THE SENIOR COURTS
COSTS OFFICE GUIDE

October 2013

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Foreword by Lord Justice Stephen Richards, Deputy Head of Civil Justice

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LIST OF COSTS JUDGES AND COSTS OFFICERS

Costs Judge	Room or Court
Chief Master Hurst (*Senior Costs Judge*)	7.08
Master O'Hare	Court 58
Master Campbell	Court 59
Master Simons	Court 57
Master Gordon-Saker	6.07
Master Haworth	7.06
Master Leonard	6.09
Master Rowley	7.05

Costs Officer	Room
Mr Lambert (*Principal Costs Officer*)	6.05
Mr Martin (*Principal Costs Officer*)	8.06
Mr Baker	6.05A
Mr Edwards	6.05A
Mr Pigott	6.06
Miss Myers	8.04
Mrs Alese	8.05
Miss Marriott	8.05
Mr Virag	8.05
Mr Johnson	8.07
Mr Cowling	8.07
Mrs Leggett	8.09
Mrs Earley (*Court Manager*)	8.09

SCCO postal address

Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL
(DX 44454 Strand)

Telephone numbers

PA to Senior Costs Judge	020 7947 6618
Costs Judges Section	020 7947 7124
Costs Officers Section	020 7947 6163
Court of Protection	020 7947 6469
Issue Section	020 7947 6404

Certificates

Costs Judges	020 7947 7124
Costs Officers	020 7947 6163

Fax Numbers

Costs Judges Section	020 7947 6247
Costs Officers Section	020 7947 6344
General Office	020 7947 6344

LIST OF REGIONAL COSTS JUDGES

(18 June 2013)

Northern Circuit	North-Eastern Circuit
District Judge Woodburn Liverpool County Court 35 Vernon Street Liverpool L2 1BX DX 702600 LIVERPOOL 5 Tel Number: 0151 296 2200 Fax Number: 0151 296 2201	District Judge Besford Kingston-upon-Hull County Court Lowgate Kingston-upon-Hull Hull HU1 2EZ DX 703010 HULL 5 Tel Number: 01482 586161 Fax Number: 01482 588527
District Judge Park Carlisle County Court Courts of Justice Earl Street Carlisle, Cumbria CA1 1DJ DX 65331 CARLISLE 2 Tel Number: 01228 520619 Fax Number: 590588	District Judge Neaves Scarborough County Court Scarborugh Justice Centre The Law Courts Northway Scarborough North Yorkshire YO12 7AE DX 65140 SCARBOROUGH 2 Tel Number: 01723 505000 Fax Number: 01723 505032
District Judge Turner Blackpool County Court The Law Courts Chapel Street Blackpool Lancs FY1 5RJ DX 724900 BLACKPOOL 10 Tel Number: 01253 754020 Fax Number: 01253 295255	District Judge Spencer Leeds County Court The Courthouse 1 Oxford Row Leeds LS1 3BG DX 703016 LEEDS 6 Tel Number: 0113 2830040 Fax Number: 0113 2452305
District Judge Wallace Macclesfield County Court 2nd Floor, Silk House Park Green Macclesfield Cheshire SK11 7NA DX 702498 MACCLESFIELD 3 Tel Number: 01625 412800 Fax Number: 01625 501262	District Judge Dodd Bradford County Court The Bradford Combined Court Centre Bradford Law Courts Exchange Square, Drake Street Bradford BD1 1JA DX 702083 BRADFORD 2 Tel Number: 01274 840274 Fax Number: 01274 840275
District Judge Moss Manchester County Court Manchester Civil Justice Centre 1 Bridge Street West Manchester Greater Manchester M60 9DJ DX 72483 MANCHESTER 44 Tel Number: 0161 240 5000 Fax Number: 0161 240 5050	

Midland Circuit	Western Circuit
District Judge Mackenzie Worcester County Court The Shirehall Foregate Street Worcester WR1 1EQ DX 721120 WORCESTER 11 Tel Number: 01905 730800 Fax Number: 01905 730801	District Judge Dancey Bournemouth County Court The Courts of Justice Deansleigh Road Bournemouth BH7 7DS DX 98420 BOURNEMOUTH 4 Tel Number: 01202 502800 Fax Number: 01202 502801
District Judge Sehdev Birmingham County Court The Priory Courts 33 Bull Street Birmingham B4 6DS DX 701987 Tel Number: 0121 6814441 Fax Number: 0121 681 3001/2	District Judge James Aldershot & Farnham County Court 78/82 Victoria Road Aldershot Hants GU11 1SS DX 98530 ALDERSHOT 2 Tel Number: 01252 796800 Fax Number: 01252 345705
District Judge Hale Nottingham County Court 60 Canal Street Nottingham NG1 7EJ DX 702381 NOTTINGHAM 7 Tel Number: 0115 9103500 Fax Number: 0115 9103510	District Judge Middleton Truro County Court The Courts of Justice Edward Street Truro Cornwall TR1 2PB DX 135396 TRURO 2 Tel Number: 01872 267460
Wales Circuit	**South-Eastern (North) Circuit**
District Judge Davies Carmarthen County Court The Old Vicarage Picton Terrace Carmarthen Wales SA31 1BJ DX 99570 CARMARTHEN 2 Tel Number: 01267 228010 Fax Number: 01267 221844	District Judge Sparrow Norwich County Court The Law Courts Bishopgate Norwich NR3 1UR DX 97385 NORWICH 5 Tel Number: 01603 728200 Fax Number: 01603 760863

Wales Circuit continued	Sth-Eastern (N) Circuit continued
District Judge Sandercock Newport County Court Olympia House, 3rd Floor Upper Dock Street Newport Gwent NP20 1PQ DX 99480 Newport (South Wales) 4 Tel Number: 01633 227150 Fax Number: 01633 263820	District Judge Ayres Bedford County Court Shire Hall 3 St. Paul's Square Bedford MK40 1SQ DX 97590 BEDFORD 11 Tel Number: 0844 8920550 Fax Number: 01234 319026
District Judge Phillips Cardiff County Court Cardiff Civil Justice Centre 2 Park Street Cardiff Wales CF10 1ET DX 99500 Cardiff 6 Tel Number: 029 2037 6400 Fax Number: 029 2037 6475	District Judge White Luton County Court 2nd floor Cresta House Alma Street Luton LU1 1PL DX 97760 Luton 4 Tel Number: 0844 8920550
District Judge Thomas Rhyl County Court The Court House Clwyd Street Rhyl Denbighshire LL18 3LA DX 99500 Cardiff 6 Tel Number: 01745 352940 Fax Number: 01745 336726	
South-East (South) Circuit	**London**
District Judge Lethem Tunbridge Wells County Court Merevale House 42/46 London Road Tunbridge Wells Kent TN1 1DP DX 98220 TUNBRIDGE WELLS 3 Tel Number: 01892 700150 Fax Number: 01892 513676	District Judge Langley Central London County Court 13-14 Park Street London W1B 1HT DX 97325 Regents Park 2 Tel Number: 020 7917 5000 Fax Number: 020 7917 5014
District Judge Matthews Oxford County Court St Aldates Oxford OX1 1TL DX 964500 OXFORD 4 Tel Number: 01865 264200 Fax Number: 01865 790773	District Judge Lightman Central London County Court 13-14 Park Street London W1B 1HT DX 97325 Regents Park 2 Tel Number: 020 7917 5000 Fax Number: 020 7917 5014

FOREWORD

Issues of costs have always been a very important part of civil litigation. The procedural reforms resulting from Lord Justice Jackson's Review of Civil Litigation Costs have made them more important than ever. This new edition of the Senior Courts Costs Office Guide takes account of those and other recent developments. Like its predecessors, it has been written by the Costs Judges and Officers of the Senior Courts Costs Office who deal with the many complexities of costs on a daily basis. It does not seek to replace the rules set out in the Civil Procedure Rules and Practice Directions, but gives practical information and guidance for dealing with this area of law. It will be of invaluable assistance to lawyers and litigants alike.

Lord Justice Stephen Richards
Deputy Head of Civil Justice

26 July 2013

GLOSSARY

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

Costs-only proceedings	The procedure to be followed where, before court proceedings are commenced, the parties to a dispute reach an agreement on all issues, including which party is to pay costs, but are unable to agree the amount of those costs.
CPR	The Civil Procedure Rules which, supplemented by their Practice Directions, govern the procedure to be followed in most civil cases brought in the SCCO. The text of the CPR and the CPD are set out in practitioner's books such as the White Book Service and the Civil Court Practice. Many of the relevant texts are also included on the SCCO page of the Court Service website (as to which, see para 1.10, below).
Detailed assessment	The judicial process under which bills of costs are checked as to their reasonableness; the court may allow or disallow any items claimed in a bill or may vary any figures claimed in respect of them.
Determining officer	The court officer in criminal cases (only) who first assesses the costs payable to a defendant out of Central Funds (defined above) or payable to solicitors and counsel under criminal legal aid orders. Costs Judges have jurisdiction to hear appeals from the decisions of Determining Officers.
Disbursements	Sums of money, e.g., court fees, counsel's fees and witness expenses which are paid or payable by a "receiving party" (defined below) which cannot and do not include any element of profit for that party or for the solicitor acting for him. A special meaning is given to this term in the case of litigants in person (see para 22.2, below).
Form N252 and other N forms	Court forms which are referred to in the CPR (defined above). Copies of the forms for use in the SCCO can be obtained from the SCCO itself or from the SCCO page of the Court Service Website (as to which, see para 1.10, below).
Legal Aid	Financial help as to the costs of legal services which is provided by the State to litigants in civil claims and defendants in criminal cases who come within certain eligibility criteria. The Legal Aid Agency administers the scheme under the control of the Lord Chancellor.
Legal representative	A person authorised to exercise a right of audience or to conduct litigation on behalf of a party to that litigation.
Litigant in person	A party to any proceedings who does not have a legal representative duly authorised to represent him or her in those proceedings.

