

Superior Courts Rules

Order 99

Costs

[1]

I. Definitions

1. In this Order:

the "2015 Act" means the Legal Services Regulation Act 2015 ;

reference to "adjudication" of, or upon, costs or any matter or item in any bill of costs means adjudication of that bill, matter or item, as the case may be, in accordance with Part 10 of the 2015 Act;

"legal practitioner and client adjudication" means an adjudication of costs under section 154(4) or section 154(5) of the 2015 Act;

"party and party adjudication" means an adjudication of costs under section 154(2) or section 154(3) of the 2015 Act;

words and expressions contained in this Order shall, where the context so admits, have the same meaning as in the 2015 Act.

II. Right to costs

2. Subject to the provisions of statute (including sections 168 and 169 of the 2015 Act) and except as otherwise provided by these Rules:

(1) The costs of and incidental to every proceeding in the Superior Courts shall be in the discretion of those Courts respectively.

(2) No party shall be entitled to recover any costs of or incidental to any proceeding from any other party to such proceeding except under an order or as provided by these Rules.

(3) The High Court, the Court of Appeal or the Supreme Court, upon determining any interlocutory application, shall make an award of costs save where it is not possible justly to adjudicate upon liability for costs on the basis of the interlocutory application.

(4) An award of costs shall include any sum payable by the party in favour of whom such an award is made by way of value added tax on such costs, where and only where such party establishes that such sum is not otherwise recoverable.

(5) An order may require the payment of an amount in respect of costs forthwith, notwithstanding that the proceedings have not been concluded.

3.(1) The High Court, in considering the awarding of the costs of any action or step in any proceedings, and the Supreme Court and Court of Appeal in considering the awarding of the costs of any appeal or step in any appeal, in respect of a claim or counterclaim, shall have regard to the matters set out in section 169(1) of the 2015 Act, where applicable.

(2) For the purposes of section 169(1)(f) of the 2015 Act, an offer to settle includes any offer in writing made without prejudice save as to the issue of costs.

4. If a cause is removed from an inferior court or from a tribunal having power to award costs which has jurisdiction in the cause, the costs in the court below or tribunal shall be costs in the cause, unless otherwise ordered by the Court or by such inferior court or tribunal.

5.(1) The costs of inquiries to ascertain the person entitled to any legacy, money, or share, or otherwise incurred in relation thereto shall be paid out of such legacy, money, or share unless the Court otherwise directs.

(2) Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the Court may order or allow immediate payment of their shares to the persons ascertained, without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares. In all such cases, an order may be made for ascertaining and payment of the costs incurred down to and including such payment as the Court shall think reasonable.

6. A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought.

7.(1) An order for the payment of costs may require the costs to be paid forthwith, notwithstanding that the proceedings have not been concluded.

(2) In awarding costs, the Court may:

(a) direct that a sum in gross be paid in lieu of adjudicated costs;

(b) in determining the amount of any such sum, of its own motion or on the application of the parties, appoint an independent legal costs accountant to report on the work to which the costs relate and shall direct that the parties be furnished with copies of any such report, and

(c) direct that the costs of preparing a report referred to in paragraph (b) be added to the sum in gross awarded or be paid by another party.

(3) At any stage of proceedings, the Court may require the parties to produce to the Court and exchange with one another estimates of the costs respectively incurred by them, for such period as the Court may direct, and particularised in such manner as the Court may direct.

8.(1) Where, on the trial of any cause or matter or on any other proceeding, it appears to the Court that the same cannot conveniently proceed, the Court may, for the purpose of ascertaining whether same is due to:

(a) the neglect of a legal practitioner acting for any party to attend personally or by some proper person on his behalf, or

(b) the failure of such legal practitioner to be properly prepared for such trial or proceeding, or

(c) the omission of such legal practitioner to deliver any paper necessary for the use of the Court which was required by these Rules, a practice direction or an order or direction of the Court to have been delivered,

adjourn the proceeding for a period of not less than 14 days for the purpose of affording the legal practitioner concerned an opportunity to adduce evidence and to make written and oral submissions in respect of such one or more of the matters specified at paragraphs (a) to (c) as

the Court shall direct.

(2) Where the Court, having at the adjourned hearing of the matters considered any such evidence and submissions, determines that the proceeding could not proceed by virtue of such neglect, failure or omission (as the case may be) of the legal practitioner concerned, may order that such legal practitioner shall personally pay to the other party such costs as the Court shall think fit to award.

9.(1) If in any case it appears to the Court that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the legal practitioner, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court may –

(a) call on the legal practitioner acting for the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the legal practitioner and his client and (if the circumstances of the case require) why the legal practitioner should not repay to his client any costs which the client may have been ordered to pay any other person, and thereupon make such order as the justice of the case may require;

(b) refer the matter to the Legal Costs Adjudicator for inquiry and report and nominate another legal practitioner to attend and take part in such inquiry.

(2) Notice of the order shall be given to the client in such manner as the Court directs. Any costs of the legal practitioner nominated as aforesaid shall be paid by such parties, or out of such funds as the Court may direct; or, if not otherwise paid, may be paid out of such moneys (if any) as may be provided by the Oireachtas.

