60th UPDATE – PRACTICE DIRECTION AMENDMENTS

The new Practice Directions and the amendments to the existing Practice Directions supplementing the Civil Procedure Rules 1998 are made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by , Parliamentary Under Secretary of State, by the authority of the Lord Chancellor.

The amendments to the Pre-Action Protocol for Judicial Review and the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents are approved by the Master of the Rolls as Head of Civil Justice.

The new Practice Directions and amendments to the existing Practice Directions, and the amendments to the Pre-Action Protocols come into force as follows—	
Practice Direction 3E – Costs Management	1 April 2013
Practice Direction 3F – Costs Capping	1 April 2013
Practice Direction 5A – Court Documents	1 April 2013
Practice Direction 5C – Electronic Working Scheme	1 April 2013
Practice Direction 15 – Defence and Reply	1 April 2013
Practice Direction 21 – Children and Protected Parties	1 April 2013
Practice Direction 22 – Statements of Truth	1 April 2013
Practice Direction 25A – Interim Injunctions	1 April 2013
Practice Direction 26 – Case Management Preliminary Stage: Allocation and Re-allocation	1 April 2013
Practice Direction 27 – The Small Claims Track	1 April 2013
Practice Direction 28 – The Fast Track	1 April 2013
Practice Direction 29 – The Multi-Track	1 April 2013
Practice Direction 35 – Experts and Assessors	1 April 2013
Practice Directions 44 to 48, replacing the Costs Practice Direction	1 April 2013
Practice Direction 51D	1 April 2013
Practice Direction 51E	1 April 2013
Practice Direction 51G	1 April 2013
Practice Direction 52A – Appeals: general provisions	1 April 2013
Practice Direction 52C – Appeals to the Court of Appeal	1 April 2013
Practice Direction 66 – Crown Proceedings	1 April 2013
Practice Direction 72 – Third Party Debt Orders	1 April 2013
Practice Direction – Civil Recovery Proceedings	1 April 2013
Practice Direction – Pre-Action Conduct	1 April 2013
Pre-Action Protocol for Judicial Review	1 April 2013
Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents	1 April 2013

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The Right Honourable The Lord Dyson
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

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Parliamentary Under Secretary of State
Ministry of Justice

PRACTICE DIRECTION 3E – COSTS MANAGEMENT

1) After Practice Direction 3D – Mesothelioma Claims, insert Practice Direction 3E – Costs Management and Practice Direction 3F – Costs Capping as set out at **Annex A**.

PRACTICE DIRECTION 4 – FORMS

2) In Practice Direction 4 – Forms, after Table 1—

(a) delete the entry for Form N149;

(b) after the entry for Form N149 insert—

"N149A	Notice of proposed allocation to small claims track
N149B	Notice of proposed allocation to fast track
N149C	Notice of proposed allocation to multi-track";

(c) delete the entry for Form N150;

(d) delete the entry for Form N151; and

(e) after the entry for Form N173 insert—

"N180	Directions Questionnaire (small claims track)
N181	Directions Questionnaire (fast track and multi-track)".

PRACTICE DIRECTION 5A – COURT DOCUMENTS

3) In Practice Direction 5A – Court Documents, in paragraph 4.2A(g), for "an allocation" substitute "a directions".

PRACTICE DIRECTION 5C – ELECTRONIC WORKING SCHEME

4) In Practice Direction 5C – Electronic Working Scheme—

(a) in paragraph 7.1(e)(vii), for "allocation" substitute "directions";

(b) in paragraph 13.1—

(i) in the first place it occurs, for "an allocation" substitute "a directions"; and

(ii) in each other place "allocation" occurs, substitute "directions".

PRACTICE DIRECTION 15 – DEFENCE AND REPLY

5) In Practice Direction 15 – Defence and Reply, in paragraph 3.2A, for "allocation" substitute "directions" in each place it occurs.

PRACTICE DIRECTION 21 – CHILDREN AND PROTECTED PARTIES

6) In Practice Direction 21, in paragraph 11.1(1) and (3) for "rule 48.5(2)" substitute "rule 46.4(2)".

PRACTICE DIRECTION 22 – STATEMENTS OF TRUTH

7) In Practice Direction 22 – Statements of Truth, after paragraph 2.2, insert—

"**2.2A** The form of the statement of truth verifying a costs budget should be as follows—

"The costs stated to have been incurred do not exceed the costs which my client is liable to pay in respect of such work. The future costs stated in this budget are a proper estimate of the reasonable and proportionate costs which my client will incur in this litigation.".".

PRACTICE DIRECTION 25A – INTERIM INJUNCTIONS

8) In Practice Direction 25A—

(a) in paragraph 5.1(1), at the beginning insert "subject to paragraph 5.1B,";

(b) in paragraph 5.1A, at the beginning insert "Subject to paragraph 5.1B,"; and

(c) after paragraph 5.1A insert paragraph 5.1B as follows—

"**5.1B** (1) If in an Aarhus Convention claim the court is satisfied that an injunction is necessary to prevent significant environmental damage and to preserve the factual basis of the proceedings, the court will, in considering whether to require an undertaking by the applicant to pay any damages which the respondent or any other person may sustain as a result and the terms of any such undertaking—

(a) have particular regard to the need for the terms of the order overall not to be such as would make continuing with the claim prohibitively expensive for the applicant; and

(b) make such directions as are necessary to ensure that the case is heard promptly.

(2) "Aarhus Convention claim" has the same meaning as in rule 45.41(2)."

PRACTICE DIRECTION 26 – CASE MANAGEMENT – PRELIMINARY STAGE: ALLOCATION AND RE-ALLOCATION

9) In Practice Direction 26 – Case Management – Preliminary Stage: Allocation and Re-Allocation—

(a) in the table of contents, for the entry "The allocation questionnaire", substitute "The directions questionnaire";

(b) in the heading to paragraph 2, for "allocation" substitute "directions";

(c) in paragraph 2.1, for sub-paragraphs (1) and (2) substitute—

"(1) The notice of proposed allocation referred to in rule 26.3(1) will be—

in the small claims track, in form N149A (SCT);

in the fast track, in form N149B (FT); and

in the multi-track, in form N149C (MT),

and the directions questionnaire referred to in Part 26 will be in Forms N180 and N181.

(2) Attention is drawn to Part 3 of the Civil Procedure Rules which requires costs budgets in all multi-track cases.";

(d) in paragraph 2.2, for subparagraph (1) substitute—

"(1) If a party wishes to give the court further information which is believed to be relevant to allocation or case management it shall be given when the party files the directions questionnaire and copied to all other parties.".

(e) in paragraph 2.3—

(i) in subparagraphs (1) and (2), for “should” substitute “parties must”;

(ii) after subparagraph (2) insert—

“(Specimen directions for a case which is allocated to the multi-track are available on the Justice website at: www.justice.gov.uk/courts/procedure-rules/civil)”; and

(iii) in subparagraph (3), for “allocation questionnaires”, substitute “the directions questionnaire or, where required, the proposed directions (whether or not agreed).”

(f) in paragraph 2.4, in subparagraphs (1) and (2), for “allocation” substitute “directions”;

(g) for paragraph 2.5 substitute—

“**Consequences of Failure to File a Directions Questionnaire**

2.5

(1) Parties must comply with the notice served under rule 26.3(1) by the date specified in it. Rules 26.3(7A), which concerns designated money claims, and 26.3(8), which concerns claims other than designated money claims, apply where a party is in default.

(2) A party’s statement of case may be struck out under rule 26.3(7A)(b).

(3) Under rule 26.3(8) the court may give directions of its own initiative or list the case for a case management conference. Alternatively, if it appears appropriate to do so, the claim may be struck out or, where a defendant is in default, judgment may be entered against that defendant.

(4) Rule 26.3(10) provides for a costs sanction if an order is made under either rules 26.3(7A)(b) or 26.3(8).”;

(h) in paragraph 4.2, in sub-paragraphs (1) and (4)(b), for “allocation” substitute “directions”;

(i) in paragraph 5.3, in sub-paragraph (1) and the first place it occurs in sub-paragraph (3), for “allocation” substitute “directions”;

(j) in paragraph 6.6, in sub-paragraph (2)(a), for “ an allocation” substitute “ a directions”.

(k) in paragraph 7.4, in the unnumbered paragraph after subparagraph (4), for “£5,000” each time it appears, substitute “£10,000”.

(l) in paragraph 8.1—

(i) in subparagraph (1)(a) for "£5,000" substitute "£10,000" ; and

(ii) for subparagraph (2) substitute—

"(2) The court may allocate to the small claims track a claim, the value of which is above the limits mentioned in rule 26.6(2). The court will not normally allow more than one day for the hearing of such a claim.".

(m) in paragraph 10.2, in subparagraph (5), for "allocation" substitute "directions".

(n) in paragraph 12.2, in subparagraph (1)(c), for "allocation" substitute "directions".

PRACTICE DIRECTION 27 – THE SMALL CLAIMS TRACK

10) In Practice Direction 27 – The Small Claims Track, in paragraph 7.3(2) –

a) for "expert's", substitute "experts' ";

b) for "£200", substitute "£750"; and

c) for the words in parentheses, for "£5,000" substitute "£10,000".

PRACTICE DIRECTION 28 – THE FAST TRACK

11) In Practice Direction 28 – The Fast Track, in paragraph 3.4, for "his allocation" substitute "their directions".

PRACTICE DIRECTION 29 – THE MULTI-TRACK

12) In Practice Direction 29 – The Multi-Track, in paragraphs 2.6 and 4.4, for "allocation" substitute "directions".

PRACTICE DIRECTION 35 – EXPERTS AND ASSESSORS

13) In Practice Direction 35 – Experts and Assessors, after paragraph 10.4 insert—

"**Concurrent expert evidence**

11.1 At any stage in the proceedings the court may direct that some or all of the experts from like disciplines shall give their evidence concurrently. The following procedure shall then apply.

11.2 The court may direct that the parties agree an agenda for the taking of concurrent evidence, based upon the areas of disagreement identified in the experts' joint statements made pursuant to rule 35.12.

11.3 At the appropriate time the relevant experts will each take the oath or affirm. Unless the court orders otherwise, the experts will then address the items on the agenda in the manner set out in paragraph 11.4.

11.4 In relation to each issue on the agenda, and subject to the judge's discretion to modify the procedure –

(1) the judge may initiate the discussion by asking the experts, in turn, for their views. Once an expert has expressed a view the judge may ask questions about it. At one or more appropriate stages when questioning a particular expert, the judge may invite the other expert to comment or to ask that expert's own questions of the first expert;

(2) after the process set out in (1) has been completed for all the experts, the parties' representatives may ask questions of them. While such questioning may be designed to test the correctness of an expert's view, or seek clarification of it, it should not cover ground which has been fully explored already. In general a full cross-examination or re-examination is neither necessary nor appropriate; and

(3) after the process set out in (2) has been completed, the judge may summarise the experts' different positions on the issue and ask them to confirm or correct that summary.".

COSTS PRACTICE DIRECTION – SUPPORTING CPR PARTS 43-48

14) For the Costs Practice Direction, substitute Practice Directions 44, 45, 46, 47 and 48 supporting CPR Parts 44, 45, 46, 47 and 48 respectively, as set out at Annex B.

PRACTICE DIRECTION 51D – DEFAMATION PROCEEDINGS COSTS MANAGEMENT SCHEME

15) Omit Practice Direction 51D - Defamation proceedings costs management scheme.

PRACTICE DIRECTION 51E – COUNTY COURT PROVISIONAL ASSESSMENT PILOT SCHEME

16) Omit Practice Direction 51E – County court provisional assessment pilot scheme.

PRACTICE DIRECTION 51G – COSTS MANAGEMENT IN MERCANTILE COURTS AND TECHNOLOGY AND CONSTRUCTIONS COURTS – PILOT SCHEME

17) Omit Practice Direction 51G – Costs management in mercantile courts and technology and construction courts – Pilot scheme.

PRACTICE DIRECTION 52A – APPEALS: GENERAL PROVISIONS

18) In Practice Direction 52A – Appeals: General Provisions, in paragraph 4.4(a), for "paragraph (2)" substitute "sub-paragraph (b)".

PRACTICE DIRECTION 52C – APPEALS TO THE COURT OF APPEAL

19) In Practice Direction 52C – Appeals to the Court of Appeal—

(a) after paragraph 5, insert—

"**Second appeals**

5A An application to make a second appeal must identify in the grounds of appeal—

(a) the important point of principle or practice, or

(b) the compelling reason

which is said to justify the grant of permission to appeal."

(b) in the timetable in paragraph 21, in Part 2 in the first entry in the left hand column, omit the words "or as" after "hearing".

