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

(K) Solicitors Act 1974: Order for delivery of a bill

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

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

(N) Solicitors Act 1974: breakdown of costs

(Q) Precedent Q

(R) Precedent R

(S) Precedent S

(T) Precedent T

(AA) Court of Protection short form bill of costs

(AB) Standard order in costs-only proceedings

(AC) Standard orders made on applications to set aside default costs certificates
(a) conditional order
(b) unconditional order
(c) dismissal of application
(d) adjournment of application

(AD) Standard orders made against parties granted legal aid
(a) award of costs against a claimant who is legally aided
(b) order specifying amounts payable, for use by a Costs Judge

(AE) Notice of Appeal prescribed for criminal costs appeals

(AF) Standard order for directions on a referral made in Civil Recovery Proceedings

(AG) Standard orders for assessments under CPR 46.4(2)

(AA) Court of Protection short form bill of costs

IN THE COURT OF PROTECTION

Case No:
SCCO reference

(to be completed by the court)

IN THE MATTER OF (A patient)

Short form bill of costs of the Receiver of *(e.g.) General Management for the period …… to be assessed pursuant to the First General Order dated ……*

One paragraph summary of work carried out

Fee earner category	Rate claimed

Work done	**Charge**
Time spent in personal attendances	
[DATE] [TIME SPENT] IUPON WHOM]	
Time spent in travel	
Letters Sent	
Telephone Calls	
Time spent on documents	

Other work (*give details*)	
Sub Total	V.A.T.
Disbursements (list below)	
V.A.T.	
Grand Total	

I certify that this bill is both accurate and complete.

Partner

Name, address and reference of solicitor filing bill

Short form bill of costs for use in Court of Protection assessments where the total costs claimed, excluding VAT, do not exceed £3000.

(AB) Standard order made in costs-only proceedings

To Claimant's Solicitor
To Defendant's Solicitor

In the High Court of Justice Senior Courts Costs Office	
SCCO Ref:	
Claimant (include Ref)	
Defendants (include Ref)	
Date	

Costs Judge [ ]

UPON THE APPLICATION of the Claimant AND UPON READING the documents on the Court file.

IT IS ORDERED as follows:

(1) Pursuant to CPR 47.4(2) the appropriate office for the detailed assessment proceedings is to be the Senior Courts Costs Office.

(2) The Claimant's costs of the claim arising from the cause of action described in the claim form in respect of which terms of settlement have been agreed shall be paid by the Defendant and be the subject of a detailed assessment hearing in this Court.

(3) The Claimant's solicitors shall commence detailed assessment proceedings pursuant to CPR 47.6 within 3 months of this Order being sealed. The parties shall observe the time limits specified in CPR 47.9(2) (points of dispute), CPR 47.13(2) (optional reply) and CPR 47.14(1) (request for a detailed assessment hearing).

(4) The parties have permission to apply not more than 7 days after the date of service of this Order on them to set aside, vary or stay this Order.

(5) Costs in the assessment.

(AC) Standard orders made on applications to set aside default costs certificates

ORDER

To Claimant's Solicitor
To Defendant's Solicitor

In the High Court of Justice Senior Courts Costs Office	
SCCO Ref:	
Claimant (include Ref)	
Defendants (include Ref)	
Date	

Costs Judge [ ]

UPON THE APPLICATION of the [PARTY]

AND UPON HEARING

IT IS ORDERED as follows:

(a) Conditional order (1)

(1) On or before 4 pm on [ ] the [ ] must pay to the [ ] [into court] the sum of [£] on account of the costs claimed by the [ ] herein and must forthwith give notice of any payment into court to the [ ].

(2) If and when the [ ] complies with paragraph (1) the default costs certificate issued herein will be automatically set aside and, on receiving notice of the payment, the [ ] must forthwith return the original certificate to the Senior Courts Costs Office to be so marked.

(3) If the default costs certificate issued herein is automatically set aside the following directions shall apply:

(a) Within [14 days] of the payment referred to in paragraph (1) the [ ] must serve Points of Dispute on the [ ] [and on the other parties hereto]. Points of Dispute should not be filed in court at that stage.

(b) Within [28] days of receipt of the Points of Dispute the [ ] must file a request for a detailed assessment hearing in Form N258.