Open letter	An offer in writing made by one party to another in detailed assessment proceedings proposing the payment of a specific sum of money thereby avoiding the need for any further delay or expense. If the offer is not accepted and the costs in question are later subject to detailed assessment, the court will have regard to that offer when deciding what order for costs to make.
Part 23 application	Applications made by any party which relate to existing or intended detailed assessment proceedings. The notice of application should be in Form N244 (as to which, see above).
Part 36 offer	An offer in writing made by one litigant to another during the proceedings preceding the detailed assessment proceedings, proposing to settle those proceedings on specified terms. As to the recommended form to use, see Form N242A. If the offer is not accepted and the costs in question are later subject to detailed assessment, neither party is allowed to reveal the existence of the offer to the Costs Judge or Costs Officer until the detailed assessment has been completed.
Paying party	The party to detailed assessment proceedings who is liable to pay the costs which are the subject of the assessment. The opposing party is referred to as the "receiving party" which is defined below.
Points of dispute	A written statement made by the paying party identifying the areas of disagreement as to the costs to be assessed. In respect of each item of costs which is disputed the statement should outline the reason for disputing it and, where a reduction is sought, should suggest the reduced figure.
Profit costs	Costs paid or payable in respect of work done by a legal representative which are not "disbursements" (defined above).
Provisional assessment	A hearing for the detailed assessment of costs which is conducted on paper only, i.e., without an oral hearing. Subsequently, the court notifies the parties of the sums proposed to be allowed and requires them to so inform the court office within a specified number of days if they wish the court to list the matter for an oral hearing.

RCJ	The Royal Courts of Justice the postal address of which is Strand, London, WC2A 2LL.
Receiving party	A party to detailed assessment proceedings who is entitled to recover from another party the costs which are the subject of the assessment. In the case of "costs between the parties" (defined above) the receiving party is the person in whose favour the court's order for costs was made or the solicitor or other legal representative acting for such a person. In the case of "solicitor and client costs" (which is defined below) the receiving party is the solicitor.
Regional Costs Judge	A District Judge who has been appointed to sit in both the County Court and the District Registry of the High Court to carry out detailed assessments in most of the larger and more difficult cases in each region of England and Wales.
SCCO	The Senior Courts Costs Office the postal address of which is Thomas More Building, Royal Courts of Justice, Strand, London, WC2A 2LL.
Solicitor and client costs	Costs payable by a client to a solicitor under the terms of a contract made between them. The expression is used in order to distinguish these costs from "costs between the parties" (see above) and "legal aid only costs" (costs payable by the Legal Aid Agency to a solicitor or barrister).
Statement of truth	A statement to be included in any claim form, application notice or witness statement which confirms that the facts stated therein are true. The statement of truth must be signed by the litigant, or his litigation friend or legal representative or witness as the case may be.
Summary assessment	The procedure by which the court, when making an award of costs, immediately calculates and specifies the sum of costs it allows.
Wasted costs order	An order against a legal representative which disallows, or, as the case may be, orders the legal representative to meet, the whole or any part of costs found to have been incurred as a result of improper, unreasonable or negligent acts or omissions on the part of the legal representative or any consequential costs.

SECTION 1 – INTRODUCTION

1.1 The work of the SCCO

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

(b) The primary function of the SCCO is the assessment of costs which are recoverable from one litigant by another litigant or by a lawyer. In the past, assessments (then called "taxations") were conducted by specialist Judges appointed to each court. In 1842 the office of Taxing Master was created and Taxing Masters were appointed to each Division of the High Court. The Supreme Court Taxing Office (SCTO) was originally one of the Departments which made up the Central Office. At the start of the 20th century it took over the work of the Chancery Taxing Masters. In 1999 the Civil Procedure Rules ("CPR") adopted the term "detailed assessment" in place of "taxation" at which time the SCTO became the SCCO. It now has jurisdiction to assess costs awarded by any Judge of the Court of Appeal, High Court or County Court. Since 2000 it has had the jurisdiction to assess orders for costs made in the Family Division of the High Court and in the Principal Registry.

(c) Regional Costs Judges

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

The criteria for a detailed assessment to be referred to a Regional Costs Judge, rather than the local District Judge, are as follows: the time estimate for the detailed assessment exceeds two days; and/or the sum claimed exceeds £100,000; and/or complex arguments on points

of law, or an issue affecting a group of similar cases, are identified in the points of dispute or the reply or are referred to in argument at a detailed assessment hearing.

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

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

A list of the names and court addresses of the District Judges who have been appointed Regional Costs Judges is set out on pages XX and YY, above.

1.2 Representation

(a) *Solicitors and other legal representatives*

In most cases parties will be represented by the solicitors or other legal representatives who have acted for them in the litigation in which the order for costs has been made. The name, address, telephone and fax numbers and reference of each such legal representative is set out on the Statement of Parties which is lodged when a request for a detailed assessment hearing is made (see further, Section 9 below).

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

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

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

(b) *Bankrupt Party*

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

(c) *Company*

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

(d) *Costs Lawyers and Costs draftsmen*

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

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

(e) Chartered Legal Executives

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

Fully qualified and experienced Chartered Legal Executive lawyers are able to undertake many of the legal activities that solicitors do. For example, they will have their own clients (with full conduct of cases) and they can undertake representation in court where appropriate.

Under the County Court (Rights of Audience) Direction 1978 rights of audience were extended to include the following:

(i) certain unopposed applications in the County Court;

(ii) an application for judgment by consent.

In addition to the above rights, a Chartered Legal Executive Lawyer may appear in county court arbitrations and before tribunals at the discretion of the court. This is under the general discretionary power of the court or tribunal. A Chartered Legal Executive lawyer who has successfully completed and passed the advocacy skills course and evidence test may apply to

CILEx for the relevant rights of audience certificate. CILEx is then able to award the rights of audience under the prescribed certificate.

(f) *Patent agents, trademark agents and claims consultants*

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

(g) *Counsel and counsel's clerks*

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

(h) *McKenzie Friend*

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

1.3 Office hours

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

1.4 SCCO support sections

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

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

1.5 The SCCO file

On receiving the appropriate documents and court fees in respect of each application or request the court clerks will open a file and allocate to it a distinct file number. Subsequently further documents may be added to that file, e.g. correspondence, witness statement, notes of hearings and the related orders. Unless the court otherwise orders, any party to the proceedings is entitled, without permission, to obtain a copy of any document filed in the SCCO in respect of those proceedings if he pays any prescribed fee and files a written request for the document. Persons other than parties have much more limited rights of obtaining documents from the court file (CPR Part 5 and the Part 5 Practice Direction).

1.6 Referrals to the RCJ Citizens Advice Bureau

(a) The RCJ Advice Bureau helps people navigate the court system and comply with civil procedure rules. They provide free legal advice and assistance if a person cannot afford a solicitor and is defending an action, or taking a case without legal representation, to: the High Court or Court of Appeal at the Royal Court of Justice & County Courts across England and Wales; the family court at the Principal Registry of the Family Division or any other family court; the bankruptcy court at the Royal Court of Justice.

(b) The RCJ Advice Bureau is able to give general legal advice to litigants in person and, for this purpose, maintains an office in the Royal Courts of Justice near the Main Hall.

(c) The Bureau operates on a "first come first served" basis. Clients will be seen first by a receptionist who will assess their eligibility for assistance by the Bureau. If they are eligible and the advice and assistance sought falls within the Bureau's remit they will be referred to a lawyer who will endeavour to provide the advice or assistance sought. Problems which can be resolved quickly will normally be dealt with there and then. If matters need more time, for example those involving a difficult point of law or procedure, or those requiring more information, research or the drafting of documents, the client will be asked to come back and an appointment made.

(d) Further information about the RCJ Advice Bureau and its referral scheme can be obtained from the SCCO Support Sections.

1.7 Contacting the SCCO by letter or by fax

(a) Although, during office hours, applications and other documents may be delivered by hand to the Costs Office, in practice most are delivered by letter, or by fax. **Any documents sent by fax should not exceed 15 pages**. All such documentation should be sent with a covering letter stating any SCCO references relevant to the documentation. At present it is not possible to file documents by e-mail. If a fee is payable the documentation should include a cheque or bankers draft made in favour of HM Paymaster General or HMPG. Parties who wish to pay court fees in cash must hand deliver the payment to Room E01 in the Royal Courts of Justice.

(b) Letters and documentation may be sent by post to:

The Court Manager
Senior Courts Costs Office
Royal Courts of Justice
Strand,
London WC2A 2LL.

Or by document exchange (DX) to DX 44454 Strand.

(c) In an emergency urgent documents may be sent to the Costs Office by fax on number 020 7947 6247 or 020 7947 6344. If the fax relates to a hearing, the date and time of the hearing should be prominently displayed as well as the relevant SCCO reference number. Examples of urgent documents it is appropriate to send by fax are: documents required by the court at short notice before the hearing and letters informing the court of a settlement which obviates the need for some or all parties to attend a hearing. A fax should not be used to send letters or documents of a routine or non urgent nature, bills of costs, papers supporting bills or skeleton arguments.

(d) Where a document is filed by fax, the party filing it is not required in addition to send to the SCCO any further copy of that document, e.g. by post or document exchange. Documents sent by fax are not to be regarded as filed at court unless and until they are delivered by the court's fax machine. If a fax is delivered after 4 pm, or at any time on a day when the court office is closed, it will be treated as filed on the next day the court office is open: see CPR Practice Direction 5A.