PRACTICE DIRECTION 66 – CROWN PROCEEDINGS

20) For Annex 2 to Practice Direction 66 – Crown Proceedings, substitute the list of Authorised Government Departments as set out at Annex C.

PRACTICE DIRECTION 72 – THIRD PARTY DEBT ORDERS

21) In Practice Direction 72 – Third Party Debt Orders, in paragraph 2, for "rule 45.6", substitute "rule 45.8".

PRACTICE DIRECTION – CIVIL RECOVERY PROCEEDINGS

22) In Practice Direction – Civil Recovery Proceedings, for paragraphs 2.1 and 2.2 substitute—

"**2.1** Except as otherwise provided in paragraph 2.2, an application made to the High Court under Part 5 or Part 8 of the Act or Part 5 of the Order in Council must be made in the Administrative Court.

2.2 A claim for a recovery order must be started in the Central Office of the Queen's Bench Division. Where a claim for a recovery order has been issued, any interim proceedings preserving the property which is the subject of the claim will be transferred to the Central Office of the Queen's Bench Division.

2.3 The preceding paragraph does not limit the power of the High Court to transfer claims or applications to or from the Central Office of the Queen's Bench Division, Administrative Court, Chancery Division or specialist list of the High Court."

PRACTICE DIRECTION – PRE-ACTION CONDUCT

23) In Practice Direction – Pre-Action Conduct, in paragraph 4.1, for "(see CPR rules 3.1(4) and (5) and 3.9(1)(e))", substitute "(see CPR rule 3.1(4) and (5))".

PRE-ACTION PROTOCOL FOR JUDICIAL REVIEW

24) In the Pre-Action Protocol for Judicial Review—

(a) in paragraph 10 (concerning the letter of claim), insert at the end—

"If the claim is considered to be an Aarhus Convention claim, the letter should state this clearly and explain the reasons, since specific rules as to costs apply to such claims.";

(b) in paragraph 16 (concerning the letter of response), insert at the end—

"If the letter before claim has stated that the claim is an Aarhus Convention claim but the defendant does not accept this, the reply should state this clearly and explain the reasons.";

(c) in Section 2 of Annex A, for "Where the claim concerns a decision by the Legal Services Commission: the address on the decision letter/notification; Legal Director Corporate Legal Team Legal Services Commission 4 Abbey Orchard Street London SW1P 2BS" substitute "Where the claim concerns a decision by the Legal Services Commission: the address on the decision letter/notification; Legal Director Corporate Legal Team Legal Services Commission 102 Petty France London SW1H 9AJ".

PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS

25) In the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents—

(a) in paragraph 4.5, for "rule 45.29" substitute "rule 45.18";

(b) in paragraph 6.9, for "rule 45.36(2)" substitute "rule 45.24(2)";

(c) in paragraph 6.18, for "rule 45.29" substitute "rule 45.18";

(d) in paragraph 7.37—

(i) in (1), for "rule 45.29" substitute "rule 45.18";

(ii) omit (3);

(e) in paragraph 7.38 and in the parentheses after it, for "rule 44.12A" substitute "rule 46.14";

(f) in paragraph 7.40—

(i) in (2) and (3), for "rule 45.29" substitute "rule 45.18";

(ii) in (4), for "rule 45.30(2)(a)" substitute "rule 45.19(2)(a)";

(iii) omit (5);

(g) in paragraph 7.53—

(i) in (2) and (3), for "rule 45.29" substitute "rule 45.18";

(ii) in (4), for "rule 45.30" substitute "rule 45.19";

(iii) omit (5);

(h) in paragraph 7.61—

(i) in (2) and (3), for “rule 45.29” substitute “rule 45.18”;

(ii) in (4), for “rule 45.30” substitute “rule 45.19”; and

(i) in paragraph 7.67, for “rule 45.29” substitute “rule 45.18”.

ANNEX A – PRACTICE DIRECTION 3E – COSTS MANAGEMENT; PRACTICE DIRECTION 3F – COSTS CAPPING

"**PRACTICE DIRECTION 3E – COSTS MANAGEMENT**

This Practice Direction supplements Section II of CPR Part 3

Contents of this Practice Direction

Budget format

1 Unless the court otherwise orders, a budget must be in the form of Precedent H annexed to this Practice Direction. It must be in landscape format with an easily legible typeface. In substantial cases, the court may direct that budgets be limited initially to part only of the proceedings and subsequently extended to cover the whole proceedings. A budget must be dated and verified by a statement of truth signed by a senior legal representative of the party. In cases where a party's budgeted costs do not exceed £25,000, there is no obligation on that party to complete more than the first page of Precedent H.

(The wording for a statement of truth verifying a budget is set out in Practice Direction 22.)

Costs management orders

2.1 If the court makes a costs management order under rule 3.15, the following paragraphs apply.

2.2 Save in exceptional circumstances-

(1) the recoverable costs of initially completing Precedent H shall not exceed the higher of £1,000 or 1% of the approved budget;

(2) All other recoverable costs of the budgeting and costs management process shall not exceed 2% of the approved budget.

2.3 If the budgets or parts of the budgets are agreed between all parties, the court will record the extent of such agreement. In so far as the budgets are not agreed, the court will review them and, after making any appropriate revisions, record its approval of those budgets. The court's approval will relate only to the total figures for each phase of the proceedings, although in the course of its review the court may have regard to the constituent elements of each total figure. When reviewing budgets, the court will not undertake a detailed assessment in advance, but rather will consider whether the budgeted costs fall within the range of reasonable and proportionate costs.

2.4 As part of the costs management process the court may not approve costs incurred before the date of any budget. The court may, however, record its comments on those costs and should take those costs into account when considering the reasonableness and proportionality of all subsequent costs.

2.5 The court may set a timetable or give other directions for future reviews of budgets.

2.6 Each party shall revise its budget in respect of future costs upwards or downwards, if significant developments in the litigation warrant such revisions. Such amended budgets shall be submitted to the other parties for agreement. In default of agreement, the amended budgets shall be submitted to the court, together with a note of (a) the changes made and the reasons for those changes and (b) the objections of any other party. The court may approve, vary or disapprove the revisions, having regard to any significant developments which have occurred since the date when the previous budget was approved or agreed.

2.7 After its budget has been approved, each party shall re-file and re-serve the budget in the form approved with re-cast figures, annexed to the order approving it.

2.8 A litigant in person, even though not required to prepare a budget, shall nevertheless be provided with a copy of the budget of any other party.

2.9 If interim applications are made which, reasonably, were not included in a budget, then the costs of such interim applications shall be treated as additional to the approved budgets.


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Precedent H Guidance Notes for Precedent H

PRACTICE DIRECTION 3F – COSTS CAPPING

This Practice Direction supplements Section III of CPR Part 3

Contents of this Practice Direction

SECTION I OF THIS PRACTICE DIRECTION – GENERAL RULES ABOUT COSTS CAPPING

When to make an application

1.1 The court will make a costs capping order only in exceptional circumstances.

1.2 An application for a costs capping order must be made as soon as possible, preferably before or at the first case management hearing or shortly afterwards. The

stage which the proceedings have reached at the time of the application will be one of the factors the court will consider when deciding whether to make a costs capping order.

Costs budget

2 The budget required by rule 3.20 must be in the form of Precedent H annexed to this Practice Direction.

Schedule of costs

3 The schedule of costs referred to in rule 3.20(3)—

(a) must set out –

(i) each sub-heading as it appears in the applicant's budget (column 1);

(ii) alongside each sub-heading, the amount claimed by the applicant in the applicant's budget (column 2); and

(iii) alongside the figures referred to in subparagraph (ii) the amount that the respondent proposes should be allowed under each sub-heading (column 3); and

(b) must be supported by a statement of truth.

Assessing the quantum of the costs cap

4.1 When assessing the quantum of a costs cap, the court will take into account the factors detailed in rule 44.5 and the relevant provisions supporting that rule in the Practice Direction supplementing Part 44. When considering a party's budget of the costs they are likely to incur in the future conduct of the proceedings, the court may also take into account a reasonable allowance on costs for contingencies.

SECTION II OF THIS PRACTICE DIRECTION – COSTS CAPPING IN RELATION TO TRUST FUNDS

Costs capping orders in relation to trust funds

5.1 In this Section, "trust fund" means property which is the subject of a trust, and includes the estate of a deceased person.

5.2 This Section contains additional provisions to enable –

(a) the parties to consider whether to apply for; and

(b) the court to consider whether to make of its own initiative,

a costs capping order in proceedings relating to trust funds.

5.3 This Section supplements rules 3.19 to 3.21 and Section I of this Practice Direction.

5.4 Any party to such proceedings who intends to apply for an order for the payment of costs out of the trust fund must file and serve on all other parties written notice of that intention together with a budget of the costs likely to be incurred by that party.

5.5 The documents mentioned in paragraph 5.4 must be filed and served –

(a) in a Part 7 claim, with the first statement of case; and

(b) in a Part 8 claim, with the evidence (or, if a defendant does not intend to serve and file evidence, with the acknowledgement of service).

5.6 When proceedings first come before the court for directions the court may make a costs capping order of its own initiative whether or not any party has applied for such an order.

Precedent H Guidance Notes for Precedent H


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ANNEX B – PRACTICE DIRECTIONS 44 to 48

"PRACTICE DIRECTION 44 - GENERAL RULES ABOUT COSTS

This Practice Direction supplements Part 44

Contents of this Practice Direction	
Title	**Number**
SECTION I – GENERAL *Subsection 1 of this Practice Direction – Documents and forms*	
Documents and forms	Para 1
Subsection 2 of this Practice Direction – Special provisions relating to VAT	
Scope of this subsection	Para 2.1
VAT registration number	Para 2.2
Entitlement to VAT on costs	Para 2.3 -2.6
Form of bill of costs where VAT rate changes	Para 2.7-2.8
Apportionment	Para 2.9
Change in VAT rate between the conclusion of a detailed settlement and the issue of a final certificate	Para 2.10
Disbursements not classified as such for VAT purposes	Para 2.11
Litigants in person	Para 2.12
Government Departments	Para 2.13
Payment pursuant to an order under section 194(3) of the 2007 Act	Para 2.14
Subsection 3 of this Practice Direction – Costs budgets	
Costs budgets	Para 3
Subsection 4 of this Practice Direction – Court's discretion as to costs: rule 44.2	
Court's discretion as to costs: rule 44.2	Para 4
Subsection 5 of this Practice Direction – Fees of Counsel	
Fees of Counsel	Para 5

SECTION I - GENERAL

SUBSECTION 1 OF THIS PRACTICE DIRECTION – DOCUMENTS AND FORMS

Documents and forms

1.1 In respect of any document which is required by Practice Directions 44 to 47 to be signed by a party or that party's legal representative, the provisions of Practice Direction 22 relating to who may sign apply as if the document in question was a statement of truth. Statements of truth are not required in assessment proceedings unless a rule or Practice Direction so requires or the court so orders.

(Practice Direction 22 makes provision for cases in which a party is a child, a protected party or a company or other corporation and cases in which a document is signed on behalf of a partnership.)

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

(Further details about Statements of Costs are given in paragraph 9.5 below.)

Precedents A, B and C in the Schedule of Costs Precedents annexed to this Practice Direction are model forms of bills of costs to be used for detailed assessments. A party wishing to rely upon a bill which departs from the model forms should include in the background information of the bill an explanation for that departure.

(Further details about bills of costs are given in Practice Direction 47.)

SUBSECTION 2 OF THIS PRACTICE DIRECTION - SPECIAL PROVISIONS RELATING TO VAT

Scope of this subsection

2.1 This subsection deals with claims for VAT) which are made in respect of costs being dealt with by way of summary assessment or detailed assessment.

VAT Registration Number

2.2 The number allocated by HMRC to every person registered under the Value Added Tax Act 1994 (except a Government Department) must appear in a prominent place at the head of every statement, bill of costs, fee sheet, account or voucher on which VAT is being included as part of a claim for costs.

Entitlement to VAT on Costs

2.3 VAT should not be included in a claim for costs if the receiving party is able to recover the VAT as input tax. Where the receiving party is able to obtain credit from HMRC for a proportion of the VAT as input tax, only that proportion which is not eligible for credit should be included in the claim for costs.

2.4 The receiving party has responsibility for ensuring that VAT is claimed only when the receiving party is unable to recover the VAT or a proportion thereof as input tax.