III. Amount of costs

10.(1) This Part applies to costs which by or under these Rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) Subject to sub-rule (3), costs to which this Part applies shall be adjudicated on a party and party basis in accordance with section 155 and Schedule 1 to the 2015 Act.

(3) The Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so, order or direct that the costs shall be adjudicated on a legal practitioner and client basis.

11. A legal practitioner and client adjudication shall be conducted in accordance with section 155 and Schedule 1 to the 2015 Act, and such of these Rules as are applicable to legal practitioner and client costs.

12.(1) Where the costs concerned were incurred in relation to contentious business, the bill of costs shall, for the purposes of section 154(1)(c) include as individual items the steps and activities (where relevant) contained in Parts I, II, and III of the scales of costs in Appendix W, and shall be prepared in accordance with the notes and general provisions contained therein.

(2) When the amount of a solicitor's remuneration in respect of sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated by any general orders for the time being in force under the Solicitors' Remuneration Act 1881, or by any rules for the time being in force under the Registration of Title Act 1964, the amount of the costs to be allowed on adjudication in respect of such business shall be regulated thereby, notwithstanding anything contained in this Order.

IV. Adjudication of costs

13.(1) The Legal Costs Adjudicator may adjudicate:

- (a) the costs of or arising out of any cause or matter in any of the Superior Courts;
- (b) any costs which are the subject of an order made by an arbitral tribunal in accordance with section 21(4) of the Arbitration Act 2010 for the adjudication of the costs of the arbitration by a Legal Costs Adjudicator;
- (c) the costs of a receiver appointed in any cause or matter, on the application of the receiver or of any party to such cause or matter;
- (d) the cost of registering judgments as mortgages, of obtaining grants of probate and of letters of administration, of satisfying judgments, and any other costs usually adjudicated ex parte, on the application of any party interested;
- (e) without any order for the purpose, costs as between legal practitioner and client, upon the application of the client and upon his written undertaking, to be lodged in the Legal Costs Adjudicators' Office, to pay any balance which the Legal Costs Adjudicator may determine and certify;
- (f) any other costs to be adjudicated under or by virtue of a statute or these Rules.

(2) The costs and expenses of an adjudication shall, unless the Legal Costs Adjudicator, for special reason to be stated in his determination otherwise directs, follow the event.

14. All bills of costs to be adjudicated shall be disposed of by the Legal Costs Adjudicators in a rotation to be fixed by them from time to time, or in such manner or order as the Chief Justice may from time to time direct; provided that the Court may at any time order that any particular costs or bill of costs shall be referred to any one of the Legal Costs Adjudicators.

15.(1) All bills of costs for adjudication shall, subject to the requirements of this Order, be lodged in the Legal Costs Adjudicators' Office. Each such bill shall include or be accompanied by a memorandum signed by or for the legal practitioner lodging the same, stating whether or not there has been any previous adjudication or taxation of costs in the same cause or matter, or relating to the same estate or trust, and if so, by which Legal Costs Adjudicator and the date thereof.

(2) The Chief Legal Costs Adjudicator may direct generally, by notice published in such manner as he may determine, or a Legal Costs Adjudicator may direct in any case, that a bill of costs or a copy thereof be lodged in electronic form.

16.(1) The register of determinations to be maintained for the purposes of section 140 of the 2015 Act may be established and maintained electronically and shall, subject to that section, include the particulars required by that section.

(2) The register of determinations shall be open to inspection by any interested party during office hours in accordance with section 140(8) of the 2015 Act.

17. The Legal Costs Adjudicators shall be respectively assistant to each other, and any Legal Costs Adjudicator may adjudicate or assist in the adjudication of a bill of costs which has been referred to another, and in such case shall certify accordingly.

18. At least one Legal Costs Adjudicator shall be available to discharge such business as may be required during the Long vacation.

19. The Legal Costs Adjudicators, in the exercise of their powers and performance of their functions, shall have regard to any guidelines published in accordance with section 142 of the 2015 Act.

20. The Legal Costs Adjudicator shall record details of items allowed or disallowed in respect of a bill of costs. The bill shall be retained in the Legal Costs Adjudicators' Office or if in electronic form, under the control of the Chief Legal Costs Adjudicator. When an adjudication has been completed and no review or appeal has been sought within the time permitted, or any review or appeal has been determined, the original bill of costs as detailed by the Legal Costs Adjudicator shall be available for inspection (in read-only form if maintained electronically), subject to any redactions which the Legal Costs Adjudicator considers necessary to conform to the requirements of section 140(5) of the 2015 Act, by any party to an adjudication during office hours without fee or charge, whether as part of the register of determinations or otherwise.

21. A Legal Costs Adjudicator may, for the purpose of adjudicating a bill of costs, in addition to the powers exercisable under section 156 of the 2015 Act -

- (a) direct the production of documents, records and vouchers to him or to other parties to the adjudication;
- (b) require any party to be represented by a separate solicitor, and
- (c) generally direct any party to the adjudication to do such acts as he considers necessary.

22. A copy of every judgment or order, whereby any costs are directed to be paid, shall be lodged in the Legal Costs Adjudicators' Office before the adjudication of such costs shall proceed, and the solicitor lodging such copy shall certify that it is a correct copy.