1.8 Contacting the SCCO by telephone

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

(b) In some cases the hearing of a detailed assessment may be conducted by telephone. If it is a hearing at which more than one party may be represented, the court will give directions as to who must arrange the conference call and the Costs Office number which should be used on that call. Many telephone hearings concern cases in which only one party is able or wishes to attend. In those cases the court will give directions stating the Costs Office telephone number to be used, the date and time of the appointment and stating whether it should be by way of a conference call or an ordinary telephone call.

1.9 SCCO Page on the Court Service website

The SCCO page on the Court Service Website comprises a miscellany of information including the text of various guides and guideline figures published by the SCCO and the text of the Civil Procedure Rules and Practice Directions on Costs and summaries of recent costs appeals which contain important points of principle. The address of the SCCO page is: http://www.justice.gov.uk/courts/rcj-rolls-building/senior-courts-costs-office.

1.10 Costs Practitioners Group

(a) This advisory group is run under the auspices of the SCCO. Two Costs Judges are members, one of whom acts as Chairman. The current Chairman is Master O'Hare. The Senior Costs Judge sometimes attends as does the Principal Costs Officer. The Council of Circuit Judges, The District Judges Association, the Bar Council, The Law Society, The London Solicitors Litigation Association, The Association of Personal Injury Lawyers (APIL), The Forum of Insurance Lawyers (FOIL) and the Association of Costs Lawyers are all represented.

(b) The group generally meets twice a year in the SCCO, its function being to comment upon and make recommendations for the improvement of the current and evolving practice of assessment of costs. Although it is an advisory group, as it consists of representatives of all the principal "users" it is intended to be influential and to afford a regular opportunity for informal exchanges of views on existing practice and how the same can be improved. Minutes are taken and circulated.

(c) Organisations and bodies wishing to apply for membership of the Costs Practitioners Group should write to its Chairman, care of the SCCO.

SECTION 2 - ENTITLEMENT TO COSTS

2.1 The meaning of "Costs"

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

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

(ii) the fees which a legal representative charges to his client. These are sometimes called "profit costs"

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

2.2 Liability to pay costs

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

(b) Costs as between legal representative and client are payable to the legal representative according to the terms of any contract he has made with the client or, alternatively, in the case of a legally aided client, according to the Regulations made under the Legal Aid Act 1988, or later statutes.

2.3 Orders which the court may make

(a) In deciding what order to make about costs the court is required to have regard to all the circumstances including the conduct of all the parties; whether a party's case has been successful

in part, even if not wholly successful; and whether or not there has been an offer of settlement (CPR 44.2(4)).

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

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

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

(iii) costs from or until a certain date;

(iv) costs incurred before proceedings have begun;

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

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

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

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

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

2.4 Bases of assessment

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

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

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

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

(e) In respect of costs payable to a solicitor by his client, the basis of assessment is the *indemnity basis* to which certain presumptions and limitations apply (see CPR 46.9 and Practice Direction 46 paragraph 6.1).

2.5 Methods of assessment of costs

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

(b) The general rule is that the court will make a summary assessment of the costs at the conclusion of the trial of a case which has been dealt with on the fast track and at the conclusion of any other hearing which has lasted for not more than one day. In certain cases the Court of Appeal will also carry out a summary assessment. Summary assessment will be carried out unless there is good reason for not doing so, for example where the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily, or there is insufficient time to carry out a summary assessment (CPR 44.6; Practice Direction 44 sub-sections 8 and 9).

2.6 The Indemnity Principle

The principle is that a successful party cannot recover from an unsuccessful party more by way of costs than the successful party is liable to pay his or her legal representatives. There are several exceptions to the principle including the statutory exceptions concerning legal aid, conditional fee agreements and damages based agreements. The following principles apply:

(i) A party in whose favour an order for costs has been made may not recover more than he is liable to pay his own legal representative: *Harold v Smith* [1865] H&N 381 at 385 and *Gundry v Sainsbury* [1910] 1KB 645 CA.

(ii) Where a party puts a statement of costs before the court for summary assessment that statement must be signed by the party or a legal representative. The form states: "The costs estimated above do not exceed the costs which the [*party*] is liable to pay in respect of the work which this estimate covers."

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

2.7 Duty to notify clients of adverse costs orders

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

2.8 Some special cases

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

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

(ii) CPR 36.10(1) (claimant's right to costs where he accepts defendant's Part 36 offer); and

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

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

(c) An appeal court may, unless it dismisses the appeal, make orders about costs of the proceedings in the lower court as well as the costs of the appeal (CPR 44.10(2)).

(d) Where proceedings are transferred from one court to another, the court to which they are transferred may (subject to any order made by the transferring court) deal with all the costs, including the costs before the transfer (CPR 44.10(3)).

(e) In a probate claim where a defendant has in his defence given notice that he requires the will to be proved in solemn form (as to which see CPR 57.7(5)), the court will not make an order for costs against the defendant unless it appears that there was no reasonable ground for opposing the will. The term "probate claim" is defined in CPR 57.1(2).

2.9 Qualified One-Way Costs Shifting ("QOCS")

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

(i) where the costs can be set off (44.14). At the conclusion of the case, costs orders against the claimant can be set off against damages and interest payable to him or her.

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

(iii) claims falling within the transitional provisions concerning recoverable success fees or ATE premiums (CPR.44.17, and see Section 30, below).

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

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

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

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

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

(b) Where a child or protected party is liable to pay money to his or her solicitor the court must order a detailed assessment of those costs (CPR 46.4) unless the case falls within one of those circumstances described in Practice Direction 46 paragraph 2.1 (e.g. another party has agreed to pay a specified sum in respect of costs and the solicitor acting for the child or protected party has waived the right to claim further costs).

2.11 Costs of Trustees and Personal Representatives

Trustees and personal representatives who are parties to litigation are generally entitled to their costs, so far as not recovered from any other party, out of any fund which they hold as trustee or personal representative. The costs are assessed on the indemnity basis. If a trustee or

personal representative has acted for a benefit other than that of the fund the court may make a different order (CPR 46.3).

2.12 Mortgagees' costs

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

2.13 Group Litigation Orders

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

2.14 Costs in the Companies Court

The court has a discretion as to what, if any, order to make as to costs.

Where an order is made for the company to be wound up, unless otherwise stated, the petitioner will be entitled to his costs as a claim in the winding up of the company. The supporting creditors may also be awarded one set of costs to be shared among them provided they have given notice of intention to appear or been given permission to appear (r.4.16 of the Insolvency Rules 1986). Such costs are payable out of the assets of the company in accordance with the order of priority prescribed by r.4.218, (see r.4.218 (1)(h) as to the costs of the petitioner and any other person appearing).

Where the petition is adjourned, unless the contrary is said, the costs will generally be in the petition.

2.15 Costs in family proceedings

The Family Procedure Rules 2010 deal with costs at Part 28. In family proceedings CPR Parts 44, 46 (except rules 44.2(2) and (3), 46.11 to 46.13), and 47 and rule 45.8 apply to costs in family proceedings subject to certain modifications. The 2010 Rules also make provision for costs in Financial Remedy Proceedings. In those proceedings CPR 44.2(1), (4) and (5) do not apply and rules 44.2(6) to (8) and r 44.12 apply to an order made under rule 28.3 of the 2010 Rules as they apply to an order made under CPR rule 44.2.

2.16 Success fees and insurance premiums

(a) Sections 58 and 58A of the Courts and Legal Services Act 1990, which make provision for the regulation of conditional fee agreements and the recoverability of success fees, were amended by the Legal Aid, Sentencing and the Punishment of Offenders Act 2012 (LASPOA 2012), as a result of which (subject to the transitional provisions) a success fee payable under a conditional fee agreement ("CFA", defined in paragraph 30.2, below) may no longer be recovered from a losing party in any proceedings, but, subject to certain limits in personal injury cases, is recoverable from the legal representatives' client.

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

The only experts' reports in respect of which an insurance premium may be recovered are those which relate to liability or causation. The amount of the premium recoverable is limited to that part of the premium which insures against the risk of incurring liability to pay the costs of any such report which is actually obtained and the costs of which is allowed

under the Costs Order. See Practice Direction 48 paragraphs 4.1 and 4.2 and The Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No 2) Regulations 2013.

(c) Section 31 below, deals with Transitional Provisions.

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

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

2.18 Costs orders in favour of or against non-parties

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

(b) The Court of Appeal has given guidance about the liabilities of professional funders, who have financed part of a Claimant's costs of litigation, to pay a contribution towards the costs of a successful defendant (see *Arkin v Borchard Lines Ltd & Ors* [2005] 1 WLR 3055; [2005] 3 All ER 613).

2.19 Costs following acceptance of an offer to settle

(a) Where a Part 36 offer is accepted within the relevant period for acceptance, the claimant is entitled to the costs of the proceedings up to the date on which notice of

acceptance was served on the offeror. If a defendant's Part 36 offer relates to part only of the claim, and, at the time of serving notice of acceptance, the claimant abandons the balance of the claim, the claimant is entitled to the costs of all of the proceedings up to the date of serving notice of acceptance unless the court orders otherwise. Costs under these provisions will be assessed on the standard basis if the amount of costs is not agreed (CPR 36.10(1) to (3)).