2.5 Where there is a dispute as to whether VAT is properly claimed the receiving party must provide a certificate signed by the legal representatives or the auditors of the receiving party substantially in the form illustrated in Precedent F in the Schedule of Costs Precedents annexed to Practice Direction 47. Where the receiving party is a litigant in person who is claiming VAT, evidence to support the claim (such as a letter from HMRC) must be produced at the hearing at which the costs are assessed.

2.6 Where there is a dispute as to whether any service in respect of which a charge is proposed to be made in the bill is zero rated or exempt from VAT, reference should be made to HMRC and its view obtained and made known at the hearing at which the costs are assessed. Such enquiry should be made by the receiving party. In the case of a bill from a solicitor to the solicitor's legal representative's own client, such enquiry should be made by the client.

Form of bill of costs where VAT rate changes

2.7 Where there is a change in the rate of VAT, suppliers of goods and services are entitled by sections 88 (1) and 88(2) of the Value Added Tax Act 1994 in most circumstances to elect whether the new or the old rate of VAT should apply to a supply where the basic and actual tax points span a period during which the rate changed.

2.8 It will be assumed, unless a contrary indication is given in writing, that an election to take advantage of the provisions mentioned in paragraph 2.7 and to charge VAT at the lower rate has been made. In any case in which an election to charge at the

lower rate is not made, such a decision must be justified to the court assessing the costs.

Apportionment

2.9 Subject to 2.7 and 2.8, all bills of costs, fees and disbursements on which VAT is included must be divided into separate parts so as to show work done before, on and after the date or dates from which any change in the rate of VAT takes effect. Where, however, a lump sum charge is made for work which spans a period during which there has been a change in VAT rates, and paragraphs 2.7 and 2.8 above do not apply, reference should be made to paragraphs 30.7 or 30.8 of the VAT Guide (Notice 700) (or any revised edition of that notice) published by HMRC. If necessary, the lump sum should be apportioned. The totals of profit costs and disbursements in each part must be carried separately to the summary.

Change in VAT rate between the conclusion of a detailed settlement and the issue of a final certificate

2.10 Should there be a change in the rate between the conclusion of a detailed assessment and the issue of the final costs certificate, any interested party may apply for the detailed assessment to be varied so as to take account of any increase or reduction in the amount of tax payable. Once the final costs certificate has been issued, no variation under this paragraph will be permitted.

Disbursements not classified as such for VAT purposes

2.11

(1) Legal representatives often make payments to third parties for the supply of goods or services where no VAT was chargeable on the supply by the third party: for example, the cost of meals taken and travel costs. The question whether legal representatives should include VAT in respect of these payments when invoicing their clients or in claims for costs between litigants should be decided in accordance with this Practice Direction and with the criteria set out in the VAT Guide (Notice 700).

(2) Payments to third parties which are normally treated as part of the legal representative's overheads (for example, postage costs and telephone costs) will not be treated as disbursements. The third party supply should be included as part of the costs of the legal representatives' legal services and VAT must be added to the total bill charged to the client.

(3) Disputes may arise in respect of payments made to a third party which the legal representative shows as disbursements in the invoice delivered to the receiving party. Some payments, although correctly described as disbursements for some purposes, are not classified as disbursements for VAT purposes. Items not classified as disbursements for VAT purposes must be shown as part of the services provided by the legal representative and, therefore, VAT must be added in respect of them whether or not VAT was chargeable on the supply by the third party.

(4) Guidance as to the circumstances in which disbursements may or may not be classified as disbursements for VAT purposes is given in the VAT Guide (Notice 700, paragraph 25.1). One of the key issues is whether the third party supply—

(a) was made to the legal representative (and therefore subsumed in the onward supply of legal services); or

(b) was made direct to the receiving party (the third party having no right to demand payment from the legal representative, who makes the payment only as agent for the receiving party).

(5) Examples of payments under subparagraph (4)(a) are: travelling expenses, such as an airline ticket, and subsistence expenses, such as the cost of meals, where the person travelling and receiving the meals is the legal representative. The supplies by the airline and the restaurant are supplies to the legal representative, not to the client.

(6) Payments under subparagraph (4)(b) are classified as disbursements for VAT purposes and, therefore, the legal representative need not add VAT in respect of them. Simple examples are payments by a legal representative of court fees and payment of fees to an expert witness.

Litigants in person

2.12 Where a litigant acts in person, that litigant is not treated for the purposes of VAT as having supplied services and therefore no VAT is chargeable in respect of work done by that litigant (even where, for example, that litigant is a solicitor or other legal representative). Consequently in such circumstances a bill of costs should not claim any VAT.

Government Departments

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

Payment pursuant to an order under section 194(3) of the 2007 Act

2.14 Where an order is made under section 194(3) of the 2007 Act, any bill presented for agreement or assessment pursuant to that order must not include a claim for VAT.

SUBSECTION 3 OF THIS PRACTICE DIRECTION – COSTS BUDGETS

Costs budgets

3.1 In any case 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 provisions of this subsection shall apply.

3.2 If there is a difference of 20% or more between the costs claimed by a 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.

3.3 If a paying party—

(a) claims to have reasonably relied on a budget filed by a receiving party; or

(b) 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 the case in this regard in that party's points of dispute.

3.4 On an assessment of the costs of a party, the court will have regard to the last approved or agreed budget, and may have regard to any other budget previously filed by that party, or by any other party in the same proceedings. Such other budgets may be taken into account when assessing the reasonableness and proportionality of any costs claimed.

3.5 Subject to paragraph 3.4, paragraphs 3.6 and 3.7 apply 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.

3.6 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 of costs reasonably and proportionately incurred by the receiving party.

3.7 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 or disproportionate.

SUBSECTION 4 OF THIS PRACTICE DIRECTION - COURT'S DISCRETION AS TO COSTS: RULE 44.2

Court's discretion as to costs: rule 44.2

4.1 The court may make an order about costs at any stage in a case.

4.2 There are certain costs orders which the court will commonly make in proceedings before trial. The following table sets out the general effect of these orders. The table is not an exhaustive list of the orders which the court may make.

Term	Effect
Costs Costs in any event	The party in whose favour the order is made is entitled to that party's costs in respect of the part of the proceedings to which the order relates, whatever other costs orders are made in the proceedings.
Costs in the case Costs in the application	The party in whose favour the court makes an order for costs at the end of the proceedings is entitled to that party's costs of the part of the proceedings to which the order relates.
Costs reserved	The decision about costs is deferred to a later occasion, but if no later order is made the costs will

Term	Effect
	be costs in the case.
Claimant's/Defendant's costs in case/application	If the party in whose favour the costs order is made is awarded costs at the end the proceedings, that party is entitled to that party's costs of the part of the proceedings to which the order relates. If any other party is awarded costs at the end of the proceedings, the party in whose favour the final costs order is made is not liable to pay the costs of any other party in respect of the part of the proceedings to which the order relates.
Costs thrown away	Where, for example, a judgment or order is set aside, the party in whose favour the costs order is made is entitled to the costs which have been incurred as a consequence. This includes the costs of – preparing for and attending any hearing at which the judgment or order which has been set aside was made; preparing for and attending any hearing to set aside the judgment or order in question; preparing for and attending any hearing at which the court orders the proceedings or the part in question to be adjourned; any steps taken to enforce a judgment or order which has subsequently been set aside.
Costs of and caused by	Where, for example, the court makes this order on an application to amend a statement of case, the party in whose favour the costs order is made is entitled to the costs of preparing for and attending the application and the costs of any consequential amendment to his own statement of case.

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

SUBSECTION 5 OF THIS PRACTICE DIRECTION - FEES OF COUNSEL

Fees of Counsel

5.1

(1) When making an order for costs the court may state an opinion as to whether or not the hearing was fit for the attendance of one or more counsel, and, if it does so, the court conducting a detailed assessment of those costs will have regard to the opinion stated.

(2) The court will generally express an opinion only where—

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

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

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

5.2

(1) Where the court refers any matter to the conveyancing counsel of the court the fees payable to counsel in respect of the work done or to be done will be assessed by the court in accordance with rule 44.2.

(2) An appeal from a decision of the court in respect of the fees of such counsel will be dealt with under the general rules as to appeals set out in Part 52. If the appeal is against the decision of an authorised court officer, it will be dealt with in accordance with rules 47.22 to 47.24.

SUBSECTION 6 OF THIS PRACTICE DIRECTION – BASIS OF ASSESSMENT: RULE 44.3

Costs on the indemnity basis

6.1 If costs are awarded on the indemnity basis, the court assessing costs will disallow any costs—

(a) which it finds to have been unreasonably incurred; or

(b) which it considers to be unreasonable in amount.

Costs on the standard basis

6.2 If costs are awarded on the standard basis, the court assessing costs will disallow any costs—

(a) which it finds to have been unreasonably incurred;

(b) which it considers to be unreasonable in amount;

(c) which it considers to have been disproportionately incurred or to be disproportionate in amount; or

(d) about which it has doubts as to whether they were reasonably or proportionately incurred, or whether they are reasonable and proportionate in amount.

SUBSECTION 7 OF THIS PRACTICE DIRECTION - AMOUNT OF COSTS WHERE COSTS ARE PAYABLE PURSUANT TO A CONTRACT: RULE 44.5

Application of rule 44.5

7.1 Rule 44.5 only applies if the court is assessing costs payable under a contract. It does not—

(a) require the court to make an assessment of such costs; or

(b) require a mortgagee to apply for an order for those costs where there is a contractual right to recover out of the mortgage funds.

Costs relating to a mortgage

7.2

(1) The following principles apply to costs relating to a mortgage.

(2) An order for the payment of costs of proceedings by one party to another is always a discretionary order: section 51 of the Senior Courts Act 1981 ("the section 51 discretion").

(3) Where there is a contractual right to the costs, the discretion should ordinarily be exercised so as to reflect that contractual right.

(4) The power of the court to disallow a mortgagee's costs sought to be added to the mortgage security is a power that does not derive from section 51, but from the power of the courts of equity to fix the terms on which redemption will be allowed.

(5) A decision by a court to refuse costs in whole or in part to a mortgagee may be—

(a) a decision in the exercise of the section 51 discretion;

(b) a decision in the exercise of the power to fix the terms on which redemption will be allowed;

(c) a decision as to the extent of a mortgagee's contractual right to add the mortgagee's costs to the security; or

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

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

7.3

(1) Where the contract entitles a mortgagee to—

(a) add the costs of litigation relating to the mortgage to the sum secured by it; or

(b) require a mortgagor to pay those costs,

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

(Rule 25.1(1)(n) provides that the court may direct that a party file an account.)

(2) The mortgagor may then dispute an amount in the mortgagee's account on the basis that it has been unreasonably incurred or is unreasonable in amount.

(3) Where a mortgagor disputes an amount, the court may make an order that the disputed costs are assessed under rule 44.5.

SUBSECTION 8 OF THIS PRACTICE DIRECTION - PROCEDURE FOR ASSESSING COSTS: RULE 44.6

Procedure for assessing costs: rule 44.6

8.1 Subject to paragraph 8.3, where the court does not order fixed costs (or no fixed costs are provided for) the amount of costs payable will be assessed by the court. Rule 44.6 allows the court making an order about costs either—

(a) to make a summary assessment of the amount of the costs; or

(b) to order the amount to be decided in accordance with Part 47 (a detailed assessment).

8.2 An order for costs will be treated as an order for the amount of costs to be decided by a detailed assessment unless the order otherwise provides.

8.3 Where a party is entitled to costs some of which are fixed costs and some of which are not, the court will assess those costs which are not fixed. For example, the court will assess the disbursements payable in accordance with rules 45.12 or 45.19. The decision whether such assessment should be summary or detailed will be made in accordance with paragraphs 9.1 to 9.10 of this Practice Direction.

SUBSECTION 9 OF THIS PRACTICE DIRECTION - SUMMARY ASSESSMENT: GENERAL PROVISIONS

When the court should consider whether to make a summary assessment

9.1 Whenever a court makes an order about costs which does not provide only for fixed costs to be paid the court should consider whether to make a summary assessment of costs.

Timing of summary assessment

9.2 The general rule is that the court should make a summary assessment of the costs—

(a) at the conclusion of the trial of a case which has been dealt with on the fast track, in which case the order will deal with the costs of the whole claim; and

(b) at the conclusion of any other hearing, which has lasted not more than one day, in which case the order will deal with the costs of the application or matter to which the hearing related. If this hearing disposes of the claim, the order may deal with the costs of the whole claim,

unless there is good reason not to do so, for example where the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily.

Summary assessment of mortgagee's costs

9.3 The general rule in paragraph 9.2 does not apply to a mortgagee's costs incurred in mortgage possession proceedings or other proceedings relating to a mortgage unless the mortgagee asks the court to make an order for the mortgagee's costs to be paid by another party.