23.(1) An application for adjudication of any matter or item in a bill of costs shall be by notice in the Form No. 1 (in the case of a party and party adjudication) or Form No. 2 (in the case of a legal practitioner and client adjudication) in Part V of Appendix W.

(2) Every notice of application shall be lodged in duplicate in the Legal Costs Adjudicators' Office. An initial return date shall be assigned to each such application and a completed notice returned to the applicant for service.

(3) Subject to rule 26, every notice of application for a party and party adjudication shall be accompanied by:

- (i) the bill of costs in the form prescribed by these Rules;
- (ii) vouchers, invoices and/or receipts in respect of any disbursement which has not been agreed;
- (iii) any other records on which the applicant relies in support of the costs claimed, separately indexed and paginated; and
- (iv) where the applicant relies on time records in support of the costs claimed, those time records, separately indexed and paginated; showing –
 - I. each legal practitioner or other person concerned;
 - II. the hourly rate(s) applicable;
 - III. the date(s) on which the relevant work was undertaken and the actual hours, or portions of hours, expended thereon;

IV. a total of the hours, or portions of hours, expended thereon, and

V. where any such time is estimated, a statement that such time has been estimated;

(v) a true copy of the order of the Court, award of the arbitrator or other order or instrument by which the costs have been awarded or allowed, and

(vi) in the case of a party and party adjudication applied for by the person the subject of the order to pay the costs, a certificate that the person has complied with section 154(2) of the 2015 Act.

(4) Every notice of application for a legal practitioner and client adjudication shall be accompanied by:

(i) the bill of costs in the form prescribed by these Rules;

(ii) vouchers, invoices and/or receipts in respect of any disbursement which has not been agreed;

(iii) any other records on which an applicant legal practitioner relies in support of the costs claimed, separately indexed and paginated, and

(iv) where the applicant relies on time records in support of the costs claimed, those time records, separately indexed and paginated, showing --

I. each legal practitioner or other person concerned;

II. the hourly rate(s) applicable;

III. the date(s) on which the relevant work was undertaken and the actual hours, or portions of hours, expended thereon;

IV. a total of the hours, or portions of hours, expended thereon, and

V. where any such time is estimated, a statement that such time has been estimated.

(v) a true copy of each notice provided by the legal practitioner concerned to the client in accordance with section 150 and/or agreement under section 151(1) of the 2015 Act;

(vi) a true copy of any statement in writing sent under section 153(1) of the 2015 Act;

(vii) a true copy of any opinion in writing sent under section 153(3) of the 2015 Act, and

(viii) a true copy of any demand for payment.

(5) In the case of an application for legal practitioner and client adjudication, the applicant shall serve copies of the issued notice of application including the return date and the documents lodged therewith in the manner provided by these Rules on the client or, as the case may be, the legal practitioner concerned.

(6) In the case of an application for party and party adjudication, the applicant shall serve copies of the issued notice of application including the return date and the documents lodged therewith in the manner provided by these Rules on the legal practitioner or, as the case may be, the person who is the subject of the order to pay the costs.

24.(1) On the initial return date of the application for adjudication, or on any date to which that application is adjourned, the Legal Costs Adjudicator may, if he does not proceed to adjudicate the matters or items concerned in the bill of costs:

- (i) give directions as to the service of notice of the adjudication on any other person;
- (ii) give such further directions, if any, as he considers necessary as to the furnishing of further documents, records and vouchers to the Chief Legal Costs Adjudicator or to other parties to the adjudication;
- (iii) give directions as to the delivery and filing of written submissions for the purposes of the adjudication;
- (iv) give such further directions in exercise of the powers available under the 2015 Act and this Order as he considers convenient for the determination of the adjudication in a manner which is just, expeditious and likely to minimise the costs of the adjudication.

25.(1) A notice of application for adjudication shall be issued and served so as to allow 14 clear days to elapse between the day of service and the initial return date. Under urgent circumstances (to be decided on by the Legal Costs Adjudicator) a notice of application for adjudication may, by leave of the Legal Costs Adjudicator, be issued returnable to an earlier date.

(2) It shall not be necessary to serve the opposing party with a copy of any document or item which accompanied the notice filed in the Office of the Legal Costs Adjudicators which has been previously served on or sent to the opposing party or which has been provided to the party effecting service by the opposing party.

(3) A notice of application for adjudication issued and served in respect of any bill of costs may be restricted so as to seek the adjudication of only one or more matters or items in the bill of costs. Any such notice of application for adjudication shall specify precisely the matters or items on which the Legal Costs Adjudicator is required to adjudicate and the matters or items which have been agreed between the parties or the legal practitioner and client, as the case may be. The Legal Costs Adjudicator shall, if satisfied that such notice has been issued and served and that not all of the matters or items in the bill of costs require to be adjudicated, adjudicate that part of the bill and the matters and items thereon in respect of which the notice has issued.

26.(1) Every bill of costs lodged for adjudication shall be indorsed with the name and registered place of business of any legal practitioner by or for whom it is so lodged. Where value added tax is claimed in a bill of costs the registered number allocated by the Revenue Commissioners to the person registered for value added tax must appear in a prominent place on every bill of costs, account or voucher, as appropriate, on which value added tax is claimed or chargeable.