(b) Where a Part 36 offer that was made less than 21 days before the start of trial is accepted, or such an offer is accepted after expiry of the time specified for acceptance, the court will make an order as to costs if the parties do not agree the liability for costs. Where the offer is accepted after the expiry of the relevant period, unless the court orders otherwise the claimant will be entitled to the costs of the proceedings up to the date on which the relevant period expired; and the offeree will be liable for the offeror's costs for the period from the date of the expiry of the relevant period to the date of acceptance. The claimant's costs include any costs incurred in dealing with the defendant's counterclaim if the Part 36 offer states that it takes the counterclaim into account (CPR 36.10(4) to (6)).

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

(d) Where the claimant does better than was proposed in the claimant's Part 36 offer, CPR 36.14(3)(d) provides an additional reward. In such circumstances, the court will, unless it considers it unjust to do so, award the claimant an additional amount which shall not exceed £75,000 calculated by applying the prescribed percentage to an amount which is:

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

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

(e) The Offers to Settle in Civil Proceedings Order 2012 sets out the prescribed percentages. Where the amount awarded by the court is up to £500,000 the prescribed percentage is 10% of the amount awarded. Where the amount awarded by the court is above £500,000 up to £1 million the prescribed percentage is 10% of the first £500,000 and 5% of any amount awarded above that figure.

(f) CPR 36.14(3)(d) applies only to Part 36 offers made after 1 April 2013, whether in proceedings commenced before or after that date.

2.20 Costs in small claims

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

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

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

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

2.21 Costs in fast track cases

(a) In fast track cases the court's power to award trial costs is limited in accordance with CPR Part 45 Section VI. Where the value of the claim does not exceed £3,000 the trial costs which the court may award will be £485. Where the value of the claim is more than £3,000 but not more than £10,000 the trial costs are £690. Where the value of the claim is more than £10,000 but not more than £15,000 the trial costs are £1,035; and where the value of the claim is

more than £15,000 (for claims issued on or after 6 April 2009) the trial costs are £1,650. The court may not award more or less than those amounts unless it decides not to award any trial costs or the circumstances set out in CPR 45.39 apply. The court has the power to apportion the amount awarded between the parties to reflect their respective degrees of success on the issues at trial (CPR 45.38(2)).

(b) The exceptional cases in which higher costs may be ordered are set out in CPR 45.39. These cover additional legal representatives, an additional liability in respect of a funding arrangement (see Section 30, 31 below), separate trials, litigants in person, counterclaims and unreasonable and improper behaviour.

(c) Where a fast track case settles before the start of the trial and the court is assessing the amount of costs to be allowed in respect of a party's advocate for preparing for trial, it may not allow an amount exceeding the amount of fast track trial costs which would have been payable had the trial taken place (CPR 46.12).

2.22 Costs following allocation and reallocation

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

2.23 Time for complying with orders for costs

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

2.24 VAT

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

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

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

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

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

(iv) the receiving party is a legal representative representing himself (the "self supply" exception to VAT).

(c) Subsection 2 of Practice Direction 44 sets out some special provisions relating to VAT.

SECTION 3 – COSTS MANAGEMENT ORDERS AND COSTS CAPPING ORDERS

3.1 Cases to which the costs management rules apply

(a) All multi-track cases commenced on or after 1 April 2013 in a County Court or the Chancery Division or Queen's Bench Division of the High Court (except in the Admiralty and Commercial Court; such cases in the Chancery Division as the Chancellor of the High Court may direct; and, such cases in the Technology and Construction Court and the Mercantile Courts as the President of the Queen's Bench Division may direct (Rule 3.(12)(1) and PD3E) are subject to costs management, unless the proceedings are the subject of fixed costs or scale costs, or the Court orders otherwise. The Costs Management Provisions may also apply to any other proceedings, including applications where the Court so orders (CPR 3.12(1)).

(b) The purpose of Costs Management is that the Court should manage both the steps to be taken and the costs to be incurred by the parties to any proceedings so as to further the overriding objective. All parties, except litigants in person, must file and exchange budgets in accordance with the rules, or as directed by the Court. This must be done by the date specified in the Notice of Proposed Allocation or, if no such date is specified, seven days before the first case management conference (CPR 3.13). Any party which fails to file a budget when required to do so, will be treated as having filed a budget comprising only the applicable Court fees (CPR 3.14).

(c) The Court may make a Costs Management Order at any time. Such an order will record the extent to which budgets are agreed between the parties and, in respect of budgets which are not agreed, record the Court's approval after making appropriate revisions. Once a Costs Management Order has been made, the Court will thereafter control the parties' budgets in respect of recoverable costs (CPR 3.15).

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

Where a Costs Management Order has been made, the Court, when assessing costs on the standard basis, would have regard to the receiving party's last approved or agreed budget for

each phase of the proceedings, and will not depart from the approved or agreed budget, unless satisfied that there is good reason to do so (CPR 3.18).

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

(a) 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, paragraphs 3.1 to 3.7 of Practice Direction 44 apply.

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

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

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

(e) 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, where it appears to the Court that that the paying party reasonably relied on the budget, the Court may restrict the recoverable costs to such sum as is reasonable for the paying party to pay in the light of that reliance, notwithstanding that such sum is less than the amount reasonably and proportionately incurred by the receiving party.

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

3.4 Costs capping orders

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

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

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

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

SECTION 4 – FORM AND LAYOUT OF BILLS

4.1 Essential ingredients

(a) Each bill should start with the full title of the proceedings, the name of the party whose bill it is and a description of the order for costs or other document giving the right to detailed assessment (as to which, see Practice Direction 47 paragraph 13.3).

(b) The bill should then give some background information about the case including a brief description of the proceedings, a statement of the status of the fee earners in respect of whom costs are claimed, the rates claimed for each such person and a brief explanation of any agreement or arrangement between the receiving party and his legal representatives which affects the costs claimed in the bill.

(c) If the only dispute between the parties concerns disbursements the remainder of the bill may comprise of only a list of the disbursements and brief written submissions in respect of them. If there is also a dispute as to the profit costs (charges made by the legal representative who conducted the litigation) the bill should continue as described below.

(d) After the title and background information, it is convenient to divide the paper into several columns headed as follows: item number, date and description of work done, VAT, disbursements, profit costs.

(e) The bill should conclude with a summary showing the total costs claimed and with such of the certificates made by the receiving party or his legal representatives which are relevant (see further, paragraph 4.5 below).

4.2 Dividing bills of costs into separate parts

Sometimes it is necessary or convenient to divide the section of the bill containing the actual items of costs into separate parts, numbered consecutively. For example, division into parts is necessary where there has been a change of solicitor, or where there has been some other change in the funding arrangements (eg to show costs incurred before, during and after the

currency of legal aid funding) to show costs claimed under different orders against different paying parties and to show costs before and after a change in the rate of VAT.

4.3 Dividing each part into separate items

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

(1) Attendances on the court and counsel, in chronological order, up to the date of the notice of commencement.

(2) Attendances on and communications with the receiving party.

(3) Attendances on and communications with witnesses, including any expert witness.

(4) Attendances to inspect any property or place for the purposes of the proceedings.

(5) Attendances on and communications with other persons including officers of public records.

(6) Communications with the court and with counsel.

(7) Work done on documents: preparing and considering documentation, including documentation relating to pre action protocols where appropriate, work done in connection with arithmetical calculations of compensation and/or interest and time spent collating documents.

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

(9) Attendances on and communications with London and other agents and work done by them.

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

(b) In the list of items above, "attendances" includes interviews and meetings and "communications" covers letters and e-mails sent and telephone calls.

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

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

4.4 Model forms of bills of costs

The Practice Direction 47 refers to the schedule of costs precedents which contains a model form of bill of costs. The use of the model form is not compulsory but is recommended and, when a different form is used, a short explanation of why it has been adopted should appear in the narrative towards the beginning. Precedent A is the one which is most frequently used in practice: it is illustrated in the Appendix, below, see paragraph A-1.

4.5 Certificates in bills of costs

The final part of the bill of costs should contain such of the prescribed certificates as are appropriate to the case and then the signature of the receiving party or his legal representative. These certificates give information on matters such as any rulings made as to entitlement to interest on costs, any payments made by the paying party on account of costs included in the bill and as to the receiving party's entitlement to recover from the paying party the VAT he is or has been liable to pay on the costs claimed. The text of the certificates is set out in the Appendix, below, paragraph A-2.

4.6 Electronic copies of bills

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

SECTION 5 – COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS

5.1 Earliest time for commencement

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

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

(c) Costs payable to a solicitor by his client are assessed if and when an order for detailed assessment is made (see further Section 26 below).

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

5.2 Latest time for commencement

(a) Detailed assessment proceedings must be commenced within three months after the judgment, order or event giving rise to the right to costs (CPR 47.7); in civil recovery proceedings under the Proceeds of Crime Act 2002 the time limit is reduced to two months, see further Section 29, below. The parties may agree between themselves to extend or shorten the time specified by the rule for commencing detailed assessment proceedings. A party may

apply to the appropriate office (as to which, see para 8.1, below) for an order to extend or shorten the period of three months, but permission is not required to commence detailed assessment proceedings out of time.

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

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

5.3 Serving a Notice of Commencement

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

(b) The notice of commencement must be served on the paying party and on any other relevant persons, ie,

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

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

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

5.4 Documents to accompany the Notice of Commencement

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

5.5 Procedure where costs are agreed

If the paying party and the receiving party agree the amount of costs, either may apply for a costs certificate (either interim or final) in the amount agreed (CPR 47.10 and, see further, Section 19 below).

5.6 Cases in which Notices of Commencement are unnecessary

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

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

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

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

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

SECTION 6 – POINTS OF DISPUTE AND REPLY

6.1 Time for points of dispute and consequences of not serving

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

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

(c) If the receiving party is not served with any points of dispute and the period for doing so has expired, he may apply for a default costs certificate, as to which, see Section 7, below (CPR 47.9(4)).