Conditional order (2)

(a) The [ ] having already served Points of Dispute, the [ ] must on or before 4 pm on [ ] file a request for a detailed assessment hearing in Form N258.

( ) The Form N258 to be filed by the [ ] must be duly completed and must specify the SCCO reference for this application.

( ) The [ ] has permission to serve a reply to the Points of Dispute if he does so before filing the request in Form N258.

(4) Enforcement of the default costs certificate is stayed until [ ] upon which date if it has not by then been automatically set aside, the [ ] can proceed to enforce it.

(5) The costs of and thrown away by this application are awarded to the [ ] and are summarily assessed at £ [including VAT] [VAT not recoverable] which sum is payable on or before [ ]

(6) There shall be a detailed assessment of the costs of the [ ] which are payable by the Lord Chancellor out of legal aid funds.

(7) Any party hereto may request a further hearing of this application in order to obtain further or other directions.

(b) Unconditional order (1) [Heading and opening words as above]

IT IS ORDERED as follows:

(1) The default costs certificate issued herein dated [ ] is hereby set aside and the [ ] must forthwith return the original certificate to the Senior Courts Costs Office to be so marked.

(2) On or before 4 pm on [ ] the [ ] must serve Points of Dispute on the [ ] [and on the other parties hereto]. Points of Dispute should not be filed in court at that stage.

(3) Within [28] days of receipt of the Points of Dispute the [ ] must file a request for a detailed assessment hearing in Form N258.

Unconditional order (2)

( ) The [ ] having already served Points of Dispute, the [ ] must on or before 4 pm on [ ] file a request for a detailed assessment hearing in Form N258.

( ) The Form N258 to be filed by the [ ] must be duly completed and must specify the SCCO reference for this application.

( ) The [ ] has permission to serve a reply to the Points of Dispute if he does so before filing the request in Form N258.

( ) The costs of and thrown away by this application are awarded to the [ ] and are summarily assessed at £ (including VAT) (VAT not recoverable) which sum [may be set off against any costs payable by the [ ] to the [ ] is payable on or before [ ].

( ) There shall be a detailed assessment of the costs of the [ ] which are payable by the Lord Chancellor out of legal aid funds.

( ) Any party hereto may request a further hearing of this application in order to obtain further or other directions.

(c) Dismissal of application [Heading and opening words as above]

IT IS ORDERED as follows:

(1) The application to set aside the default costs certificate herein is dismissed

(2) The costs of this application are awarded to the [ ] and are summarily assessed at £ (including VAT) (VAT not recoverable) which sum is payable on or before [ ].

(3) The costs of the application are awarded to [ ] to be assessed if not agreed.

(4) There shall be a detailed assessment of the costs of the [ ] which are payable by the Lord Chancellor out of legal aid funds.

(d) Adjournment of application [Heading and opening words as above]

IT IS ORDERED as follows:

(1) This application is adjourned to [ ] [a date to be fixed].

(2) Enforcement of the default costs certificate issued herein is stayed until the conclusion of this application or further order.

(AD) Standard orders made against parties granted legal aid

(a) Award of costs against a Claimant who is legally aided

To Claimant's Solicitor

To Defendant's Solicitor

In the High Court of Justice Senior Courts Costs Office	
SCCO Ref:	
Claimant (include Ref)	
Defendants (include Ref)	
Date	

IT IS ORDERED THAT:

1. The claim is dismissed.

2. The full costs of this claim which have been incurred by the defendant are [summarily assessed at £] [to be determined by a Costs Judge or District Judge].

3. The claimant (a legally aided party) do pay to the Defendant [nil] [£] [an amount to be determined by a Costs Judge or District Judge]. [When determining such costs the Costs Judge or District Judge should take into account the following facts:

   [Here list any findings as to the party's conduct in the proceedings or otherwise which are relevant to the determination of the costs payable by the legally aided party]

4. On or before (date) the claimant must pay into court £ on account of the costs payable under paragraph 2, above.

5. There be a detailed assessment of the costs of the claimant which are payable by the Lord Chancellor out of legal aid funds.