(2) Bills of costs and notices, the service of which is required, shall have the service as effected indorsed upon them in a manner sufficiently, though briefly, specifying the person served, the time, place and mode of service, and the person serving, and the documents so indorsed shall be produced on proving service.

(3) No addition or alteration shall be made in a bill of costs after it is lodged for adjudication except by permission or direction of the Legal Costs Adjudicator.

(4) No entry, initialling or marking in a bill of costs lodged shall be made, save by the Legal Costs Adjudicator, nor shall any erasures be allowed. Where this provision is infringed the Legal Costs Adjudicator may, subject to an appeal to the Court, disallow any matter or item in respect of which the infringement has taken place, or may report the matter to the Court.

(5) Subject to sub-rule (6), a bill of costs lodged for adjudication shall be in the Form No. 3 in Part V of Appendix W.

(6) Where an agreement has been made under section 151 of the 2015 Act by a legal practitioner and the legal practitioner's client, sub-rule (5) shall have application subject to sections 152(5) to (7) of the 2015 Act.

(7) Where a Legal Costs Adjudicator so directs, a bill of costs may be accepted for adjudication notwithstanding lack of conformity with the prescribed form, provided that the Legal Costs Adjudicator is satisfied that the bill of costs:

(i) if a bill of costs furnished by a legal practitioner to a client, contains the particulars specified in section 152(2) of the 2015 Act;

(ii) is in the Legal Costs Adjudicator's opinion sufficient, when read together with the documents served and filed together with that bill, to enable the paying party to assess and dispute or oppose the work undertaken and disbursements incurred in respect of which charges are claimed, and

(iii) is in the Legal Costs Adjudicator's opinion sufficient, when read together with the documents served and filed together with that bill, to enable the Legal Costs Adjudicator to adjudicate the matters and items in dispute in accordance with the 2015 Act.

(8) Where a bill of costs which does not conform to the prescribed form is not sufficient to satisfy the requirements of sub-rule (7), the Legal Costs Adjudicator may:

(i) adjourn the adjudication and direct the service and lodgment of a new bill of costs, or of an amended bill of costs;

(ii) adjourn the adjudication and direct the service and lodgment of further information or documents in respect of matters or items in the bill of costs;

(iii) strike out the application for adjudication without prejudice to the right of the moving party to make a further application.

27.(1) An index or schedule of the documents included in each brief shall be produced on adjudication if required by the Legal Costs Adjudicator.

(2) Subject to the direction of the Legal Costs Adjudicator, there shall be produced on adjudication the documents or portions of documents entered in evidence or produced at any hearing in respect of which a charge is claimed in the bill of costs.

(3) Accounts for disbursements charged in a bill of costs, together with all rulings, orders, reports and other important documents shall be produced on adjudication.

(4) Subject to the direction of the Legal Costs Adjudicator, there shall be produced on adjudication all drafts and other documents in respect of the preparation of which a charge is claimed in the bill of costs.

(5) Subject to the direction of the Legal Costs Adjudicator, there shall be produced or provided on adjudication the following details in respect of each witness in respect of whom expenses are claimed in a bill of costs:

(i) the person's name, address and occupation;

(ii) the place at which the person was subpoenaed;

(iii) the distance the person had to travel for the purpose of attending the trial;

(iv) the dates on which the person was required to attend at the trial;

(v) where applicable, the loss of income, duly certified, claimed by the person arising from the requirement to attend at trial;

(vi) the note of the evidence of such person as briefed to counsel for the trial.

28. Certificates of determinations of the amount of costs allowed shall be prepared without interlineation, or alteration save such as the Legal Costs Adjudicator may think it right to mark with his initials, and no erasure whatsoever shall be allowed.

29.(1) The Legal Costs Adjudicator may allow a legal practitioner or legal costs accountant attending to oppose the adjudication of costs, otherwise than as between party and party, proper charges for his preparation and attendance.

(2) In cases of special difficulty and importance involving questions of principle, the Legal Costs Adjudicator may allow, as part of the costs of adjudication, the expenses of counsel appearing before him.

(3) The Legal Costs Adjudicator, in adjudicating any subsequent costs in the same cause or matter,

(a) shall have regard to the preceding bill(s) or other costs or charges arising out of the same or similar matters, and

(b) for that purpose may require production by a party of information relating to the matter or matters which he considers relevant.

30. If, during the adjudication of any bill of costs or the taking of any account between legal practitioner and client, it appears that there must in any event be moneys payable by the solicitor to the client, the Legal Costs Adjudicator may from time to time make an interim certificate as to the amount so payable by the solicitor. On the filing of such certificate the Court may order the moneys so certified to be paid forthwith to the client or brought into Court.

31. The adjudication shall, if possible, be continued without interruption until completed, but if adjourned for any reason notice of the adjournment shall be given to any legal practitioner not present at the time of the adjournment whose attendance at the adjourned hearing is necessary or proper.

32.(1) A client of a legal practitioner may apply for the adjudication of costs by issuing a notice of application and serving such notice on the legal practitioner in accordance with rule 23.

(2) In the case of an application for legal practitioner and client adjudication by the person liable for the costs, the applicant is not required to have the bill of costs in the form prescribed by these Rules but may lodge the bill of costs, memorandum of costs or account for costs, in whatever form it was received from the legal practitioner, and in default of such the applicant may set down a written statement of the relevant facts in lieu thereof.