6.2 Form and contents of points of dispute

(a) Points of dispute should be short and to the point and should follow as closely as possible Precedent G of the Schedule of Costs Precedents annexed to the Practice Direction 47. (See Appendix A-3).

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

(c) A paying party may dispute a bill on the basis that the costs claimed therein exceed the amount of costs shown in a costs budget which the receiving party previously filed in the proceedings. In order to raise this dispute the paying party should include in his Points of Dispute a statement setting out his case if he:

(i) claims that he reasonably relied on the costs budget filed by the receiving party; or

(ii) wishes to rely upon the costs shown in the costs budget in order to dispute the reasonable or proportionality of the costs claimed in the bill.

(N.B. the consequences of raising such a point of dispute are considered further in paragraph 11.3, below.)

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

6.3 Time limit for replies and their format

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

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

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

SECTION 7 – OBTAINING A DEFAULT COSTS CERTIFICATE

7.1 When and how to apply

(a) In most cases, the deadline for serving points of dispute is 21 days after the date of service of notice of commencement (see para 6.1, above). A receiving party who is not served with points of dispute on or before that deadline can request the issue of a default costs certificate (CPR 47.9(4)) unless the case is one of those described in para 7.2, below.

(b) A request for a default costs certificate must be made in Form N254 and must be accompanied by a copy of the order for costs or other document giving the right to detailed assessment (as to which, see Practice Direction 47, para 13.3). The form must be signed by the receiving party or his solicitor. A court fee is payable (see further, Section 27, below).

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

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

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

(b) The default costs certificate procedure does not apply to costs of a party funded by legal aid, costs payable out of a fund other than the Legal Aid Fund, or costs to be assessed pursuant to an order under Part III of the Solicitors Act 1974. Further information concerning these cases is given in paras 5.6 and 9.1 of this Guide.

7.3 Form of default costs certificate

(a) A default costs certificate will be in Form N255. It will include an order to pay the costs to which it relates, the fixed costs payable in respect of a legal representative's charges on the issue of a default costs certificate and the fee paid on the request for the issue of a default costs certificate.

(b) The receiving party may either draw up a default costs certificate and deliver it to the court together with the request, or may leave it to the court to draw it up.

7.4 Effect of a default costs certificate

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

(b) An application to stay enforcement of a default costs certificate issued by the SCCO may be made to a Costs Judge or to a court which has jurisdiction to enforce the certificate (see further Section 19, below). Proceedings for enforcement of a default costs certificate may not be issued in the SCCO (Practice Direction 47, para 10.4).

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

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

SECTION 8 – APPLYING TO SET ASIDE A DEFAULT COSTS CERTIFICATE

8.1 Application by receiving party

(a) The court will set aside a default costs certificate if the receiving party was not entitled to it.

(b) A court officer may set aside a default costs certificate at the request of the receiving party under rule 47.12.

8.2 Application by paying party

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

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

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

(d) A Costs Judge or a District Judge may exercise the power of the court to make an order under CPR 44.2(8) although he did not make the order about costs which led to the issue of the default costs certificate (Practice Direction 47, para 11.3).

8.3 Orders and directions on set aside applications

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

(b) The Appendix, below, contains standard forms of order commonly made on set aside applications in the SCCO; a conditional order, an unconditional order, an order adjourning the application and an order dismissing the application (see para A-4).

SECTION 9 - REQUESTS FOR A DETAILED ASSESSMENT HEARING

9.1 Forms of request

(a) There are four forms of request:

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

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

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

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

(b) The request should be filed in the District Registry or County Court in which the case was being dealt with when the judgment or order for costs was made or when the event occurred which gave rise to the right to assessment, or to which it has subsequently been transferred; in all other cases the request must be filed in the SCCO (CPR 47.4). Special provisions apply to cases proceeding in the London County Courts: see para 9.2, below.

(c) In cases in which Form N258 is appropriate, the request should be filed within six months after the judgment, order or event giving rise to the right to costs. In cases in which any of the other three forms of request is appropriate, the request should be filed within three months after the judgment, order or event giving rise to the right to costs. As to the making of agreements or applications for an extension of this time limit, see para 19.5, below.

9.2 Detailed assessment by the SCCO of costs of proceedings in London county courts

Where there is an order or judgment for costs in civil proceedings in the courts listed below, the receiving party must file the request for detailed assessment in the SCCO. All applications and requests must be made there. The relevant courts are: Barnet, Bow, Brentford, Bromley, Central London, Clerkenwell and Shoreditch, Croydon, Edmonton,

Ilford, Lambeth, Mayors and City of London, Romford, Uxbridge, Wandsworth, West London, Willesden and Woolwich.

9.3 Documents to accompany the request

(a) Each form of request contains a series of tick boxes which give guidance as to the documents which should accompany the request. In cases of difficulty or uncertainty litigants and their representatives should also refer to the full list of documents which is set out in Practice Direction 47 at para 13.2.

(b) As to the fee which may be payable when filing a request, further details are given in Section 27, below.

9.4 Allocation to a costs officer or Costs Judge

(a) As a general rule bills not exceeding £75,000 (excluding VAT) will be allocated to a costs officer. Larger bills will be allocated to a Costs Judge. Costs Judges also assess bills with a value below £75,000, excluding VAT, where they are linked to other bills which exceed that sum, involve complex legal argument, or involve an assessment under the Solicitors Act 1974. Where the total costs claimed in a between the parties bill do not exceed £75,000 the bill will be assessed provisionally (as to which, see Section 10, below).

(b) On receipt of a form of request for a detailed assessment hearing, duly completed, the court clerk will enter the case on the computer, give it a reference number and then assign the case to a particular costs officer or Costs Judge. The court clerk will then prepare an acknowledgment of the request which gives details of the reference number and the initials of the costs officer or Costs Judge to whom it has been assigned.

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

(d) After a case has been assigned to a costs officer, a party who objects to the detailed assessment being made by a costs officer must apply to a Costs Judge setting out the reasons

for the objection. If sufficient reason is shown the court will direct that the bill should be assessed by a Costs Judge.

9.5 Fixing the date for the detailed assessment hearing

(a) On receipt of the request for a detailed assessment hearing, except where the bill is to be assessed provisionally (see Section 10, below), the court will fix a date for the detailed assessment hearing, or, if the costs officer or Costs Judge so decides, will give directions or fix a date for the first appointment.

(b) The court will give at least 14 days notice of the time and place of the detailed assessment hearing to every person whose name and address appears on the statement of persons to whom notice should be given which accompanies the request.

(c) Listing times vary according to the numbers of cases received and the resources available to the court. Historically cases assigned to costs officers have usually been given a date for hearing not more than 12 weeks later than the date the request for a hearing was filed. Cases assigned to Costs Judges have usually been given a date for hearing not more than eight months later than the date upon which the request for a hearing was filed. When filing the request the receiving party should also file a note of any dates upon which, to the knowledge of that party, a detailed assessment hearing would be inconvenient for any party likely to attend.

(d) As to the making of an application to change the date for hearing once fixed, see para 19.6.

9.6 Application for an interim costs certificate

(a) At any time after the receiving party has filed the request for a detailed assessment hearing, the receiving party may apply for the issue of an interim costs certificate. Further details about making applications are given in Section 19, below. The application should be listed before the costs officer or Costs Judge to whom the case has been allocated. If the detailed assessment has been assigned to a Deputy Costs Judge the application will be heard by a Costs Judge.

(b) In determining what, if any, interim certificate to make, the court will consider, amongst other things, the bill of costs, the points of dispute, any reply and the certificate in the bill as to any payments on account which have already been made.

(c) The form of interim costs certificate, N257, specifies the amount which must be paid, the time within which payment must be made and specifies whether the payment should be made to the receiving party or into court to await the issue of a final costs certificate. Payment into court is made at the Court Funds Office, Glasgow, G58 1AB (DX 501757 Cowglen). Cheques must be made payable to the "Accountant General of the Senior Courts". The form for payment in is CFO 100 which must be accompanied by a sealed copy of the interim costs certificate or order. Further details are provided on the Ministry of Justice website.

(d) An application to amend, cancel or stay enforcement of an interim costs certificate may be made to a Costs Judge (but not to a costs officer) and applications to stay enforcement may also be made to any court which has jurisdiction to enforce the certificate. Proceedings for enforcement of an interim costs certificate may not be issued in the SCCO.

9.7 Lodging papers in support of the bill

(a) Unless the court otherwise directs 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.

(b) Save as mentioned below the papers to be filed and the order in which they are to be arranged is 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. Instructions are now frequently given by letter or email. These instructions should be separated or copied from the file if the original instructions sent to counsel are not available;

(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;

(vi) where the claim also includes a claim in respect of an additional liability any papers relevant to the issues raised by the claim for additional liability.

(c) Further information about lodging documents and about orders for the production of documents is given in Section 11, below.

(d) The car parks at the Royal Courts of Justice are secure and requests to park to make deliveries or collections must be made in writing in advance.

9.8 Obtaining files from other courts

Where a District Registry or a County Court has directed that the detailed assessment hearing shall be at the SCCO, the District Registry or County Court will send their court file to the SCCO. The receiving party is responsible for filing all other papers at the SCCO. If, in cases in which the order for costs was made in the Royal Courts of Justice, the parties consider that the court file is required for the assessment proceedings, they should so notify the SCCO in sufficient time to enable the SCCO to obtain it.