(b) Order specifying the amounts payable, for use by a costs judge

To Claimant's Solicitor
To Defendant's Solicitor

In the High Court of Justice Senior Courts Costs Office	
SCCO Ref:	
Claimant (include Ref)	
Defendants (include Ref)	
Date	

IT IS ORDERED as follows

1. The full costs of the [defendant] herein, [including the costs of this application] are assessed at £
2. The amount of costs which it is reasonable for the [claimant] to pay to the [defendant] is [nil] [£ which sum is payable to the [defendant] on or before (date)].
3. The sum of £ paid into court on account of the costs specified in paragraph 2 above and any interest accruing thereon shall be paid out to the [defendant in part satisfaction] [claimant] as specified in the payment schedule to this Order.
4. The amount of costs payable by the Lord Chancellor out of legal aid funds to the [defendant] [including the costs of this application] is £ which sum is payable to the [defendant] on or before (date).

[Schedule in Form 200 (see Court Funds Rules 1987)]

(AE) Notice of appeal prescribed for criminal costs appeals

Appellant's Notice
(Criminal Costs Appeal to a Costs Judge)

For Court use only	
SCCO Ref No	
Date filed	

SEAL

Section 1	**Details of the case in which you are appealing**
Court	
Name of the case	R v
Case no.	

Details of the Appellant

Name

Address (including postcode)

	Tel No.	
	Fax	
	DX	
	E mail	
	Ref.	
Do you wish to attend the hearing of the appeal?		**YES / NO**

Section 2	**Details of the decision under appeal**
Name and address of the Determining Authority (the appellant must send a copy of this Notice to the Determining Authority)	
Date of written reasons	

Section 3	Extensions of Time
Do you need an extension of time to pursue the appeal?	**YES / NO**

If yes, please set out the grounds relied on

Section 4	Grounds of appeal

Please identify (briefly) the items in the written reasons which you wish to appeal and the grounds of appeal in relation to each such item

(if necessary, continue on a separate page)

Section 5 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate box.

- ☐ a copy of the solicitor's bill or counsel's fee claim (as appropriate) with any supporting submissions
- ☐ a copy of the original determination and redetermination
- ☐ a copy of the appellant's representations on redetermination
- ☐ a copy of the written reasons by the determining authority
- ☐ a copy of the representation order and any authorities granted under it
- ☐ relevant supporting papers

I confirm that a copy of this notice has been served on the determining authority

Statement of truth

I believe (The appellant believes) that the facts stated in this notice are true.

Full name _____

Name of appellant's solicitor's firm _____

Signed _____ position or office held _____

Appellant ('s solicitor) (if signing on behalf of firm or company)

Dated _____

(AF) Standard order for directions on a referral made in Civil Recovery Proceedings

To Claimant's Solicitor
To Defendant's Solicitor

In the High Court of Justice Senior Courts Costs Office	
SCCO Ref:	
Claimant (include Ref)	
Defendants (include Ref)	
Date	

UPON THE APPLICATION of the Defendant AND UPON READING the documents on the court file IT IS ORDERED as follows:

1 This matter now stands adjourned to a hearing before Costs Judge [ ] in Court [ ] in the Senior Courts Costs Office on [*date to be fixed*] (2 hours allowed) for the Claimant to show cause why the exclusion in respect of the Defendant's reasonable legal costs should not specify:-

(1) the stage or stages in the civil recovery proceedings;

(2) the maximum amount which may be released in respect of legal costs for each specified stage; and

(3) the total amount which may be released in respect of legal costs pursuant to the exclusion

in the manner, and in the amounts, set out in the Defendant's estimate of costs which is referred to in the application notice herein.

2 On or before [*date to be fixed*] the Claimant must file in court and serve on the Defendant Points of Dispute on the estimate (i.e., a brief statement identifying each item in the estimate which is disputed, summarising the nature and grounds of dispute in respect of that item and, where practicable, suggesting a figure to be allowed for each item in respect of which a reduction is sought).

3 Liberty to [both] [all] parties to apply by letter to the Court requesting the Court to stay, set aside or vary this Order.

(AG) Standard orders for assessments under CPR 46.4(2)

Appendix 1

On [ ] before Costs Judge [ ] sitting in Court [ ] at The Royal Courts of Justice, Strand, London

UPON the settlement of the costs between the parties

AND UPON the Claimant's solicitors waiving any claim against the Claimant or any other person for costs and disbursements not recovered from the Defendant

IT IS ORDERED THAT:-

1. The settlement of costs between the parties at £ [ ] inclusive of interest and costs of assessment, is approved under CPR 21.10.