(3) A Legal Costs Adjudicator may, if he considers it just and convenient, direct the legal practitioner, at no cost or expense to the client, to revise a bill of costs to the client to ensure that the bill of costs is prepared in accordance with section 152 of the 2015 Act.

(4) On the completion by the Legal Costs Adjudicator of the adjudication of a bill of costs, the legal practitioner shall take up the certificate of determination within a period of 21 days or such further period as the Court or the Legal Costs Adjudicator may allow. If either party seeks a consideration in accordance with section 160 of the 2015 Act of any decision as regards a matter or item in the bill of costs by the Legal Costs Adjudicator, or seeks a review in

accordance with section 161 of the 2015 Act by the Court, the relevant period shall operate from the date of the decision or determination under section 160(5) of the 2015 Act or, as the case may be, the order of the Court under section 161(4) of the 2015 Act.

(5) If the legal practitioner fails to take up the certificate of determination within the said period of 21 days or such extended period as is allowed in accordance with sub-rule (4), the client may take up the certificate of determination on payment of the court fee on the bill of costs and on the certificate of determination. The client shall be entitled to deduct from the bill of costs, any fee allowed or payable to such legal practitioner for attending on and opposing the adjudication. The client shall also be entitled to deduct from the said bill of costs the costs of adjudication, the court fee on the bill of costs and on the certificate of determination, the fee for drawing the bill of costs and for attending the adjudication or any of them.

(6) The foregoing provisions of this rule shall apply in cases of the adjudication of a bill of costs payable out of a fund or estate or out of the assets of a company in liquidation, as well as between legal practitioner and client.

33. Where, on the adjudication of any bill of costs it appears to the Legal Costs Adjudicator that it is necessary to inspect any books, papers or documents relating to the cause or matter, the Legal Costs Adjudicator may request the Registrar or Examiner who has the custody of such books, papers or documents to cause the same to be transmitted to the office of the Legal Costs Adjudicator. The Legal Costs Adjudicator may also request such Registrar or Examiner to certify any proceedings which may be comprised in the bill of costs under adjudication. In such cases, the Registrar or Examiner shall as soon as may be convenient cause such books, papers and documents to be transmitted to the office of the Legal Costs Adjudicator for his use during the adjudication and shall certify the proceedings which have taken place according to the request of the Legal Costs Adjudicator. After the costs have been certified, the Legal Costs Adjudicator shall cause the same books, papers and documents to be returned.

34. The Legal Costs Adjudicator may allow such sum as he considers reasonable for printing or reproducing, including by electronic means, copies of pleadings, answers and other documents where he considers the printing or reproduction to have been necessary or proper.

35.(1) Subject to sub-rule (2), the fees to be allowed in respect of transcript writers shall be of such amount as to the Legal Costs Adjudicator seems reasonable.

(2) A transcript of evidence required by any party to be furnished to him during the trial shall not be allowed for unless such transcript has been directed to be made by the Court, or is subsequently used for the purpose of an appeal.

36.(1) The Court may, on any application or proceedings in or at the hearing of any cause or matter and whether the same is objected to or not, direct the costs of any indorsement on a summons, pleading, affidavit or any other document, which is improper, or contains vexatious or unnecessary matter, or is of unnecessary length, to be disallowed, or may direct the Legal Costs Adjudicator to look into the same and to disallow the costs thereof or of such part thereof as he finds to be improper, or to contain vexatious or unnecessary matter, or to be of unnecessary length. In such case, the party whose costs are so disallowed shall pay the costs occasioned thereby to the other party. In any case where such question has not been dealt with by the Court, it shall be the duty of the Legal Costs Adjudicator to look into the reasonableness of any indorsement on a summons, pleading, affidavit or any other document as if he had been specially directed to do so.

(2) In any case in which a party entitled to receive costs is liable to pay costs to any other party, the Legal Costs Adjudicator may adjudicate the costs such party is so liable to pay, and may adjust the same by way of deduction or set off without any order of the court.

(3) The Legal Costs Adjudicator may direct what parties are to attend before him on the adjudication of costs to be borne by a fund or estate, and may disallow the costs of any party whose attendance he shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or adequately protected by other parties interested, or for other sufficient reason.

(4) Where any bill of costs is ordered to be adjudicated for the purpose of being paid or raised out of any fund or property, the Legal Costs Adjudicator may, in his discretion, require the solicitor to give notice to his clients or such of them as the Legal Costs Adjudicator shall direct, and may suspend the adjudication until such notice has been given. Such notice shall state that the bill of costs has been referred to the Legal Costs Adjudicator and the date and hour fixed by the Legal Costs Adjudicator for the adjudication to proceed, and shall also state that the party to whom such notice is addressed is entitled to appear to be represented to oppose the allowances on adjudication.

(5) When a person in whose favour an order to pay costs has been made or other person entitled to costs refuses or neglects to deliver a bill of costs to the person liable to pay, and thereby prejudices that person or any other party, the Legal Costs Adjudicator may certify the costs of the other parties, and certify such refusal or neglect, or may allow the person so refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

(6) Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant), but there shall be deducted from such costs any sum which may have been paid by the plaintiff in respect of any amendment.