SECTION 10 - PROVISIONAL ASSESSMENT OF BILLS NOT EXCEEDING £75,000

10.1 Provisional assessment generally

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

10.2 Requesting an assessment

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

(i) the request in Form N258;

(ii) the documents listed in paragraphs 8.3 (open offers) and 13.2 (documents to accompany N258) of Practice Direction 47.

(iii) an additional copy of the bill;

(iv) a statement of the costs claimed in respect of the detailed assessment proceedings (drawn on the basis that there will be no oral hearing following the provisional assessment);

(v) 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);

(vi) a copy of the points of dispute and any reply in the form of Precedent G.

(b) Parties are invited to supply the court with an email address to which details of the provisional assessment may be sent and, where supplied, these should be set out in the statement of parties (required by paragraph 13.2(j) of Practice Direction 47).

(c) In the SCCO the Costs Judge or costs officer will have regard to the papers in support of the bill (that is, the papers listed in paragraph 13.12 of Practice Direction 47) when conducting the provisional assessment. If the receiving party has not lodged the supporting papers with the request for detailed assessment, that party should do so when requested by the court.

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

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

10.3 After the provisional assessment

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

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

(c) If a party wishes to make submissions as to the order to be made in respect of the costs of the provisional assessment, the court will invite each party to make written

submissions and the question of what costs order should be made will be determined without a hearing.

(d) In proceedings which do not go beyond provisional assessment, the maximum amount the court will award to any party as costs of the assessment (other than the costs of drafting the bill of costs) is £1,500 together with any VAT thereon and any court fees paid by that party.

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

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

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

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

SECTION 11 – DETAILED ASSESSMENT HEARINGS GENERALLY

11.1 The conduct of the hearing

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

(b) A hearing or any part of it may be private, for example if it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality. Other examples are set out in Practice Direction 39A. At the start of a public hearing, or during it, either party may request the court to rule that, thereafter, the hearing should be conducted in private. Any judgment or order given or made in private must, when drawn up, be clearly marked that the court was "sitting in private" (Practice Direction 39A para 1.13).

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

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

11.2 The decisions made at the hearing

(a) A hearing will usually be recorded digitally by the court. A party may obtain a transcript of such a recording on payment of the proper transcribing charges. Requests for a transcript should be made to the Courts Recording and Transcription Unit at the Royal Courts

of Justice. It is still important that the parties and/or their representatives keep a careful note of the submissions and the decisions which are given as the hearing proceeds.

(b) Having considered the evidence, both oral and written, and having heard argument, the court will normally give a decision orally in respect of each item as and when it deals with it. On any complicated matter that may arise, the costs officer or Costs Judge may reserve his decision and, if he does so, his decision on that matter may be delivered either at a subsequent hearing or in writing.

(c) The adverse ruling that may be made if a receiving party fails to abide by any costs budget that party previously gave in the proceedings is considered in paragraph 11.3, below.

(d) Often, the final matter dealt with at the hearing is the award of the costs of the detailed assessment proceedings. As to this see further, Section 13, below.

(e) Some information about the possibility of bringing an appeal against any decision made, and the time limit in which to do so, is given in Section 15, below.

11.3 Relevance of costs budgets

(a) When assessing the costs in a case in which a costs management order has been made under CPR 3.15 the court will:

(i) have regard to the receiving party's last approved or agreed budget for each phase of the proceedings; and

(ii) not depart from such approved or agreed budget unless satisfied that there is good reason to do so.

(b) Further, on an assessment of the costs of a party in any case (whether or not a costs management order has been made), the court may have regard to a budget previously filed by that party, or by any other party in the same proceedings. Budgets may be taken into account as a factor when assessing the reasonableness and proportionality of any costs claimed. See Practice Direction 44, subsection 3.

(c) If 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, the court may regard the difference as evidence that the costs claimed are unreasonable or disproportionate if –

(i) the receiving party has not provided a satisfactory explanation for that difference; or

(ii) the court is satisfied that the paying party reasonably relied on the budget.

11.4 Removing the papers in support

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

11.5 Hearings outside London

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

SECTION 12 – PRODUCTION OF CONFIDENTIAL DOCUMENTS IN DETAILED ASSESSMENT HEARINGS

12.1 Receiving party's duty to lodge documents

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

(b) Practice Direction 47 paragraph 13.12 gives further details about "the papers in support of the bill" (see para 9.7, above). In respect of each item of costs claimed in the bill the papers in support include all of the papers relevant to that item, whether they are favourable to the receiving party's case or unfavourable, or whether or not they are confidential or privileged. The lodging of documents as required by the Practice Direction does not amount to a waiver of any privilege in those documents.

12.2 Court's power to order production of documents

(a) The court may direct the receiving party to produce any document which, in the opinion of the court, is necessary to enable it to reach its decision. These documents will in the first instance be produced to the court, but the court may ask the receiving party to elect whether to disclose the particular document to the paying party in order to rely on the contents of that document, or whether to decline disclosure and instead rely on other evidence (Practice Direction 47, paragraph 13.13).

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

12.3 Deciding points of dispute in favour of the paying party

If, having examined papers lodged with or produced to the court, the court makes a decision based on those documents wholly in favour of the paying party, the court will so inform the parties and give brief reasons if necessary. The paying party has no right to see the documents relied on by the court in reaching a decision which is wholly favourable to that party.

12.4 Deciding points of dispute in favour of the receiving party

(a) If, having examined documents lodged with or produced to the court, the court is minded to determine a point of dispute wholly or partly in favour of the receiving party it does not automatically follow that the paying party will have a right to see all of the documents relied on by the court in reaching that decision. The court should enquire of the paying party whether the paying party is content to accept that ruling (subject to appeal) or whether the paying party wishes to see the documents relied on by the court in making the ruling. In many cases the paying party will be content to agree that the court alone should see those documents. The alternatives (see below) may lead to additional delay and an increase in costs.

(b) If the paying party declines to accept the court's ruling without inspecting documents, then, save as explained in paras (f) to (h) below, the court will put the receiving party to his election between showing the documents in question to the paying party or not relying upon them and offering to prove the fact of which the document is evidence by some other means. Alternatively the receiving party may decide to withdraw the claim for the costs of it. The court may give directions enabling the receiving party to have a fair opportunity to provide other evidence. In reaching its final decision on the issue the court will not take account of documents which the receiving party has elected not to show to the paying party.

(c) If the receiving party elects to show the documents in question to the paying party, the court may give directions to ensure that this is done fairly and that the paying party is given a reasonable opportunity to consider the documents and to make observations thereon. When showing documents to the paying party it is permissible

to blank out parts of the disclosed documents on the ground that they are irrelevant to the issue of costs.

(d) It is standard practice for the client care letter (redacted where appropriate) to be shown to the paying party. The Court of Appeal has held that it should be the usual practice for a conditional fee agreement (redacted where appropriate) to be disclosed for the purpose of costs proceedings in which a success fee is claimed.

(e) No production of documents is appropriate where the court determines that the point of dispute raised is spurious or vexatious only.

(f) No production is appropriate in respect of documents which the court did not rely upon in reaching its decision and which the receiving party did not deploy.

(g) The court will not compel production of any documents where it is unnecessary or disproportionate to do so.

(h) The court will exercise its discretion to put the receiving party to his election having regard to the requirements of fairness and justice. In particular it may consider whether the production could be made to the paying party's legal representatives only, and whether any confidential matter which is irrelevant can be excluded from the production.

(i) If, in respect of any privileged documents, the receiving party elects to waive its privilege by showing them to the paying party, that waiver is for the purposes of the detailed assessment only.

12.5 Avoiding or minimising the expense and delay of production

The production of documents at a detailed assessment hearing may well cause substantial delay to that hearing and may prejudice or embarrass any appeal made in the proceedings in which the costs were awarded or in any similar proceedings between the same parties. Receiving parties should therefore consider in advance what voluntary disclosure to their opponents they are willing to make and, how such

disclosure can be achieved before the detailed assessment hearing without substantially damaging any privilege they wish to retain. If necessary, directions can be made by consent. Directions can also be made providing split hearing dates or times so as to facilitate the orderly disposal of the points in dispute. If production of documents may substantially prejudice or embarrass any appeal or linked proceedings, orders can be made adjourning the detailed assessment proceedings pending the determination of the other proceedings and directing the payment of interim costs certificates in the meantime.

SECTION 13 – COSTS OF DETAILED ASSESSMENT PROCEEDINGS

13.1 Entitlement

(a) As a general rule the receiving party is entitled to the costs of the detailed assessment proceedings (CPR 47.20). For exceptions concerning offers to settle, findings of delay or misconduct and the special rules applicable to assessments under the Solicitors Act 1974, see below, para 13.2 and Sections 18 and 26 respectively.

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

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

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

13.2 Offers to settle

(a) Section 8.3 of Practice Direction 47 requires the paying party, on serving Points of Dispute (see section 6 above) to state in an open letter what sum, if any, that party offers to pay in settlement. If no open offer is made the receiving party may, by letter request one and, if it is still not forthcoming, may, if appropriate, apply to the court for an order compelling compliance with the Practice Direction.

(b) The effects which offers to settlement may have differ as between cases in which the detailed assessment proceedings commenced on or before 1 April 2013, and cases in which

the detailed assessment proceedings commenced after 1 April 2013, as is explained below. As to what amounts to commencement of detailed assessment proceedings, see para 9.3 above.

13.3 Commencement of detailed assessment before 1 April 2013

(a) Where detailed assessment proceedings were commenced before 1 April 2013, either party may make an offer to settle the claim for costs which is expressed to be "without prejudice, save as to the costs of the detailed assessment proceedings." Such an offer may relate to any issue in dispute between the parties. Its main purpose is to enable the parties to explore the possibility of negotiating a compromise which will not damage the subsequent presentation of their case if no compromise is reached.