(Paragraphs 7.2 and 7.3 deal in more detail with costs relating to mortgages.)

Consent orders

9.4 Where an application has been made and the parties to the application agree an order by consent without any party attending, the parties should seek to agree a figure for costs to be inserted in the consent order or agree that there should be no order for costs.

Duty of parties and legal representatives

9.5

(1) It is the duty of the parties and their legal representatives to assist the judge in making a summary assessment of costs in any case to which paragraph 9.2 above applies, in accordance with the following subparagraphs.

(2) Each party who intends to claim costs must prepare a written statement of those costs showing separately in the form of a schedule—

(a) the number of hours to be claimed;

(b) the hourly rate to be claimed;

(c) the grade of fee earner;

(d) the amount and nature of any disbursement to be claimed, other than counsel's fee for appearing at the hearing;

(e) the amount of legal representative's costs to be claimed for attending or appearing at the hearing;

(f) counsel's fees; and

(g) any VAT to be claimed on these amounts.

(3) The statement of costs should follow as closely as possible Form N260 and must be signed by the party or the party's legal representative. Where a party is—

(a) an assisted person;

(b) a LSC funded client;

(c) a person for whom civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) are provided under arrangements made for the purposes of that Part of that Act; or

(d) represented by a person in the party's employment,

the statement of costs need not include the certificate appended at the end of Form N260.

(4) The statement of costs must be filed at court and copies of it must be served on any party against whom an order for payment of those costs is intended to be sought as soon as possible and in any event—

(a) for a fast track trial, not less than 2 days before the trial; and

(b) for all other hearings, not less than 24 hours before the time fixed for the hearing.

9.6 The failure by a party, without reasonable excuse, to comply with paragraph 9.5 will be taken into account by the court in deciding what order to make about the costs of the claim, hearing or application, and about the costs of any further hearing or detailed assessment hearing that may be necessary as a result of that failure.

No summary assessment by a costs officer

9.7 The court awarding costs cannot make an order for a summary assessment of costs by a costs officer. If a summary assessment of costs is appropriate but the court awarding costs is unable to do so on the day, the court may give directions as to a further hearing before the same judge.

Assisted persons etc

9.8 The court will not make a summary assessment of the costs of a receiving party who is an assisted person or LSC funded client or who is a person for whom civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) are provided under arrangements made for the purposes of that Part of that Act.

Children or protected parties

9.9

(1) The court will not make a summary assessment of the costs of a receiving party who is a child or protected party within the meaning of Part 21 unless the legal representative acting for the child or protected party has waived the right to further costs (see Practice Direction 46 paragraph 2.1).

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

Disproportionate or unreasonable costs

9.10 The court will not give its approval to disproportionate or unreasonable costs. When the amount of the costs to be paid has been agreed between the parties the order for costs must state that the order is by consent.

SUBSECTION 10 OF THIS PRACTICE DIRECTION - LEGAL REPRESENTATIVE'S DUTY TO NOTIFY PARTY: RULE 44.8

Legal representative's duty to notify party: rule 44.8

10.1 For the purposes of rule 44.8 and paragraph 10.2, "party" includes any person (for example, an insurer, a trade union or the LSC or Lord Chancellor) who has

instructed the legal representative to act for the party or who is liable to pay the legal representative's fees.

10.2 A legal representative who notifies a party of an order under rule 44.8 must also explain why the order came to be made.

10.3 Although rule 44.8 does not specify any sanction for breach of the rule the court may, either in the order for costs itself or in a subsequent order, require the legal representative to produce to the court evidence showing that the legal representative took reasonable steps to comply with the rule.

SUBSECTION 11 OF THIS PRACTICE DIRECTION - COURT'S POWERS IN RELATION TO MISCONDUCT: RULE 44.11

Court's powers in relation to misconduct: rule 44.11

11.1 Before making an order under rule 44.11, the court must give the party or legal representative in question a reasonable opportunity to make written submissions or, if the legal representative so desires, to attend a hearing.

11.2 Conduct which is unreasonable or improper includes steps which are calculated to prevent or inhibit the court from furthering the overriding objective.

11.3 Although rule 44.11(3) does not specify any sanction for breach of the obligation imposed by the rule the court may, either in the order under rule 44.11(2) or in a subsequent order, require the legal representative to produce to the court evidence that the legal representative took reasonable steps to comply with the obligation.

SECTION II – QUALIFIED ONE-WAY COSTS SHIFTING

SUBSECTION 12 OF THIS PRACTICE DIRECTION – QUALIFIED ONE-WAY COSTS SHIFTING

Qualified one-way costs shifting

12.1 This subsection applies to proceedings to which Section II of Part 44 applies.

12.2 Examples of claims made for the financial benefit of a person other than the claimant or a dependant within the meaning of section 1(3) of the Fatal Accidents Act 1976 within the meaning of rule 44.16(2) are subrogated claims and claims for credit hire.

12.3 "Gratuitous provision of care" within the meaning of rule 44.16(2)(a) includes the provision of personal services rendered gratuitously by persons such as relatives and friends for things such as personal care, domestic assistance, childminding, home maintenance and decorating, gardening and chauffeuring.

12.4 In a case to which rule 44.16(1) applies (fundamentally dishonest claims)—

(a) the court will normally direct that issues arising out of an allegation that the claim is fundamentally dishonest be determined at the trial;

(b) where the proceedings have been settled, the court will not, save in exceptional circumstances, order that issues arising out of an allegation that the claim was fundamentally dishonest be determined in those proceedings;

(c) where the claimant has served a notice of discontinuance, the court may direct that issues arising out of an allegation that the claim was fundamentally dishonest be determined notwithstanding that the notice has not been set aside pursuant to rule 38.4;

(d) the court may, as it thinks fair and just, determine the costs attributable to the claim having been found to be fundamentally dishonest.

12.5 The court has power to make an order for costs against a person other than the claimant under section 51(3) of the Senior Courts Act 1981 and rule 46.2. In a case to which rule 44.16(2)(a) applies (claims for the benefit of others)—

(a) the court will usually order any person other than the claimant for whose financial benefit such a claim was made to pay all the costs of the proceedings or the costs attributable to the issues to which rule 44.16(2)(a) applies, or may exceptionally make such an order permitting the enforcement of such an order for costs against the claimant.

(b) the court may, as it thinks fair and just, determine the costs attributable to claims for the financial benefit of persons other than the claimant.

12.6 In proceedings to which rule 44.16 applies, the court will normally order the claimant or, as the case may be, the person for whose benefit a claim was made to pay costs notwithstanding that the aggregate amount in money terms of such orders exceeds the aggregate amount in money terms of any orders for damages, interest and costs made in favour of the claimant.

12.7 Assessments of costs may be on a standard or indemnity basis and may be subject to a summary or detailed assessment.

PRACTICE DIRECTION 45 - FIXED COSTS

This Practice Direction supplements Part 45

Scope	Para 4
Section VII of Part 45 – Costs Limits in Aarhus Convention Claims	
Limit on costs recoverable from a party in an Aarhus Convention claim: rule 45.43	Para 5

SECTION I OF PART 45 – FIXED COSTS

Fixed costs in small claims

1.1 Under Rule 27.14 the costs which can be awarded to a claimant in a small claim include the fixed costs payable under Part 45 attributable to issuing the claim.

1.2 Those fixed costs are the sum of—

(a) the fixed commencement costs calculated in accordance with Table 1 of Rule 45.2;

(b) the appropriate court fee or fees paid by the claimant.

Claims to which Part 45 does not apply

1.3 In a claim to which Part 45 does not apply, no amount shall be entered on the claim form for the charges of the claimant's legal representative, but the words "to be assessed" shall be inserted.

SECTION II OF PART 45 – ROAD TRAFFIC ACCIDENTS: FIXED RECOVERABLE COSTS IN COSTS-ONLY PROCEEDINGS

Scope

2.1 Section II of Part 45 (‘the Section’) provides for certain fixed costs to be recoverable between parties in respect of costs incurred in disputes which are settled prior to proceedings being issued. The Section applies to road traffic accident disputes as defined in rule 45.9(4)(a), where the accident which gave rise to the dispute occurred on or after 6th October 2003.

2.2 The Section does not apply to disputes where the total agreed value of the damages is within the small claims limit or exceeds £10,000. Rule 26.8(2) sets out how the financial value of a claim is assessed for the purposes of allocation to track.

2.3 Fixed recoverable costs are to be calculated by reference to the amount of agreed damages which are payable to the receiving party. In calculating the amount of these damages—

(a) account must be taken of both general and special damages and interest;

(b) any interim payments made must be included;

(c) where the parties have agreed an element of contributory negligence, the amount of damages attributed to that negligence must be deducted;

(d) any amount required by statute to be paid by the compensating party directly to a third party (such as sums paid by way of compensation recovery payments and National Health Service expenses) must not be included.

2.4 The Section applies to cases which fall within the scope of the Uninsured Drivers Agreement dated 13 August 1999. The section does not apply to cases which fall within the scope of the Untraced Drivers Agreement dated 14 February 2003.

Fixed recoverable costs formula

2.5 The amount of fixed costs recoverable is the sum of –

(a) £800;

(b) 20% of the agreed damages up to £5,000; and

(c) 15% of the agreed damages between £5,000 and £10,000.

For example, agreed damages of £7,523 would result in recoverable costs of £2,178.45 i.e.

£800 + (20% of £5,000) + (15% of £2,523).

Additional costs for work in specified areas

2.6 The area referred to in rules 45.11(2) and 45.18(5) consists of (within London) the county court districts of Barnet, Bow, Brentford, Central London, Clerkenwell and Shoreditch, Edmonton, Ilford, Lambeth, Mayors and City of London, Romford,

Wandsworth, West London, Willesden and Woolwich and (outside London) the county court districts of Bromley, Croydon, Dartford, Gravesend and Uxbridge.

Multiple claimants

2.7 Where two or more potential claimants instruct the same legal representative, the provisions of the section apply in respect of each claimant.

Information to be included in the claim form

2.8 Costs only proceedings are commenced using the procedure set out in rule 46.14. A claim form should be issued in accordance with Part 8. Where the claimant is claiming an amount of costs which exceed the amount of the fixed recoverable costs the claim form must give details of the exceptional circumstances to justify the additional costs.

2.9 The claimant must also include on the claim form details of any disbursements. The disbursements that may be claimed are set out in rule 45.12(1). If the disbursement falls within 45.12(2)(c) (disbursements that have arisen due to a particular feature of the dispute) the claimant must give details of the particular feature of the dispute that made the disbursement necessary.

Disbursements

2.10 If the parties agree the amount of the fixed recoverable costs and the only dispute is as to the payment of, or amount of, a disbursement, then proceedings should be issued under rule 46.14.

SECTION IV OF PART 45 – SCALE COSTS FOR PROCEEDINGS IN A PATENTS COUNTY COURT

Tables A and B

3.1 Tables A and B set out the maximum amount of scale costs which the court will award for each stage of a claim in a patents county court.

3.2 Table A sets out the scale costs for each stage of a claim up to determination of liability.

3.3 Table B sets out the scale costs for each stage of an inquiry as to damages or account of profits.

Table A

Stage of a claim	Maximum amount of costs
Particulars of claim	£6,125
Defence and counterclaim	£6,125
Reply and defence to counterclaim	£6,125
Reply to defence to counterclaim	£3,000
Attendance at a case management conference	£2,500
Making or responding to an application	£2,500
Providing or inspecting disclosure or product/process description	£5,000
Performing or inspecting experiments	£2,500
Preparing witness statements	£5,000
Preparing experts' report	£7,500
Preparing for and attending trial and judgment	£15,000
Preparing for determination on the papers	£5,000

Table B

Stage of a claim	Maximum amount of costs
Points of claim	£2,500

Stage of a claim	Maximum amount of costs
Points of defence	£2,500
Attendance at a case management conference	£2,500
Making or responding to an application	£2,500
Providing or inspecting disclosure	£2,500
Preparing witness statements	£5,000
Preparing experts' report	£5,000
Preparing for and attending trial and judgment	£7,500
Preparing for determination on the papers	£2,500

SECTION VI OF PART 45 – FAST TRACK TRIAL COSTS

Scope

4.1 Section VI of Part 45 applies to the costs of an advocate for preparing for and appearing at the trial of a claim in the fast track.

4.2 It applies only where, at the date of the trial, the claim is allocated to the fast track. It does not apply in any other case, irrespective of the final value of the claim.

4.3 In particular it does not apply to a disposal hearing at which the amount to be paid under a judgment or order is decided by the court (see paragraph 12.4 of Practice Direction 26)).