(7)

(i) Where in the scales of costs in Appendix W there is entered either a minimum and a maximum sum, or the word "discretionary", the amount of costs to be allowed in respect of that item shall, subject to any order of the Court, be in the discretion of the Legal Costs Adjudicator, within the limits of the sums so entered (if any).

(ii) In exercising his discretion in relation to any item, the Legal Costs Adjudicator shall have regard to the matters set out in Schedule 1 to the 2015 Act.

(8) As to all fees and allowances not referred to in sub-rule (7), it shall be in the discretion of the Legal Costs Adjudicator to disallow the same in whole or in part.

(9) Where, in proceedings before the Legal Costs Adjudicator, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the Legal Costs Adjudicator may, without limitation of any other power available to him, direct such party or his legal practitioner to pay the reasonable costs occasioned by such neglect or delay. Such costs may be deducted from or, as the case may be, added to and included in the amount of the costs determined to be due on adjudication.

(10) Subject to any provision of statute, the Legal Costs Adjudicator may limit or extend the time for any proceedings before him. Where, by these Rules, a time is appointed for any proceedings before or by a Legal Costs Adjudicator, unless the Court otherwise directs, such Legal Costs Adjudicator may from time to time extend the time appointed upon such terms (if any) as the justice of the case requires, and although the application for the same is not made until after the expiration of the time appointed.

(11) In any case in which costs are directed to be paid by any order, and the same are subsequently determined and certified, the party entitled to such costs may, after the determination has taken effect in accordance with section 158 of the 2015 Act, upon production of such order, the Legal Costs Adjudicator's certificate of determination of the amount thereof, and proof that such costs are not the subject of a consideration under section 160 or a review under section 161 of the 2015 Act, have an order of execution for the payment of the certified amount of such costs.

V. Consideration of adjudication

37.(1) Any party who is dissatisfied with the allowance or disallowance by the Legal Costs Adjudicator of the whole or part of any item (including any special allowance) may, within the time permitted by section 160(1) of the 2015 Act, apply to the Legal Costs Adjudicator by notice in the Form No. 4 in Part V of Appendix W for consideration of the decision or decisions specified in the notice and for a determination under that section. The notice shall list in a concise form the matters or items, or parts thereof, to which the decision of the Legal Costs Adjudicator being objected to relates and the grounds and reasons for such objections. A copy of the notice shall be served on the other party to the adjudication not later than 14 days before the return date assigned for the hearing of the application.

(2) The Legal Costs Adjudicator shall, if he thinks fit, and on the application of the party entitled to the costs, issue pending the hearing of the application under section 160 of the 2015 Act an interim certificate of determination in accordance with section 160(3) of the 2015 Act. Such further certificate as may be necessary shall be issued by the Legal Costs Adjudicator after his decision on the application for consideration of the decision or decisions concerned.

(3) On such application the Legal Costs Adjudicator shall reconsider and review his determination in accordance with section 160(4) of the 2015 Act.

VI. Review of determination of Legal Costs Adjudicator

38.(1) An application to the Court under section 161(1) of the 2015 Act shall be made by motion on notice to the persons specified in section 161(2) of the 2015 Act. The notice of motion shall be filed in the Central Office and a copy thereof filed in the Office of the Legal Costs Adjudicators. The motion shall be heard and determined by the Court on the evidence brought in before the Legal Costs Adjudicator, and no further evidence shall be received on the hearing thereof, unless the Court otherwise directs.

(2) The party seeking a review of the determination shall produce for the Court duly certified copies of the original bill of costs, notice of application for further consideration and submissions in support of that application and any replying submissions and any other material documents.

(3) After the determination by the Court the matter shall, where necessary, be remitted to the Legal Costs Adjudicator to complete the adjudication in accordance with the decision of the Court and, where necessary, to issue a final certificate of determination.

(4) If the bill of costs or any part thereof is remitted to the Legal Costs Adjudicator for further adjudication, any party may upon such further adjudication apply for a consideration of the further adjudication and the provisions of this rule shall apply to such further adjudication as on the original adjudication.

VII. Reference of question of law

39. Any reference of a question of law to the Court under section 159(1) of the 2015 Act shall be by way of case stated in accordance with Order 62.

VIII. Costs of judgment in default

40. In all cases of judgment by default of appearance for a liquidated demand, where the plaintiff is entitled to costs, there shall be added to the principal sum for which such judgment is marked the respective sums for costs set out in Part II of the scales of costs in Appendix W.

41. In cases within rule 40 or within Order 4, rule 5, where:

- (i) there has been an order for service of the summons or of notice thereof, out of the jurisdiction, or
- (ii) there has been an order for substituted or other service, or
- (iii) there has been an order for the substitution of notice for service, or
- (iv) there has been an order declaring service effected sufficient, or
- (v) more than one attendance has been necessary to effect service, or
- (vi) there has been a notice by advertisement of the issuing of the summons under Order 9, rule 7,

there shall be added to the sums in rule 40 respectively mentioned the proper and necessary additional costs, to be ascertained on adjudication (in cases of claims within the jurisdiction of the Circuit Court or District Court, as the case may be costs to be on the scale appropriate to the court concerned).