(b) Paying parties should usually make their offers within 14 days after service of the notice of commencement. Receiving parties should usually make their offers within 14 days after service of the points of dispute. Offers made after these periods are likely to be given less weight unless there is good reason for the offer not having been made until the later time.

(c) The terms of the offer must be clear. There is no obligation to give details or a breakdown showing how the sum specified was arrived at, but unless the offer states otherwise, it will be treated as including the costs of the preparation of the bill, interest and VAT. Subsequent, revised offers may be made by either side.

(d) When an offer to settle is properly brought to the attention of the court, the court may take it into account when deciding what, if any, order for costs to make. For example, if the court decides that an offer to settle made by the paying party ought reasonably to have been accepted by the receiving party, the court may disallow the receiving party, wholly or in part, any costs of the detailed assessment and/or award costs in the detailed assessment to the paying party who made the offer.

13.4 Commencement of detailed assessment from 1 April 2013

(a) In detailed assessment proceedings commenced on or after 1 April 2013, CPR 47.20(4) provides that CPR 36 ("Part 36") applies, with the receiving party in the position of claimant, the paying party in the position of defendant, the detailed assessment hearing as the

trial and the amount of the bill as assessed as the judgment. The detailed provisions of Part 36 and the accompanying Practice Direction fall outside the scope of this guide. Any person wishing to make a Part 36 offer should refer to those provisions (and where applicable CPR 44 part II and the Practice Direction dealing with Qualified One-Way Costs Shifting). A short summary of the relevant provisions of Part 36 follows.

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

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

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

(e) A Part 36 offer may not be accepted after the commencement of detailed assessment proceedings except by agreement (CPR 36.9(5)).

13.5 Where an offer to settle is accepted

(a) If, because of acceptance, the whole of the detailed assessment proceedings are now settled, the receiving party must give notice of that fact to the court immediately, preferably by fax. The current fax number is: 020 7947 6605.

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

(c) Where the accepted offer was not a Part 36 offer, either party may apply for a costs certificate under CPR 47.10. This should be done by consent, but if necessary a receiving party can apply for a certificate under CPR 23 (see section 19 of this Guide).

13.6 Where an offer to settle is not accepted

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

13.7 Provisional assessments

(a) In provisional assessments (see Section 10, above) costs awards are limited to £1500 and a statement of the receiving party's costs, for provisional assessment purposes, is filed with the bill. Offers must be filed in sealed marked envelopes and considered as necessary at the conclusion of the assessment (see Practice Direction 47, section 14, and CPR 47.15).

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

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

13.8 Fixed costs

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

(b) See CPR 45.12 and 45.13 for the procedure in Road Traffic Accident cases and 45.14 for the potential costs penalty.

(c) Where fixed success fees are, under the transitional provisions in CPR 48 (see Section 31 below) still recoverable after 1 April 2013, CPR 45.19, CPR 45.22 and CPR 45.26 of the pre-April 2013 rules set out the percentage by which, in a given category of case, the fixed success fee must be varied if the applicant is not to bear the costs of the application and the assessment.

SECTION 14 - FINAL COSTS CERTIFICATES

14.1 Completing the bill of costs

(a) At the detailed assessment hearing, the court will note on the bill of costs all items allowed, disallowed or reduced. The receiving party must, after the hearing, make clear the correct figures agreed or allowed in respect of each item and re-calculate the summary of the bill.

(b) The receiving party must file the completed bill of costs at the SCCO no later than 14 days after the detailed assessment hearing. When filing the bill of costs, the receiving party must lodge receipted fee notes and accounts in respect of all disbursements. However, there is no obligation to produce receipted fee notes or accounts in respect of disbursements (other than those relating to counsel's fees) which individually do not exceed £500 if the bill includes a certificate that such disbursements have been duly discharged (see Precedent F(5) which is illustrated in the Appendix, below, para A-2). Also, the court may have given a direction at the detailed assessment hearing which dispenses with the need for the production of some or all the fee notes and accounts in question. For example, the bill may be marked "vouching of [all disbursements] [expert's fees] is dispensed with".

14.2 Failure to file completed bill of costs

If the receiving party fails to file the completed bill of costs within 14 days of the detailed assessment hearing, the paying party may make an application for such directions as may be appropriate under the court's general powers of management. As to applications generally, see Section 19, below.

14.3 Effect of final costs certificate

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

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

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

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

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

14.4 Order to stay enforcement

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

14.5 Enforcement of certificate

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

SECTION 15 - APPEALS AGAINST DECISIONS IN DETAILED ASSESSMENT PROCEEDINGS

15.1 Routes of appeal

(a) From a decision of a costs officer in a High Court case there is a right of appeal (no permission to appeal is needed) to a Costs Judge with a further appeal (for which permission is required) to a High Court Judge.

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

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

(d) In London County Court cases which are not transferred to the SCCO so as to become High Court cases, the appeal from a Costs Judge lies, if permission is granted, to the London Designated Civil Judge, sitting at the Central London County Court (or such judge as he or she shall nominate).

15.2 Seeking permission to appeal

(a) No permission to appeal is required from any decision made by a costs officer.

(b) From any decision of a Costs Judge (including decisions made on an appeal from a costs officer) permission to appeal is required. The general test for permission is whether the appeal has any real prospect of success. The permission should normally be sought orally at the time of the hearing. If refused, or if not sought then, the intending appellant must include an application for permission in its appellant's notice (as to which, see para 15.4, below).

(c) In order to bring a further appeal to the Court of Appeal from the decision of a High Court Judge or Circuit Judge permission is required from the Court of Appeal (CPR 52.13). The general test for permission in such a case is whether the appeal would raise an important point of principle or practice or whether there is some other compelling reason for the Court of Appeal to hear it.

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

(e) The Costs Judge, upon hearing an application for permission to appeal against his judgment should state in his judgment or order

(1) whether or not the judgment or order is final;

(2) to which appeal court an appeal lies from the judgment or order;

(3) whether the court gives permission to appeal; and

(4) if permission is refused, the appropriate appeal court to which any further application for permission may be made.

(f) Where permission is refused, the Costs Judge will either record the information in (e) above in an order following the hearing or will complete form N460 setting out the reasons for refusal. The form N460 will either be handed to the appellant at the hearing, if completed at the time, or will be retained on the court file pending an appeal to the appellate court.

15.3 Time limits for appeals

(a) An intending appellant must file an appeal notice within 21 days after the date of the decision it wishes to appeal against (CPR 47.23 and 52.4). If a party has good reason for seeking a longer period in which to appeal it should apply for an extension of time, either on the occasion when the decision is made, or by including such an application in its appeal notice.

(b) If a detailed assessment is carried out at more than one hearing (the final hearing concluding on or after 1 April 2013) the time for appeal will not start to run until the conclusion of the final hearing unless the court orders otherwise (CPR 47.14(7)).

15.4 Documentation on appeals

(a) Form N161 is the prescribed form of notice for all costs appeals. On an appeal from a costs officer the notice, once filed, will be served on other parties by the court office. On an appeal from a Costs Judge the appellant must arrange service of a copy of the notice on each respondent as soon as practicable and, in any event, within seven days after filing.

(b) Form N161 summarises the documents which should be prepared in support of the appeal. In particular, the appellant must supply a suitable record of the judgment being appealed, i.e. an approved transcript, alternatively a written judgment signed by the costs officer or Costs Judge, or alternatively in the case of a costs officer, the officer's comments written on the bill, or, in the case of a Costs Judge, a note of the judgment which is agreed by the respondent and/or approved by the Costs Judge.

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

15.5 Conduct of the appeal

(a) On an appeal from a costs officer, the Costs Judge will rehear the proceedings which gave rise to the decision appealed against and may make any order and give any directions which he considers appropriate.

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

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

SECTION 16 – CORRECTING ACCIDENTAL SLIPS OR OMISSIONS IN FINAL COSTS CERTIFICATES

16.1 The Slip Rule

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

16.2 Applications for amendment

An application under the slip rule may be made informally (e.g. by letter) or formally, by application under Part 23 (as to which see Section 19, below). The application may be dealt with without a hearing if the applicant so requests, or with the consent of all parties, or where the court does not consider that a hearing would be appropriate. However, if the application is, or is likely to be, opposed, it should be listed for hearing before a Costs Judge.

SECTION 17 - INTEREST ON COSTS

17.1 Entitlement to interest on costs

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

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

(ii) Under CPR 40.8 and CPR 44.2(6)g the court has power to order interest on costs to run from a date other than the date of judgment: but

(iii) The power to order interest to run from a date other than the date of judgment has, as at the date of preparing this guide, been found to be ultra vires in the county court until the Treasury takes certain steps to validate it. For the time being, in county court cases, interest on costs (other than the costs of assessment) will always run from the date of judgment.

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

17.2 Effect on final costs certificates

(a) If the amount of costs payable under an order for costs proceeds to a detailed assessment, the final costs certificate issued will record the date of entitlement to interest and the effect of any rulings which the court has made as to interest. Where a bill of costs

covers costs payable under an order or orders in respect of which the receiving party wishes to claim interest from different dates, the bill should be divided into separate parts so as to enable such interest to be calculated. If not so divided the date of entitlement to interest recorded in the certificate will be the latest of the relevant dates.

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

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

SECTION 18 – APPLICATIONS CONCERNING DELAY, MISCONDUCT OR WASTED COSTS

18.1 Sanction for delay in commencing detailed assessment proceedings

(a) Under CPR 47.7 detailed assessment proceedings must be commenced within three months of the date of the order for costs or other event under which the right to costs arose, by the receiving party serving on the paying party the documents referred to in CPR 47.6(1) (see Section 5 above).