SECTION VII OF PART 45 - COSTS LIMITS IN AARHUS CONVENTION CLAIMS

Limit on costs recoverable from a party in an Aarhus Convention claim: Rule 45.43

5.1 Where a claimant is ordered to pay costs, the amount specified for the purpose of rule 45.43(1) is—

(a) £5,000 where the claimant is claiming only as an individual and not as, or on behalf of, a business or other legal person;

(b) in all other cases, £10,000.

5.2 Where a defendant is ordered to pay costs, the amount specified for the purpose of rule 45.43(1) is £35,000.

PRACTICE DIRECTION 46 - COSTS SPECIAL CASES

This Practice Direction supplements Part 46

Contents of this Practice Direction	
Title	**Number**
Awards of costs in favour of a trustee or personal representative: rule 46.3	Para 1
Costs where money is payable by or to a child or protected party: rule 46.4	Para 2
Litigants in person: rule 46.5	Para 3
Orders in respect of pro bono representation: rule 46.7	Para 4
Personal liability of legal representative for costs – wasted costs orders: rule 46.8	Para 5
Assessment of solicitor and client costs: rules 46.9 and 46.10	Para 6
Costs on the small claims and fast tracks: rule 46.11	Para 7
Costs following allocation, re-allocation and non-allocation: rule 46.13	Para 8
Costs-only proceedings – rule 46.14	Para 9

AWARDS OF COSTS IN FAVOUR OF A TRUSTEE OR PERSONAL REPRESENTATIVE: RULE 46.3

1.1 A trustee or personal representative is entitled to an indemnity out of the relevant trust fund or estate for costs properly incurred. Whether costs were properly incurred depends on all the circumstances of the case including whether the trustee or personal representative ("the trustee")—

(a) obtained directions from the court before bringing or defending the proceedings;

(b) acted in the interests of the fund or estate or in substance for a benefit other than that of the estate, including the trustee's own; and

(c) acted in some way unreasonably in bringing or defending, or in the conduct of, the proceedings.

1.2 The trustee is not to be taken to have acted for a benefit other than that of the fund by reason only that the trustee has defended a claim in which relief is sought against the trustee personally.

COSTS WHERE MONEY IS PAYABLE BY OR TO A CHILD OR PROTECTED PARTY: RULE 46.4

2.1 The circumstances in which the court need not order the assessment of costs under rule 46.4(3) are as follows—

(a) where there is no need to do so to protect the interests of the child or protected party or their estate;

(b) where another party has agreed to pay a specified sum in respect of the costs of the child or protected party and the legal representative acting for the child or protected party has waived the right to claim further costs;

(c) where the court has decided the costs payable to the child or protected party by way of summary assessment and the legal representative acting for the child or protected party has waived the right to claim further costs; and

(d) where an insurer or other person is liable to discharge the costs which the child or protected party would otherwise be liable to pay to the legal representative and the court is satisfied that the insurer or other person is financially able to discharge those costs.

LITIGANTS IN PERSON: RULE 46.5

3.1 In order to qualify as an expert for the purpose of rule 46.5(3)(c) (expert assistance in connection with assessing the claim for costs), the person in question must be a—

(a) barrister;

(b) solicitor;

(c) Fellow of the Institute of Legal Executives;

(d) Fellow of the Association of Costs Lawyers;

(e) law costs draftsman who is a member of the Academy of Experts;

(f) law costs draftsman who is a member of the Expert Witness Institute.

3.2 Where a self represented litigant wishes to prove that the litigant has suffered financial loss, the litigant should produce to the court any written evidence relied on to support that claim, and serve a copy of that evidence on any party against whom the litigant seeks costs at least 24 hours before the hearing at which the question may be decided.

3.3 A self represented litigant who commences detailed assessment proceedings under rule 47.5 should serve copies of that written evidence with the notice of commencement.

3.4 The amount, which may be allowed to a self represented litigant under rule 45.39(5)(b) and rule 46.5(4)(b), is £18 per hour.

ORDERS IN RESPECT OF PRO BONO REPRESENTATION: RULE 46.7

4.1 Where an order is sought under section 194(3) of the Legal Services Act 2007 the party who has pro bono representation must prepare, file and serve a written statement of the sum equivalent to the costs that party would have claimed for that legal representation had it not been provided free of charge.

PERSONAL LIABILITY OF LEGAL REPRESENTATIVE FOR COSTS – WASTED COSTS ORDERS: RULE 46.8

5.1 A wasted costs order is an order—

(a) that the legal representative pay a sum (either specified or to be assessed) in respect of costs to a party; or

(b) for costs relating to a specified sum or items of work to be disallowed.

5.2 Rule 46.8 deals with wasted costs orders against legal representatives. Such orders can be made at any stage in the proceedings up to and including the detailed assessment proceedings. In general, applications for wasted costs are best left until after the end of the trial.

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

5.4 A party may apply for a wasted costs order—

(a) by filing an application notice in accordance with Part 23; or

(b) by making an application orally in the course of any hearing.

5.5 It is appropriate for the court to make a wasted costs order against a legal representative, only if—

(a) the legal representative has acted improperly, unreasonably or negligently;

(b) the legal representative's conduct has caused a party to incur unnecessary costs, or has meant that costs incurred by a party prior to the improper, unreasonable or negligent act or omission have been wasted;

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

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

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

(a) at the first stage the court must be satisfied—

(i) that it has before it evidence or other material which, if unanswered, would be likely to lead to a wasted costs order being made; and

(ii) the wasted costs proceedings are justified notwithstanding the likely costs involved;

(b) at the second stage, the court will consider, after giving the legal representative an opportunity to make representations in writing or at a hearing, whether it is appropriate to make a wasted costs order in accordance with paragraph 5.5 above.

5.8 The court may proceed to the second stage described in paragraph 5.7 without first adjourning the hearing if it is satisfied that the legal representative has already had a reasonable opportunity to make representations.

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

(a) what the legal representative is alleged to have done or failed to do; and

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

ASSESSMENT OF SOLICITOR AND CLIENT COSTS: RULES 46.9 AND 46.10

6.1 A client and solicitor may agree whatever terms they consider appropriate about the payment of the solicitor's charges. If however, the costs are of an unusual nature, either in amount or the type of costs incurred, those costs will be presumed to have been unreasonably incurred unless the solicitor satisfies the court that the client was informed that they were unusual and that they might not be allowed on an assessment of costs between the parties. That information must have been given to the client before the costs were incurred.

6.2 Costs as between a solicitor and client are assessed on the indemnity basis. The presumptions in rule 46.9(3) are rebuttable.

6.3 If a party fails to comply with the requirements of rule 46.10 concerning the service of a breakdown of costs or points of dispute, any other party may apply to the court in which the detailed assessment hearing should take place for an order requiring compliance. If the court makes such an order, it may—

(a) make it subject to conditions including a condition to pay a sum of money into court; and

(b) specify the consequence of failure to comply with the order or a condition.

6.4 The procedure for obtaining an order under Part III of the Solicitors Act 1974 is by a Part 8 claim, as modified by rule 67.3 and Practice Direction 67. Precedent J of the Schedule of Costs Precedents is a model form of claim form. The application must be accompanied by the bill or bills in respect of which assessment is sought, and, if the claim concerns a conditional fee agreement, a copy of that agreement. If the original bill is not available a copy will suffice.

6.5 Model forms of order, which the court may make, are set out in Precedents K, L and M of the Schedule of Costs Precedents.

6.6 The breakdown of costs referred to in rule 46.10 is a document which contains the following information—

(a) details of the work done under each of the bills sent for assessment; and

(b) in applications under Section 70 of the Solicitors Act 1974, a cash account showing money received by the solicitor to the credit of the client and sums paid out of that money on behalf of the client but not payments out which were made in satisfaction of the bill or of any items which are claimed in the bill.

6.7 Precedent P of the Schedule of Costs Precedents is a model form of breakdown of costs. A party who is required to serve a breakdown of costs must also serve–

(a) copies of the fee notes of counsel and of any expert in respect of fees claimed in the breakdown, and

(b) written evidence as to any other disbursement which is claimed in the breakdown and which exceeds £250.

6.8 The provisions relating to default costs certificates (rule 47.11) do not apply to cases to which rule 46.10 applies.

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

6.10 The form of request for a hearing date must be in Form N258C. The request must be accompanied by copies of—

(a) the order sending the bill or bills for assessment;

(b) the bill or bills sent for assessment;

(c) the solicitor's breakdown of costs and any invoices or accounts served with that breakdown;

(d) a copy of the points of dispute;

(e) a copy of any replies served;

(f) a statement signed by the party filing the request or that party's legal representative giving the names and addresses for service of all parties to the proceedings.

6.11 The request must include the estimated length of hearing.

6.12 On receipt of the request the court will fix a date for the hearing, or will give directions.

6.13 The court will give at least 14 days notice of the time and place of the detailed assessment hearing.

6.14 Unless the court gives permission, only the solicitor whose bill it is and parties who have served points of dispute may be heard and only items specified in the points of dispute may be raised .

6.15 If a party wishes to vary that party's breakdown of costs, points of dispute or reply, an amended or supplementary document must be filed with the court and copies of it must be served on all other relevant parties. Permission is not required to vary a breakdown of costs, points of dispute or a reply but the court may disallow the variation or permit it only upon conditions, including conditions as to the payment of any costs caused or wasted by the variation.

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

6.17 Once the detailed assessment hearing has ended it is the responsibility of the legal representative appearing for the solicitor or, as the case may be, the solicitor in person to remove the papers filed in support of the bill.

6.18 If, in the course of a detailed assessment hearing of a solicitor's bill to that solicitor's client, it appears to the court that in any event the solicitor will be liable in connection with that bill to pay money to the client, it may issue an interim certificate specifying an amount which in its opinion is payable by the solicitor to the client.

6.19 After the detailed assessment hearing is concluded the court will –

(a) complete the court copy of the bill so as to show the amount allowed;

(b) determine the result of the cash account;

(c) award the costs of the detailed assessment hearing in accordance with Section 70(8) of the Solicitors Act 1974; and

(d) issue a final costs certificate.

COSTS ON THE SMALL CLAIMS AND FAST TRACKS: RULE 46.11

7.1

(1) Before a claim is allocated to either the small claims track or the fast track the court is not restricted by any of the special rules that apply to that track but see paragraph 8.2 below.

(2) Where a claim has been so allocated , the special rules which relate to that track will apply to work done before as well as after allocation save to the extent (if any) that an order for costs in respect of that work was made before allocation.

(3) Where a claim, issued for a sum in excess of the normal financial scope of the small claims track, is allocated to that track only because an admission of part of the claim by the defendant reduces the amount in dispute to a sum within the normal scope of that track; on entering judgment for the admitted part before allocation of the balance of the claim the court may allow costs in respect of the proceedings down to that date.

COSTS FOLLOWING ALLOCATION, RE-ALLOCATION AND NON-ALLOCATION: RULE 46.13

8.1 Before reallocating a claim from the small claims track to another track , the court must decide whether any party is to pay costs to the date of the order to re-allocate in accordance with the rules about costs contained in Part 27 If it decides to make such an order the court will make a summary assessment of those costs in accordance with that Part.

8.2 Where a settlement is reached or a Part 36 offer accepted in a case which has not been allocated but would, if allocated, have been suitable for allocation to the small claims track, rule 46.13 enables the court to allow only small claims track costs in accordance with rule 27.14. This power is not exercisable if the costs are to be paid on the indemnity basis.

COSTS-ONLY PROCEEDINGS: RULE 46.14

9.1 A claim form under rule 46.14 should not be issued in the High Court unless the dispute to which the agreement relates was of such a value or type that proceedings would have been commenced in the High Court.

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

9.3 Attention is drawn to rule 8.2 (in particular to paragraph (b)(ii)) and to rule 46.14(3). The claim form must—

(a) identify the claim or dispute to which the agreement relates;

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

(c) set out or attach a draft of the order which the claimant seeks;

(d) state the amount of the costs claimed.

9.4 Unless the court orders otherwise or Section II of Part 45 applies the costs will be treated as being claimed on the standard basis.

9.5 The evidence required under rule 8.5 includes copies of the documents on which the claimant relies to prove the defendant's agreement to pay costs.

9.6 A costs judge or a district judge has jurisdiction to hear and decide any issue which may arise in a claim issued under this rule irrespective of the amount of the costs claimed or of the value of the claim to which the agreement to pay costs relates. The court may make an order by consent under paragraph 9.8, or an order dismissing a claim under paragraph 9.10 below.

9.7 When the time for filing the defendant's acknowledgement of service has expired, the claimant may request in writing that the court to make an order in the terms of the claim, unless the defendant has filed an acknowledgement of service stating the intention to contest the claim or to seek a different order.