42. In cases of judgment by default of appearance for a liquidated demand, where it appears by affidavit made by some person who can swear positively to the debt that a sum greater than that for which judgment is marked was due to the plaintiff in respect of the sum sued for at the time of the service of the summons, there shall be added to the principal sum for which such judgment is marked, the same sum for costs as would have been so added if the judgment had been marked for the sum due at the time of such service, together with the costs of registration under the Judgments Registry (Ireland) Act 1850 .

43. In claims for liquidated demand, where:

- (i) the plaintiff would, if any sum remained due on foot of such demand, be entitled to enter judgment by default of appearance, and
- (ii) it appears by affidavit made by some person who can swear positively to the debt, that a sum specified was due to the plaintiff in respect of the sum sued for at the time of the service of the summons,

the plaintiff shall be entitled to enter judgment for his costs for such sum as would have been added if a judgment had been marked for the sum due at the time of such service, together with the costs of registration under the Judgments Registry (Ireland) Act 1850 .

44.(1) In cases of judgment for a liquidated demand under Order 37, when no step has been taken by the defendant after appearance, there shall, unless the Court otherwise orders, be added to the principal sum for which judgment is marked for costs, the same sums as are hereinbefore respectively allowed in case of judgment by default of appearance, together with such further costs of the motion for judgment as the Court allows.

(2) In cases of applications under Order 13, rules 14 and 15, there shall be added to the sums allowed in case of judgment by default of appearance such further costs (if any) of the motion to enter judgment as the Court allows.

45. In any action brought upon a negotiable instrument where judgment is marked by default, there shall be lodged with the proper officer a certificate stating whether or not more than one action had been brought on the same instrument. Such certificate shall be filed by the proper officer.

46. In all undefended cases where a party becomes entitled to judgment by default, the affidavit upon which that party grounds his claim to the costs of the proceedings shall contain an averment stating whether value added tax is payable by him on such costs and, if so, whether the sum so payable is recoverable by him by way of set-off against any value added tax payable to him.

IX. Costs of execution

47. In all cases not provided for by rule 40 in which a person obtains judgment for the payment of money or costs, if and when execution issues on foot thereof, the officer issuing such execution shall add to the sum ordered to be paid the appropriate sum specified in respect of costs of execution set out in Part I of the scales of costs in Appendix W.

X. Non-contentious probate matters

48. In non-contentious probate matters, the costs and fees to be allowed shall be at the discretion of the Legal Costs Adjudicator.

XI. Bankruptcy

49. The following classes of costs may be adjudicated without an order:

- (a) any costs as between the Official Assignee and the solicitor appointed by the Official Assignee to have carriage of the proceedings on his behalf, on the application of the Official Assignee;
- (b) any costs as between a trustee in bankruptcy and the solicitor appointed to have carriage of the proceedings on his behalf, on the application of the trustee;
- (c) any other costs to which the Official Assignee or trustee in bankruptcy is declared entitled by the Court.

50. The costs and fees payable to solicitors in respect of proceedings in bankruptcy shall be at the discretion of the Legal Costs Adjudicator.

51. The costs of the employment of a separate solicitor under rule 21(b) shall, on production of the certificate of adjudication therefor, be paid out of the estate in due priority, unless the Court otherwise directs.

52. The Examiner may himself measure a sum for costs where:

- (i) the judge so directs, or
- (ii) the parties concerned so consent, or
- (iii) he considers that the amount which would be allowed on adjudication would not exceed €10,000.

53.(1) When the gross proceeds of the assets realised in any bankruptcy do not exceed €20,000, the disbursements of the petitioning creditor's solicitor together with three-fifths only of the professional charges of such solicitor shall be allowed, unless the Court otherwise directs.

(2) When there has been no realisation, or the realisation is incomplete, if the Court is satisfied that the assets are likely to realise at least €20,000, and shall so direct, the Legal Costs Adjudicator shall allow the full professional charges and disbursements.

54. No sum shall be paid by or allowed to the Official Assignee for or on account of costs without an order of the Court unless such sum does not exceed the amount for the time being specified in section 61(3)(h) of the Bankruptcy Act 1988 .

55.(1) When a Bankruptcy Inspector or messenger or assistant has for execution two or more warrants in distinct matters in bankruptcy or arrangement which are or may be executed at the same time or in continuous journey without returning to Dublin, the travelling and other expenses incurred for the entire journey shall be apportioned between the different bankruptcies or arrangements, as the case may be, and no duplicate charges shall in any case be allowed.

(2) The Official Assignee may advance money to the Bankruptcy Inspector or to an assistant on undertaking any journey.

56. A copy of each bill in bankruptcy, when measured or adjudicated, shall be filed forthwith with the Examiner in the matter to which it relates.

XII. Lodgment or tender in respect of costs

57.(1) In any application for adjudication of costs initiated under this Order by a person in whose favour the order to pay costs has been made or by a legal practitioner, the person who is the subject of the order to pay costs or, as the case may be, the client, may within 21 days of the service upon him of the application, or at any later time by leave of a Legal Costs Adjudicator, upon notice to the party obliged to pay costs or, as the case may be, the legal practitioner concerned, pay into Court a sum of money in satisfaction of the claim for costs (in this Part, a "lodgment in satisfaction of costs").