2. The Claimant's costs payable by the Defendant are assessed at the agreed figure and assessment between solicitor and client is dispensed with under Practice Direction 46 paragraph 2.1(b).

Appendix 2

On [ ] before Costs Judge [ ] sitting in Court [ ] at The Royal Courts of Justice, Strand, London

UPON the application of the solicitors for the Claimant under CPR 46.4(5)

IT IS ORDERED THAT:-

1. The success fee/balance payable to the Claimant's solicitors under the Conditional Fee Agreement/Damages Based Agreement dated [ ] is assessed at [£].

2. The Claimant's costs payable by the Defendant are assessed at [*the agreed figure*] [(inclusive of interest and the costs of detailed assessment proceedings)].

3. The costs and disbursements payable by the Claimant to the Claimant's solicitors are limited to the sums assessed under paragraphs 1 and 2 above.

Appendix 3

On [ ] before Costs Judge [ ] sitting in Court [ ] at The Royal Courts of Justice, Strand, London

UPON the court being notified that the costs payable by the Defendant to the Claimant have been agreed

AND UPON the court's own initiative

IT IS ORDERED that:

1. The assessment of the costs payable to the Claimant by the Defendant and payable by, or out of money belonging to, the Claimant pursuant to CPR 46.4(2) is listed for [ ] with a time estimate of [ ] (attendance by the Defendant is not required).

2. [The hearing is to be held by Microsoft Teams, and the Claimant's solicitors are to provide the court, at least 7 days before the hearing, with email addresses so that invitations may be sent to all persons attending].

3. The Claimant's solicitors shall by 4 pm on [ ] (a) provide a copy of this order to any appointed Deputy and Litigation friend by way of confirmation that they may attend the hearing if they wish, and (b) confirm to the court that that has been done.

4. The Claimant's solicitors shall file copies of the first General Order of the Court of Protection (if made) together with any subsequent Orders or Authorities relating to the claim.

5. The Claimant's solicitors shall at least 7 days before the hearing (i) file in either paper or electronic form the relevant underlying papers at the SCCO for Costs Judge [ ] to whom the case is allocated; (ii) file a skeleton argument as to the reasonableness of the costs and disbursements sought by the Claimant's solicitors in excess of those recovered from the Defendant.

6. Where the payment of a success fee is in issue those papers will include: the conditional fee agreement/s, the risk assessment/s and any attendance notes relevant to the issue of the risk undertaken by the solicitors at the time the CFA was entered into.

7. Where the cost of an ATE premium is in issue the papers should include the insurance certificate, a copy of the policy, any risk assessment, any relevant attendance notes and the advice given to the litigation friend about the policy and the need to take it out.

8. The papers should also include (unless already filed) the Bill of Costs or any breakdown of costs which formed the basis of the negotiations between the parties.

9. This Order has been made on the court's own initiative and without a hearing. Any party affected by this Order may, within 7 days of its receipt, apply to the Court to set aside, vary or stay its terms.

Appendix 4

On [ ] before Costs Judge [ ] sitting in Court [ ] at The Royal Courts of Justice, Strand, London

UPON hearing [Counsel/Costs Lawyer] for the Claimant's Solicitors

AND UPON the Court noting that the Claimant and Defendant have agreed the costs payable pursuant to the Order of [ ] dated [ ] in the sum of [ ] [(inclusive of interest and the costs of detailed assessment proceedings)]

AND UPON the Court carrying out a solicitor and own client assessment pursuant to CPR 46.4(2)(a)

AND UPON the Claimant's Litigation Friend [and Deputy] confirming that [they] do not wish to attend the hearing on [ ]

IT IS ORDERED THAT:-

(1) The costs payable to the Claimant by the Defendant are assessed in the agreed sum.

(2) Pursuant to CPR 46.4(4), the Court certifies the further sum of [ ] as payable by the Claimant (protected party) to his/her Solicitors.

(3) The Claimant's Deputy [ ] has permission to release, within 28 days, the sum of [ ] for such payment from funds currently held on client account to [ ].



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