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

9.9 Where costs are ordered to be assessed, the general rule is that this should be by detailed assessment. However when an order is made under this rule following a hearing and the court is in a position to summarily assess costs it should generally do so.

9.10 If the defendant opposes the claim the defendant must file a witness statement in accordance with rule 8.5(3). The court will then give directions including, if appropriate, a direction that the claim shall continue as if it were a Part 7 claim. A claim is not treated as opposed merely because the defendant disputes the amount of the claim for costs.

9.11 A claim issued under this rule may be dealt with without being allocated to a track. Rule 8.9 does not apply to claims issued under this rule.

9.12 Where there are other issues nothing in rule 46.14 prevents a person from issuing a claim form under Part 7 or Part 8 to sue on an agreement made in settlement of a dispute where that agreement makes provision for costs, nor from claiming in that case an order for costs or a specified sum in respect of costs but the "costs only" procedure in rule 46.14 must be used where the sole issue is the amount of costs.

PRACTICE DIRECTION 47 - PROCEDURE FOR DETAILED ASSESSMENT OF COSTS AND DEFAULT PROVISIONS

This Practice Direction supplements Part 47

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TIME WHEN ASSESSMENT MAY BE CARRIED OUT: RULE 47.1

1.1 For the purposes of rule 47.1, proceedings are concluded when the court has finally determined the matters in issue in the claim, whether or not there is an appeal, or made an award of provisional damages under Part 41.

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

1.3 A party who is served with a notice of commencement (see paragraph 5.2 below) may apply to a costs judge or a district judge to determine whether the party who served it is entitled to commence detailed assessment proceedings. On hearing such an application the orders which the court may make include: an order allowing the detailed assessment proceedings to continue, or an order setting aside the notice of commencement.

1.4 A costs judge or a district judge may make an order allowing detailed assessment proceedings to be commenced where there is no realistic prospect of the claim continuing.

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

2. An application to stay the detailed assessment of costs pending an appeal may be made to the court whose order is being appealed or to the court which will hear the appeal.

POWERS OF AN AUTHORISED COURT OFFICER: RULE 47.3

3.1 The court officers authorised by the Lord Chancellor to assess costs in the Costs Office and the Principal Registry of the Family Division are authorised to deal with claims where the base costs excluding VAT do not exceed £35,000 in the case of senior executive officers, or their equivalent, and £110,000 in the case of principal officers.

3.2 Where the receiving party, paying party and any other party to the detailed assessment proceedings who has served points of dispute are agreed that the assessment should not be made by an authorised court officer, the receiving party should so inform the court when requesting a hearing date. The court will then list the hearing before a costs judge or a district judge.

3.3 In any other case a party who objects to the assessment being made by an authorised court officer must make an application to the costs judge or district judge under Part 23 setting out the reasons for the objection.

VENUE FOR DETAILED ASSESSMENT PROCEEDINGS: RULE 47.4

4.1 For the purposes of rule 47.4(1) the 'appropriate office' means—

(a) the district registry or county court in which the case was being dealt with when the judgment or order was made or the event occurred which gave rise to the right to assessment, or to which it has subsequently been transferred;

(b) where a tribunal, person or other body makes an order for the detailed assessment of costs, a county court (subject to paragraph 4.2); or

(c) in all other cases, including Court of Appeal cases, the Costs Office.

4.2

(1) This paragraph applies where the appropriate office is any of the following county courts: Barnet, Bow, Brentford, Bromley, Central London, Clerkenwell and Shoreditch, Croydon, Edmonton, Ilford, Kingston, Lambeth, Mayors and City of London, Romford, Uxbridge, Wandsworth, West London, Willesden and Woolwich.

(2) Where this paragraph applies—

(a) the receiving party must file any request for a detailed assessment hearing in the Costs Office and, for all purposes relating to that detailed assessment (other than the issue of default costs certificates and applications to set aside default costs certificates), the Costs Office will be treated as the appropriate office in that case;

(b) default costs certificates should be issued and applications to set aside default costs certificates should be issued and heard in the relevant county court; and

(c) unless an order is made under rule 47.4(2) directing that the Costs Office as part of the High Court shall be the appropriate office, an appeal from any decision made by a costs judge shall lie to the Designated Civil Judge for the London Group of County Courts or such judge as the Designated Civil Judge shall nominate. The appeal notice and any other relevant papers should be lodged at the Central London Civil Justice Centre.

4.3

(1) A direction under rule 47.4(2) or (3) specifying a particular court, registry or office as the appropriate office may be given on application or on the court's own initiative.

(2) Unless the Costs Office is the appropriate office for the purposes of rule 47.4(1) an order directing that an assessment is to take place at the Costs Office will be made only if it is appropriate to do so having regard to the size of the bill of costs, the difficulty of the issues involved, the likely length of the hearing, the cost to the parties and any other relevant matter.

COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS: RULE 47.6

5.1 Precedents A, B, C and D in the Schedule of Costs Precedents annexed to this Practice Direction are model forms of bills of costs for detailed assessment.

5.2 The receiving party must serve on the paying party and all the other relevant persons the following documents—

(a) a notice of commencement in Form N252;

(b) a copy of the bill of costs;

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

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

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

5.3 The notice of commencement must be completed to show as separate items—

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

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

5.4 Where the notice of commencement is to be served outside England and Wales the date to be inserted in the notice of commencement for the paying party to send points of dispute is a date (not less than 21 days from the date of service of the notice) which must be calculated by reference to Section IV of Part 6 as if the notice were a claim form and as if the date to be inserted was the date for the filing of a defence.

5.5

(1) For the purposes of rule 47.6(2) a "relevant person" means—

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

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

(c) any other person whom the court orders to be treated as such.

(2) Where a party is unsure whether a person is or is not a relevant person, that party may apply to the appropriate office for directions.

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

5.6 Where—

(a) the bill of costs is capable of being copied electronically; and

(b) before the detailed assessment hearing,

a paying party requests an electronic copy of the bill, the receiving party must supply the paying party with a copy in its native format (for example, in Excel or an equivalent) free of charge not more than 7 days after receipt of the request.

FORM AND CONTENTS OF BILLS OF COSTS - GENERAL

5.7 A bill of costs may consist of such of the following sections as may be appropriate—

(1) title page;

(2) background information;

(3) items of costs claimed under the headings specified in paragraph 5.12;

(4) summary showing the total costs claimed on each page of the bill;

(5) schedules of time spent on non-routine attendances; and

(6) the certificates referred to in paragraph 5.21.

If the only dispute between the parties concerns disbursements, the bill of costs shall be limited to items (1) and (2) above, a list of the disbursements in issue and brief written submissions in respect of those disbursements.

5.8 Where it is necessary or convenient to do so, a bill of costs may be divided into two or more parts, each part containing sections (2), (3) and (4) above. Circumstances in which it will be necessary or convenient to divide a bill into parts include the following—

(1) Where the receiving party acted in person during the course of the proceedings (whether or not that party also had a legal representative at that time) the bill must be divided into different parts so as to distinguish between;

(a) the costs claimed for work done by the legal representative; and

(b) the costs claimed for work done by the receiving party in person.

(2) Where the receiving party had pro bono representation for part of the proceedings and an order under section 194(3) of the Legal Services Act 2007 has been made, the bill must be divided into different parts so as to distinguish between—

(a) the sum equivalent to the costs claimed for work done by the legal representative acting free of charge; and

(b) the costs claimed for work not done by the legal representative acting free of charge.

(3) Where the receiving party was represented by different legal representatives during the course of the proceedings, the bill must be divided into different parts so as to distinguish between the costs payable in respect of each legal representative.

(4) Where the receiving party obtained legal aid or LSC funding or is a person for whom civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) were provided under arrangements made for the purposes of that Part of that Act in respect of all or part of the proceedings, the bill must be divided into separate parts so as to distinguish between—

(a) costs claimed before legal aid or LSC funding was granted or before civil legal services were provided;

(b) costs claimed after legal aid or LSC funding was granted or after civil legal services were provided; and

(c) any costs claimed after legal aid or LSC funding ceased or after civil legal services ceased to be provided.

(5) Where the bill covers costs payable under an order or orders under which there are different paying parties the bill must be divided into parts so as to deal separately with the costs payable by each paying party.

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

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

FORM AND CONTENT OF BILLS OF COSTS: TITLE PAGE

5.10 The title page of the bill of costs must set out—

(1) the full title of the proceedings;

(2) the name of the party whose bill it is and a description of the document showing the right to assessment (as to which see paragraph 13.3 of this Practice Direction);

(3) if VAT is included as part of the claim for costs, the VAT number of the legal representative or other person in respect of whom VAT is claimed;

(4) details of all legal aid certificates, LSC certificates, certificates recording the determinations of the Director of Legal Aid Casework and relevant amendment certificates in respect of which claims for costs are included in the bill.

FORM AND CONTENT OF BILLS OF COSTS: BACKGROUND INFORMATION

5.11 The background information included in the bill of costs should set out—

(1) a brief description of the proceedings up to the date of the notice of commencement;

(2) a statement of the status of the legal representatives' employee in respect of whom costs are claimed and (if those costs are calculated on the basis of hourly rates) the hourly rates claimed for each such person.

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

FORM AND CONTENT OF BILLS OF COSTS: HEADS OF COSTS

5.12 The bill of costs may consist of items under such of the following heads as may be appropriate—

(1) attendances at court and upon counsel up to the date of the notice of commencement;

(2) attendances on and communications with the receiving party;

(3) attendances on and communications with witnesses including any expert witness;

(4) attendances to inspect any property or place for the purposes of the proceedings;

(5) attendances on and communications with other persons, including offices of public records;

(6) communications with the court and with counsel;

(7) work done on documents:

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

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

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

5.13 In respect of each of the heads of costs—

(1) 'communications' means letters out e-mails out and telephone calls;

(2) communications, which are not routine communications, must be set out in chronological order;

(3) routine communications must be set out as a single item at the end of each head;

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

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

5.16 In each part of the bill of costs which claims items under head (1) in paragraph 5.12 (attendances at court and upon counsel) a note should be made of—

(1) all relevant events, including events which do not constitute chargeable items;

(2) any orders for costs which the court made (whether or not a claim is made in respect of those costs in this bill of costs).

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

5.18 In respect of heads (2) to (10) in paragraph 5.12 above, if the number of attendances and communications other than routine communications is twenty or more, the claim for the costs of those items in that section of the bill of costs should be for the total only and should refer to a schedule in which the full record of dates and details is set out. If the bill of costs contains more than one schedule each schedule should be numbered consecutively.

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

5.20 The summary must show the total profit costs and disbursements claimed separately from the total VAT claimed. Where the bill of costs is divided into parts the summary must also give totals for each part. If each page of the bill gives a page total the summary must also set out the page totals for each page.

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

5.22 The following provisions relate to work done by legal representatives—

(1) Routine letters out, routine e-mails out and routine telephone calls will in general be allowed on a unit basis of 6 minutes each, the charge being calculated by reference to the appropriate hourly rate. The unit charge for letters out and e-mails out will include perusing and considering the routine letters in or e-mails in.

(2) The court may, in its discretion, allow an actual time charge for preparation of electronic communications sent by legal representatives, which properly amount to attendances provided that the time taken has been recorded.

(3) Local travelling expenses incurred by legal representatives will not be allowed. The definition of ‘local’ is a matter for the discretion of the court. As a matter of guidance,

'local' will, in general, be taken to mean within a radius of 10 miles from the court dealing with the case at the relevant time. Where travelling and waiting time is claimed, this should be allowed at the rate agreed with the client unless this is more than the hourly rate on the assessment.

(4) The cost of postage, couriers, out-going telephone calls, fax and telex messages will in general not be allowed but the court may exceptionally in its discretion allow such expenses in unusual circumstances or where the cost is unusually heavy.

(5) The cost of making copies of documents will not in general be allowed but the court may exceptionally in its discretion make an allowance for copying in unusual circumstances or where the documents copied are unusually numerous in relation to the nature of the case. Where this discretion is invoked the number of copies made, their purpose and the costs claimed for them must be set out in the bill.

(6) Agency charges as between principal legal representatives and their agents will be dealt with on the principle that such charges, where appropriate, form part of the principal legal representative's charges. Where these charges relate to head (1) in paragraph 5.12 (attendances at court and on counsel) they must be included in their chronological order in that head. In other cases they must be included in head (9) (attendances on London and other agents).

PERIOD FOR COMMENCING DETAILED ASSESSMENT PROCEEDINGS: RULE 47.7

6.1 The time for commencing the detailed assessment proceedings may be extended or shortened either by agreement (rule 2.11) or by the court (rule 3.1(2)(a)). Any application is to the appropriate office.