(2) Where a lodgment in satisfaction of costs is made, the notice of lodgment in satisfaction of costs shall specify the sum paid in in respect of each of the following (inclusive of Value Added Tax, where applicable): (i) the costs of any firm of solicitors; (ii) the costs of any barrister, and (iii) the total amount of disbursements or outlay (other than in respect of legal practitioners' fees) claimed, and the total amount so paid in.

(3) A party obliged to pay costs or, as the case may be, a legal practitioner, upon whom a notice of lodgment in satisfaction of costs is served shall serve a copy of the notice of lodgment in satisfaction of costs on each legal practitioner for whose firm or for whom an amount for costs is specified in the notice of lodgment in satisfaction of costs.

(4) The notice of lodgment in satisfaction of costs shall be in the Form No. 5 in Part V of Appendix W, with any necessary modifications, and shall be filed in the Legal Costs Adjudicators' Office but shall not be disclosed to the Legal Costs Adjudicator until the proceedings on the application for adjudication of costs have been finally determined.

58.(1) Where a lodgment in satisfaction of costs is made under rule 57 the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, may, within 14 days of the receipt of notice of lodgment in satisfaction of costs, or within such further period as may be agreed by the parties, accept the sum in satisfaction of the costs by giving notice to the party liable to pay the costs, in the Form No. 6 in Part V of Appendix W, with any necessary modifications; and thereupon he shall be entitled to receive payment of the accepted sum in satisfaction.

(2) Payment shall be made to the person in whose favour the order to pay costs has been made or on his written authority to his solicitor or, as the case may be, to the legal practitioner concerned, and thereupon proceedings on the adjudication or in respect of the adjudication of

the costs shall be stayed.

59. If the money paid in is not taken out under rule 60, the said money shall not be paid out except in satisfaction of the costs in respect of which it was paid in and in pursuance of a certificate of the Legal Costs Adjudicator.

60. If the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, does not accept the sum so paid in but proceeds with the adjudication in respect of such costs and is not determined to be due more than the amount paid into Court, then the following provisions shall apply:

(1) If the amount paid into Court exceeds the amount determined to be due for costs to the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, the excess shall be repaid to the person who is the subject of the order to pay costs or, as the case may be, the client, and the balance shall be retained in Court.

(2) The person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner shall be entitled to the costs of the adjudication up to the time when such payment into Court was made.

(3) The person who is the subject of the order to pay costs or, as the case may be, the client, shall be entitled to the costs of the adjudication from the time such payment into Court was made.

(4) The costs mentioned at paragraphs (2) and (3) shall be set off against each other, and:

(i) if the balance is in favour of the person who is the subject of the order to pay costs or, as the case may be, the client, the amount thereof shall be satisfied pro tanto out of the money remaining in Court and, in so far as the money remaining in Court is not sufficient to satisfy the same, shall be recoverable from the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, or

(ii) if the balance is in favour of the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, the amount thereof shall be recoverable from the person who is the subject of the order to pay costs or, as the case may be, the client.

(5) Any money remaining in Court after satisfying the balance (if any) due to the person who is the subject of the order to pay costs or, as the case may be, the client, for costs as aforesaid shall be paid out to the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner.

(6) If in any case the Legal Costs Adjudicator is of opinion that for the purposes of the preceding paragraphs of this rule it is not necessary to retain in Court the whole of the balance referred to in paragraph (1) he may direct the payment out to the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, of so much thereof as he deems proper.

61.(1) In this rule, "qualified party" has the same meaning as in Order 22, rule 14.

(2) Where a qualified party is entitled to make a lodgment in satisfaction of costs under rule 57, then such party may, in lieu of lodging any money in Court, make an offer of tender of payment in satisfaction of costs to the other party or parties to the cause or proceedings (in this rule, a "tender in satisfaction of costs").

(3) Any tender in satisfaction of costs made under this rule shall be deemed to be a lodgment in satisfaction of costs and to have the same effect as a lodgment in satisfaction of costs and all of the provisions of rules 57 to 60 inclusive shall apply mutatis mutandis to such tender in satisfaction of costs as regards time for making and accepting same as they apply to a lodgment in satisfaction of costs.

(4) A tender in satisfaction of costs shall be made in accordance with the Form No. 5 in Part V of Appendix W, with the necessary modifications. Notice of acceptance of a tender in satisfaction of costs shall be in the Form No. 6 in Part V of Appendix W, with the necessary modifications, and the provisions of rule 58 shall apply thereto.

(5) Where a tender in satisfaction of costs has been accepted, the party having made the tender in satisfaction of costs thereupon being required to pay the sum specified, such sum specified shall be paid within four weeks of the date of receipt of notice of acceptance of same.

(6) Any qualified party who has made a tender in satisfaction of costs which has been accepted but who has failed to pay the sum specified in the said tender in satisfaction of costs within the time required shall continue to be liable to pay the sum specified together with interest thereon at the rate fixed for judgments of the Court for each month or portion of the month for which the said sum or any part thereof remains unpaid.

[1] Order 99 substituted in full by SI 584 of 2019, effective 3 December 2019.