6.2 The detailed assessment proceedings are commenced by service of the documents referred to. Permission to commence assessment proceedings out of time is not required.

SANCTION FOR DELAY IN COMMENCING DETAILED ASSESSMENT PROCEEDINGS: RULE 47.8

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

POINTS OF DISPUTE AND CONSEQUENCES OF NOT SERVING: RULE 47.9

8.1 Time for service of points of dispute may be extended or shortened either by agreement (rule 2.11) or by the court (rule 3.1(2)(a)). Any application is to the appropriate office.

8.2 Points of dispute must be short and to the point. They must follow Precedent G in the Schedule of Costs Precedents annexed to this Practice Direction, so far as practicable. They must:

(a) identify any general points or matters of principle which require decision before the individual items in the bill are addressed; and

(b) identify specific points, 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.

8.3 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.

PROCEDURE WHERE COSTS ARE AGREED AND ON DISCONTINUANCE: RULE 47.10

9.1 Where the parties have agreed terms as to the issue of a costs certificate (either interim or final) they should apply under rule 40.6 (Consent judgments and orders) for an order that a certificate be issued in the terms set out in the application. Such an application may be dealt with by a court officer, who may issue the certificate.

9.2 Where in the course of proceedings the receiving party claims that the paying party has agreed to pay costs but that the paying party will neither pay those costs nor

join in a consent application under paragraph 9.1, the receiving party may apply under Part 23 for a certificate either interim or final to be issued.

9.3 Nothing in rule 47.10 prevents parties who seek a judgment or order by consent from including in the draft a term that a party shall pay to another party a specified sum in respect of costs.

9.4

(1) The receiving party may discontinue the detailed assessment proceedings in accordance with Part 38 (Discontinuance).

(2) Where the receiving party discontinues the detailed assessment proceedings before a detailed assessment hearing has been requested, the paying party may apply to the appropriate office for an order about the costs of the detailed assessment proceedings.

(3) Where a detailed assessment hearing has been requested the receiving party may not discontinue unless the court gives permission.

(4) A bill of costs may be withdrawn by consent whether or not a detailed assessment hearing has been requested.

DEFAULT COSTS CERTIFICATE: RULE 47.11

10.1

(1) A request for the issue of a default costs certificate must be made in Form N254 and must be signed by the receiving party or his legal representative.

(2) The request must be accompanied by a copy of the document giving the right to detailed assessment and must be filed at the appropriate office. (Paragraph 13.3 below identifies the appropriate documents).

10.2 A default costs certificate will be in Form N255.

10.3 Attention is drawn to Rules 40.3 (Drawing up and Filing of Judgments and Orders) and 40.4 (Service of Judgments and Orders) which apply to the preparation and service of a default costs certificate. The receiving party will be treated as having permission to draw up a default costs certificate by virtue of this Practice Direction.

10.4 The issue of a default costs certificate does not prohibit, govern or affect any detailed assessment of the same costs which are payable out of the Community Legal Service Fund or by the Lord Chancellor under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

10.5 An application for an order staying enforcement of a default costs certificate may be made either–

(a) to a costs judge or district judge of the court office which issued the certificate; or

(b) to the court (if different) which has general jurisdiction to enforce the certificate.

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

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

10.7 Unless paragraph 1.2 of Practice Direction 45 (Fixed Costs in Small Claims) applies or unless the court orders otherwise, the fixed costs to be included in a default costs certificate are £80 plus a sum equal to any appropriate court fee payable on the issue of the certificate.

10.8 The fixed costs included in a certificate must not exceed the maximum sum specified for costs and court fee in the notice of commencement.

SETTING ASIDE DEFAULT COSTS CERTIFICATE: RULE 47.12

11.1 A court officer may set aside a default costs certificate at the request of the receiving party under rule 47.12. A costs judge or a district judge will make any other order or give any directions under this rule.

11.2

(1) An application for an order under rule 47.12(2) to set aside or vary a default costs certificate must be supported by evidence.

(2) In deciding whether to set aside or vary a certificate under rule 47.12(2) the matters to which the court must have regard include whether the party seeking the order made the application promptly.

(3) As a general rule a default costs certificate will be set aside under rule 47.12 only if the applicant shows a good reason for the court to do so and if the applicant files with the application a copy of the bill, a copy of the default costs certificate and a draft of the points of dispute the applicant proposes to serve if the application is granted.

11.3 Attention is drawn to rule 3.1(3) (which enables the court when making an order to make it subject to conditions) and to rule 44.2(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). A costs judge or a district judge may exercise the power of the court to make an order under rule 44.2(8) although he did not make the order about costs which led to the issue of the default costs certificate.

OPTIONAL REPLY: RULE 47.13

12.1 A reply served by the receiving party under Rule 47.13 must be limited to points of principle and concessions only. It must not contain general denials, specific denials or standard form responses.

12.2 Whenever practicable, the reply must be set out in the form of Precedent G.

DETAILED ASSESSMENT HEARING: RULE 47.14

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

13.2 The request for a detailed assessment hearing must be in Form N258. The request must be accompanied by—

(a) a copy of the notice of commencement of detailed assessment proceedings;

(b) a copy of the bill of costs,

(c) the document giving the right to detailed assessment (see paragraph 13.3 below);

(d) a copy of the points of dispute, annotated as necessary in order to show which items have been agreed and their value and to show which items remain in dispute and their value;

(e) as many copies of the points of dispute so annotated as there are persons who have served points of dispute;

(f) a copy of any replies served;

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

(h) copies of the fee notes and other written evidence as served on the paying party in accordance with paragraph 5.2 above;

(i) where there is a dispute as to the receiving party's liability to pay costs to the legal representatives who acted for the receiving party, any agreement, letter or other written information provided by the legal representative to the client explaining how the legal representative's charges are to be calculated;

(j) a statement signed by the receiving party or the legal representative giving the name, address for service, reference and telephone number and fax number, if any, of—

(i) the receiving party;

(ii) the paying party;

(iii) any other person who has served points of dispute or who has given notice to the receiving party under paragraph 5.5(1)(b) above;

and giving an estimate of the length of time the detailed assessment hearing will take;

(k) where the application for a detailed assessment hearing is made by a party other than the receiving party, such of the documents set out in this paragraph as are in the possession of that party;

(l) where the court is to assess the costs of an assisted person or LSC funded client or person to whom civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) are provided under arrangement made for the purposes of that Part of that Act—

(i) the legal aid certificate, LSC certificate, the certificate recording the determination of the Director of Legal Aid Casework and relevant amendment certificates, any authorities and any certificates of discharge or revocation or withdrawal;

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

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

(iv) if the rates payable out of the LSC fund or by the Lord Chancellor under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are prescribed rates, a schedule to the bill of costs setting out all the items in the bill which are claimed against other parties calculated at the legal aid prescribed rates with or without any claim for enhancement: (further information as to this schedule is set out in paragraph 17 of this Practice Direction);

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

13.3 "The document giving the right to detailed assessment" means such one or more of the following documents as are appropriate to the detailed assessment proceedings—

(a) a copy of the judgment or order of the court or tribunal giving the right to detailed assessment;

(b) a copy of the notice served under rule 3.7 (sanctions for non-payment of certain fees) where a claim is struck out under that rule;

(c) a copy of the notice of acceptance where an offer to settle is accepted under Part 36 (Offers to settle);

(d) a copy of the notice of discontinuance in a case which is discontinued under Part 38 (Discontinuance);

(e) a copy of the award made on an arbitration under any Act or pursuant to an agreement, where no court has made an order for the enforcement of the award;

(f) a copy of the order, award or determination of a statutorily constituted tribunal or body.

13.4 On receipt of the request for a detailed assessment hearing the court will fix a date for the hearing, or, if the costs officer so decides, will give directions or fix a date for a preliminary appointment.

13.5 Unless the court otherwise orders, if the only dispute between the parties concerns disbursements, the hearing shall take place in the absence of the parties on the basis of the documents and the court will issue its decision in writing.

13.6 The court will give at least 14 days' notice of the time and place of the detailed assessment hearing to every person named in the statement referred to in paragraph 13.2(j) above.

13.7 If either party wishes to make an application in the detailed assessment proceedings the provisions of Part 23 apply.

13.8

(1) This paragraph deals with the procedure to be adopted where a date has been given by the court for a detailed assessment hearing and—

(a) the detailed assessment proceedings are settled; or

(b) a party to the detailed assessment proceedings wishes to apply to vary the date which the court has fixed; or

(c) the parties to the detailed assessment proceedings agree about changes they wish to make to any direction given for the management of the detailed assessment proceedings.

(2) If detailed assessment proceedings are settled, the receiving party must give notice of that fact to the court immediately, preferably by fax.

(3) A party who wishes to apply to vary a direction must do so in accordance with Part 23.

(4) If the parties agree about changes they wish to make to any direction given for the management of the detailed assessment proceedings—

(a) they must apply to the court for an order by consent; and

(b) they must file a draft of the directions sought and an agreed statement of the reasons why the variation is sought; and

(c) the court may make an order in the agreed terms or in other terms without a hearing, but it may direct that a hearing is to be listed.

13.10

(1) If a party wishes to vary that party's bill of costs, points of dispute or a reply, an amended or supplementary document must be filed with the court and copies of it must be served on all other relevant parties.

(2) Permission is not required to vary a bill of costs, points of dispute or a reply but the court may disallow the variation or permit it only upon conditions, including conditions as to the payment of any costs caused or wasted by the variation.

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

13.12 The papers to be filed in support of the bill and the order in which they are to be arranged are as follows—

(i) instructions and briefs to counsel arranged in chronological order together with all advices, opinions and drafts received and response to such instructions;

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

(iii) any other relevant papers;

(iv) a full set of any relevant statements of case

(v) correspondence, file notes and attendance notes;

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

13.14 Once the detailed assessment hearing has ended it is the responsibility of the receiving party to remove the papers filed in support of the bill.

PROVISIONAL ASSESSMENT: RULE 47.15

14.1 The amount of costs referred to in rule 47.15(1) is £75,000.

14.2 The following provisions of Part 47 and this Practice Direction will apply to cases falling within rule 47.15—

(1) rules 47.1, 47.2, 47.4 to 47.13, 47.14 (except paragraphs (6) and (7)), 47.16, 47.17, 47.20 and 47.21; and

(2) paragraphs 1, 2, 4 to 12, 13 (with the exception of paragraphs 13.4 to 13.7, 13.9, 13.11 and 13.14), 15, and 16, of this Practice Direction.

14.3 In cases falling within rule 47.15, when the receiving party files a request for a detailed assessment hearing, that party must file—

(a) the request in Form N258;

(b) the documents set out at paragraphs 8.3 and 13.2 of this Practice Direction;

(c) an additional copy of the bill, including a statement of the costs claimed in respect of the detailed assessment drawn on the assumption that there will not be an oral hearing following the provisional assessment;

(d) 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);

(e) completed Precedent G (points of dispute and any reply).

14.4

(1) On receipt of the request for detailed assessment and the supporting papers, the court will use its best endeavours to undertake a provisional assessment within 6 weeks. No party will be permitted to attend the provisional assessment.

(2) Once the provisional assessment has been carried out the court will return Precedent G (the points of dispute and any reply) with the court's decisions noted upon it. Within 14 days of receipt of Precedent G the parties must agree the total sum due to the receiving party on the basis of the court's decisions. If the parties are unable to

agree the arithmetic, they must refer the dispute back to the court for a decision on the basis of written submissions.

14.5 When considering whether to depart from the order indicated by rule 47.15(10) the court will take into account the conduct of the parties and any offers made.

14.6 If a party wishes to be heard only as to the order made in respect of the costs of the initial provisional assessment, the court will invite each side to make written submissions and the matter will be finally determined without a hearing. The court will decide what if any order for costs to make in respect of this procedure.

POWER TO ISSUE AN INTERIM CERTIFICATE: RULE 47.16

15. A party wishing to apply for an interim certificate may do so by making an application in accordance with Part 23.

FINAL COSTS CERTIFICATE: RULE 47.17

16.1 At the detailed assessment hearing the court will indicate any disallowance or reduction in the sums claimed in the bill of costs by making an appropriate note on the bill.

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

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

16.4 At the same time as filing the completed bill of costs, the party whose bill it is must also produce receipted fee notes and receipted accounts in respect of all disbursements except those covered by a certificate in Precedent F(5) in the Schedule of Costs Precedents annexed to this Practice Direction.

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

16.6 If the receiving party fails to file a completed bill in accordance with rule 47.17 the paying party may make an application under Part 23 seeking an appropriate order under rule 3.1.

16.7 A final costs certificate will show—

(a) the amount of any costs which have been agreed between the parties or which have been allowed on detailed assessment;

(b) where applicable the amount agreed or allowed in respect of VAT on such costs.

This provision is subject to any contrary statutory provision relating to costs payable out of the Community Legal Service Fund or by the Lord Chancellor under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

16.8 A final costs certificate will include disbursements in respect of the fees of counsel only if receipted fee notes or accounts in respect of those disbursements have been produced to the court and only to the extent indicated by those receipts.

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

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

16.11 An application for an order staying enforcement of an interim costs certificate or final costs certificate may be made either—

(a) to a costs judge or district judge of the court office which issued the certificate; or

(b) to the court (if different) which has general jurisdiction to enforce the certificate.

16.12 An interim or final costs certificate may be enforced as if it were a judgment for the payment of an amount of money. However, proceedings for the enforcement of interim costs certificates or final costs certificates may not be issued in the Costs Office.

DETAILED ASSESSMENT PROCEDURE WHERE COSTS ARE PAYABLE OUT OF THE COMMUNITY LEGAL SERVICE FUND OR BY THE LORD CHANCELLOR UNDER PART 1 OF THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012: RULE 47.18

17.1 The time for requesting a detailed assessment under rule 47.18 is within 3 months after the date when the right to detailed assessment arose.

17.2

(1) The request for a detailed assessment of costs must be in Form N258A. The request must be accompanied by—

(a) a copy of the bill of costs;

(b) the document giving the right to detailed assessment (see paragraph 13.3 above);

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

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

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

(f) the legal aid certificates, LSC certificates, certificates recording the determinations of the Director of Legal Aid Casework, any relevant amendment certificates, any authorities and any certificates of discharge, revocation or withdrawal; and

(g) a statement signed by the legal representative giving the representative's name, address for service, reference, telephone number, fax number, e-mail address where available and, if the assisted person has a financial interest in the detailed assessment and wishes to attend, giving the postal address of that person, to which the court will send notice of any hearing.

(2) The relevant papers in support of the bill as described in paragraph 13.12 must only be lodged if requested by the costs officer.

17.3 Where the court has provisionally assessed a bill of costs it will send to the legal representative a notice, in Form N253 annexed to this practice direction, of the amount of costs which the court proposes to allow together with the bill itself. The legal representative should, if the provisional assessment is to be accepted, then complete the bill.

17.4 If the solicitor whose bill it is, or any other party wishes to make an application in the detailed assessment proceedings, the provisions of Part 23 applies.

17.5 It is the responsibility of the legal representative to complete the bill by entering in the bill the correct figures allowed in respect of each item, recalculating the summary of the bill appropriately and completing the Community Legal Service assessment certificate (Form EX80A).

COSTS PAYABLE BY THE LEGAL SERVICES COMMISSION OR LORD CHANCELLOR AT PRESCRIBED RATES

17.6 Where the costs of an assisted person or LSC funded client or person to whom civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) are provided under arrangements made for the purposes of that Part of that Act are payable by another person but costs can be claimed against the LSC or Lord Chancellor at prescribed rates (with or without enhancement), the solicitor of the assisted person or LSC funded client or person to whom civil legal services are provided must file a legal aid/ LSC schedule in accordance with paragraph 13.2(l) above. The schedule should follow as closely as possible Precedent E of the Schedule of Costs Precedents annexed to this Practice Direction.

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

17.8 Where there has been a change in the prescribed rates during the period covered by the bill of costs, the schedule (as opposed to the bill) should be divided into separate parts, so as to deal separately with each change of rate. The schedule must also be divided so as to correspond with any divisions in the bill of costs.

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

17.10 The detailed assessment of the legal aid/ LSC schedule will take place immediately after the detailed assessment of the bill of costs but on occasions, the court may decide to conduct the detailed assessment of the legal aid/ LSC schedule separately from any detailed assessment of the bill of costs. This will occur, for example, where a default costs certificate is obtained as between the parties but that certificate is not set aside at the time of the detailed assessment of the legal aid costs.

17.11 Where costs have been assessed at prescribed rates it is the responsibility of the legal representative to enter the correct figures allowed in respect of each item and to recalculate the summary of the legal aid/ LSC schedule.

DETAILED ASSESSMENT PROCEDURE WHERE COSTS ARE PAYABLE OUT OF A FUND OTHER THAN THE COMMUNITY LEGAL SERVICE FUND OR BY THE LORD CHANCELLOR UNDER PART 1 OF THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012: RULE 47.19

18.1 Rule 47.19 enables the court to direct under rule 47.19(3) that the receiving party must serve a copy of the request for assessment and copies of the documents which accompany it, on any person who has a financial interest in the outcome of the assessment.

18.2 A person has a financial interest in the outcome of the assessment if the assessment will or may affect the amount of money or property to which that person is or may become entitled out of the fund. Where an interest in the fund is itself held by a

trustee for the benefit of some other person, that trustee will be treated as the person having such a financial interest unless it is not appropriate to do so. 'Trustee' includes a personal representative, receiver or any other person acting in a fiduciary capacity.

18.3 The request for a detailed assessment of costs out of the fund should be in Form N258B, be accompanied by the documents set out at paragraph 17.2(1) (a) to (e) and the following—

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

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

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

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

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

18.6

(1) The court will send the provisionally assessed bill to the receiving party with a notice in Form N253. If the receiving party is legally represented the legal representative should, if the provisional assessment is to be accepted, then complete the bill.

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

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

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

18.9 If the receiving party is legally represented the legal representative must complete the bill by inserting the correct figures in respect of each item and must recalculate the summary of the bill.

COSTS OF DETAILED ASSESSMENT PROCEEDINGS – RULE 47.20: OFFERS TO SETTLE UNDER PART 36 OR OTHERWISE

19. Where an offer to settle is made, whether under Part 36 or otherwise, it should specify whether or not it is intended to be inclusive of the cost of preparation of the bill, interest and VAT. Unless the offer states otherwise it will be treated as being inclusive of these.

APPEALS FROM AUTHORISED COURT OFFICERS IN DETAILED ASSESSMENT PROCEEDINGS: RULES 47.22 TO 47.25

20.1 This Section relates only to appeals from authorised court officers in detailed assessment proceedings. All other appeals arising out of detailed assessment proceedings (and arising out of summary assessments) are dealt with in accordance with Part 52 and Practice Directions 52A to 52E. The destination of appeals is dealt with in accordance with the Access to Justice Act 1999 (Destination of Appeals) Order 2000.

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

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

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

20.5 The appellant's notice should, if possible, be accompanied by a suitable record of the judgment appealed against. Where reasons given for the decision have been officially recorded by the court an approved transcript of that record should accompany the notice. Where there is no official record the following documents will be acceptable—

(a) the officer's comments written on the bill;

(b) advocates' notes of the reasons agreed by the respondent if possible and approved by the authorised court officer.

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

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

SCHEDULE OF COSTS PRECEDENTS

A:	Model form of bill of costs (REDRAFTED PRECEDENT TO FOLLOW)
B:	Model form of bill of costs (detailed assessment of additional liability only)
C:	Model form of bill of costs (payable by Defendant and the LSC)
D:	Model form of bill of costs (alternative form, single column for amounts claimed, separate parts for costs payable by the LSC only)
E:	Legal Aid/ LSC Schedule of Costs
F:	Certificates for inclusion in bill of costs (REDRAFTED PRECEDENT TO FOLLOW)
G:	Points of Dispute and Reply (REDRAFTED PRECEDENT TO FOLLOW)
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 bill
L:	Solicitors Act 1974: order for detailed assessment (client) (REDRAFTED PRECEDENT TO FOLLOW)
M:	Solicitors Act 1974: order for detailed assessment (solicitors) (REDRAFTED PRECEDENT TO FOLLOW)
P:	Solicitors Act 1974: breakdown of costs (REDRAFTED PRCEDENT TO FOLLOW)


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PRACTICE DIRECTION 48 - PART 2 OF THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 RELATING TO CIVIL LITIGATION FUNDING AND COSTS: TRANSITIONAL PROVISION AND EXCEPTIONS

This Practice Direction supplements Part 48

Contents of this Practice Direction

Transitional Provisions: General

1.1 Sections 44 and 46 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act") make changes to the effect that a costs order may not include, respectively, provision requiring the payment by one party of all or part of a success fee payable by another party under a conditional fee agreement or of an amount in respect of all or part of the premium of a costs insurance policy taken out by another party. These changes come into force on 1 April 2013.

1.2 Sections 44(6) and 46(3) of the 2012 Act make saving provisions to the effect, respectively, that these changes do not apply so as to prevent a costs order including such provision where the conditional fee agreement in relation to the proceedings was entered into (or, in relation to a collective conditional fee agreement, services were provided to the party under the agreement), or the costs insurance policy in relation to the proceedings taken out, before the date on which the changes come into force.

1.3 The provisions in the CPR relating to funding arrangements have accordingly been revoked (either in whole or in part as they relate to funding arrangements) with effect from 1 April 2013; but they will remain relevant, and will continue to have effect notwithstanding the revocations, after that date for those cases covered by the saving provisions.

1.4 The provisions in the CPR in force prior to 1 April 2012 relating to funding arrangements include—

(a) CPR 43.2(1)(a), (k), (l), (m), (n), (o), 43.2(3) and 43.2(4);

(b) CPR 44.3A, 44.3B, 44.12B, 44.15 and 44.16;

(c) CPR 45.8, 45.10, 45.12, 45.13, Sections III to V (45.15 to 45.19, 45.20 to 22 and 45.23 to 26), 45.28 and 45.31 to 45.40;

(d) CPR 46.3;

(e) CPR 48.8.

Mesothelioma claims

2.1 By virtue of section 48 of the 2012 Act, the changes relating to recoverable success fees and insurance premiums which are made by sections 44 and 46 of the Act may not be commenced, and accordingly will not apply, in relation to mesothelioma claims (defined by section 48(2) of the Act as having the same meaning as in the Pneumoconiosis etc. (Workers' Compensation) Act 1979) until such time as a review has been carried out and the conclusions of that review published. It will accordingly remain possible for a costs order in favour of a party to such proceedings to include provision requiring the payment of success fees and premiums under after the event costs insurance policies, and so the provisions of the CPR relating to funding arrangements as in force immediately prior to 1 April 2013 will continue to apply in relation to such proceedings, whether commenced before or after 1 April 2013. This will include the provision for fixed recoverable success fees in respect of employers' liability disease claims in Section V of Part 45 (CPR 45.23 to 45.26), which will otherwise cease to apply other than to claims in which a CFA was entered into or a costs insurance policy taken out before 1 April 2013).

2.2 On the later date when sections 44 and 46 are brought into force in relation to mesothelioma claims, the saving provisions of sections 44(6) and 44(3) will have effect in relation to funding arrangements in such claims as they do more generally, save that the operative date for the saving provisions will not be 1 April 2013 but the later date.

Insolvency-related proceedings and publication and privacy proceedings

3.1 Sections 44 and 46 of the 2012 Act are not being commenced immediately in relation to certain proceedings related to insolvency. Until such time as those sections are commenced in relation to those proceedings, therefore, they are in a similar position as regards funding arrangements to mesothelioma claims.

3.2 Similarly, sections 44 and 46 of the 2012 Act are not being commenced immediately in respect of publication and privacy proceedings, which will accordingly be in a similar position as regards funding arrangements to mesothelioma claims and insolvency-related proceedings until such time as those sections are commenced in relation to them.

New provision in relation to clinical negligence claims

4.1 Section 46 of the 2012 Act enables the Lord Chancellor by regulations to provide that a costs order may include provision requiring the payment of an amount in respect of all or part of the premium of a costs insurance policy, where—

(a) the order is made in favour of a party to clinical negligence proceedings of a prescribed description;

(b) the party has taken out a costs insurance policy insuring against the risk of incurring a liability to pay for one or more expert reports in respect of clinical negligence in connection with the proceedings (or against that risk and other risks);

(c) the policy is of a prescribed description;

(d) the policy states how much of the premium relates to the liability to pay for such an expert report or reports, and the amount to be paid is in respect of that part of the premium.

4.2 The regulations made under the power are the Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings Regulations 2013 (S.I. 2013/92). The regulations relate only to clinical negligence cases where a costs insurance policy is taken out on or after 1 April 2013, so the provisions in force in the CPR prior to 1 April 2013 relating to funding arrangements will not apply."

ANNEX C – LIST OF AUTHORISED GOVERNMENT DEPARTMENTS

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