(b) Permission to commence detailed assessment proceedings out of time is not required (Practice Direction 47 section 6) but if the receiving party has failed to commence detailed assessment proceedings within the deadline the paying party may apply for an order under CPR 47.8(1) disallowing all the costs to which the receiving party would otherwise be entitled unless the detailed assessment proceedings are commenced within such further time as the court may specify.

(c) An application for an order under Rule 47.8(1) must be made in writing, issued in the appropriate court office and served at least seven days before the hearing.

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

18.2 Misconduct by litigants or legal representatives

(a) The court may make an order under CPR 44.11 where –

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

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

(b) Examples of conduct which is unreasonable or improper include steps which are calculated to prevent or inhibit the Court from furthering its overriding objective, which is to deal with cases justly.

(c) The sanctions which the Court can impose are:

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

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

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

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

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

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

(b) The court may make a wasted costs order only if:-

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

(ii) his conduct has caused a party to incur unnecessary costs or has meant that costs previously incurred have been wasted; and

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

18.4 Principles on which wasted costs orders are made

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

(i) acting "improperly" covers but is not confined to conduct which would ordinarily be held to justify disbarment of barristers, striking off from the roll of solicitors, suspension from practice or other serious professional penalty;

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

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

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

18.5 Procedural steps on applications for a wasted costs order

(a) A party may apply for a wasted costs order by filing an application notice in accordance with Part 23 (as to which, see Section 19, below) or by making an application orally in the course of any hearing (Practice Direction 46 section 5.4).

(b) A Part 23 application must be supported by evidence (Practice Direction 46 section 5.9) which:

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

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

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

18.6 Deciding whether to make a wasted costs order

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

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

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

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

SECTION 19 – OTHER APPLICATIONS IN DETAILED ASSESSMENT PROCEEDINGS

19.1 Applications generally

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

(b) An application can be made in the Senior Court Costs Office if that is the "appropriate office" for the purposes of CPR 47.4 (and see para 9.1, above). In order to make an application, the party must file in court a notice of application, copies of any documents relied on in support and the appropriate court fee, or a fee exemption certificate (see Section 27, below).

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

19.2 Evidence in support of applications

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

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

[I believe] [the (claimant or as may be) believes] that the facts stated in this application notice (or witness statement as may be)] are true.

The statement of truth must be signed by the applicant, or his litigation friend, or legal representative or witness, as may be.

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

19.3 Extension of time for commencing detailed assessment proceedings

The time limit for commencing detailed assessment proceedings is summarised in para 5.2, above. The parties may agree to extend this time. Alternatively, the receiving party can make an application for an order extending the time limit. Note that permission to commence detailed assessment proceedings out of time is not required.

19.4 Extensions of time for service of points of dispute

The time limit for service of points of dispute is summarised in para 6.1, above. Failure to serve points of dispute in time may lead to the receiving party obtaining a default costs certificate (as to which see Section 7, above). The parties may agree to extend the time for service of points of dispute, alternatively the paying party may apply to the appropriate office for an order extending the time limit.

19.5 Extension of other time limits

The time limit for serving a reply to points of dispute is summarised in para 6.1 above and the time limit for filing a request for a detailed assessment hearing is summarised in para 9.1(c), above. In any case directions of the court may impose further time limits for the taking of certain steps, eg the service of witness statements. All these time limits may be extended by the agreement of the parties or, alternatively, by an order made upon an application.

19.6 Changing the date fixed for a detailed assessment hearing

A date fixed for the hearing of a detailed assessment cannot be changed or cancelled merely by the agreement of the parties unless the parties agree a compromise and the detailed assessment proceedings are settled. If detailed assessment proceedings are settled the receiving party must give notice of that fact to the court immediately, preferably by fax or email. The current fax numbers are: 020 7947 6247 or 6344. In all other cases, if one or all parties wishes to vary a fixed date, he or they must make an application in Form N244 or request the court to restore a previous application for hearing, if "permission to apply" has previously been given.

19.7 Amending bills of costs, points of dispute or replies

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

19.8 Case management directions

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

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

(c) In the case of larger bills where a significant amount of court time and costs will be involved the court will consider whether to order budgets to be prepared by the parties in relation to the costs of detailed assessment with a view to making a Costs Management Order.

19.9 Agreed costs certificates

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

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

19.10 Change of legal representative

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

(b) Often, when a legal representative and his client part company the client does not instruct anyone else to represent him. In that case the former legal representative will often prepare a notice of change and either obtain his former client's signature to it and file it at court or will send it to the former client for him to sign and file. The former legal representative will usually warn the client that, if the client refuses or unreasonably fails to serve and/or file the notice he will apply for an order that he has ceased to act together with an order for the costs of the application.

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

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

19.11 Stay of detailed assessment proceedings

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

19.12 Stay of enforcement of costs certificates

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

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

19.13 Other applications

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

- for assessment before conclusion of main proceedings (para 5.1),
- for an order setting aside a default costs certificate (paras 8.1 and 8.2),
- for assignment from a costs officer to a Costs Judge (para 9.3),
- for an interim costs certificate (para 9.6 and 10.2(e)),
- for permission to appeal (para 15.2),
- for correcting accidental slips or omissions in certificates (para 16.2),
- for sanctions for failure to commence in time (para 16.1), and
- for a wasted costs order (para 16.3).

SECTION 20 - CASES TRANSFERRED FROM OTHER COURTS

20.1 Assessment of costs awarded in the High Court and the county courts

(a) Bills of costs in proceedings in the District Registries of the High Court and County Courts are frequently transferred to the SCCO either at the request of the parties or of the Court's own initiative. This is likely to occur when a District Judge considers the size and complexity of the bill warrants such a transfer.

(b) When bills are transferred from a District Registry or a County Court by an order of that Court, the parties will be served with a copy of that order. Sometimes such an order is made immediately prior to the date fixed for detailed assessment at the local Court, which itself may be some time after the parties first requested a hearing date. Every effort is made by the SCCO to list the transferred case at the earliest opportunity. When, however, the parties have already waited for a significant time for their bill to be assessed by the local Court, they should notify the SCCO of this fact immediately after the order transferring the case is made, so that a hearing date which is as early as possible can be given. Otherwise the parties may find themselves at the end of the queue of cases awaiting a hearing date at the SCCO.

20.2 Assessment of costs awarded by other tribunals and bodies

Various statutes give the SCCO jurisdiction to assess costs in litigation including the following:

(i) Election petitions

(ii) Proceedings under the Arbitration Acts

(iii) Proceedings before National Health Service Committees, Tribunals and other similar bodies

(iv) Proceedings before the Upper Tribunal

(v) Proceedings before various chambers of the First Tier Tribunal

(vi) Determinations by the Secretary of State for Environment or his appointed local planning inspectors as a result of local planning inquiries

(vii) Proceedings before the Solicitor's Disciplinary Tribunal

(viii) Proceedings before the Copyright Tribunal.

(ix) Competition appeals.

(x) Proceedings under the Justices and Justices' Clerks (Costs) Regulations 2001

SECTION 21 – COSTS ONLY PROCEEDINGS

21.1 Introduction

(a) CPR 46.14 sets out the procedure to be followed where, before court proceedings are commenced; the parties to a dispute reach agreement on all issues, including which party is to pay costs, but are unable to agree the amount of those costs.

(b) Two distinct steps are required: firstly an application under CPR Part 8 seeking an order for costs; and secondly detailed assessment of those costs.

(c) It is not appropriate for either party to take the first step unless:

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

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

(iii) no proceedings must have been started and the parties, *after a proper attempt at agreement*, must have failed to agree the amount of the costs.

21.2 The application under CPR Part 8

(a) Either party may start costs only proceedings. The claim should be issued in the court in which the main proceedings would have been heard if that had been necessary.

(b) The Part 8 claim form (form N208) must: (i) identify the claim or dispute to which the agreement to pay costs relates; (ii) state the date and terms of the agreement on which the claimant relies; (iii) set out a draft of the order sought; (iv) state the amount of the costs claimed; and (v) state whether costs are claimed on the standard or the indemnity basis.

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

21.3 Obtaining the order for costs

(a) The court may make an order in the terms of the claim without the necessity of a hearing if:

(i) the defendant fails to file an acknowledgment of service within the time allowed to do so and the claimant has written to the court requesting an order; or

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

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

(b) In costs only proceedings to which CPR 45 Section II applies (ie certain road traffic accident claims where the total amount of agreed damages does not exceed £10,000) the court must assess the costs in the manner set out in that section (ie it should allow certain fixed recoverable costs and disbursements) and applications for greater amounts will be entertained only if the court considers that exceptional circumstances make it appropriate to do so).

(c) If the defendant opposes the claim the defendant must file a witness statement in accordance with CPR 8.5(3). The court will then give directions (Practice Direction 46 para 9.10). The claim is likely to be dismissed if there are issues in dispute between the parties going beyond the amount of costs to be allowed (Practice Direction 46 para 9.12). A claim will not be treated as opposed and therefore dismissed merely because the defendant states in an acknowledgment of service that he disputes the amount of the claim for costs.

(d) Standard forms of order commonly made in the SCCO under CPR 46.14 are illustrated in the Appendix A-5 below.

(e) Unless all parties consent the order for costs will not include an order for a payment of costs on account. In costs only proceedings, the only issue to be decided by the court when making the order is whether or not there should be an assessment.

21.4 Conducting the detailed assessment proceedings

(a) An order for costs made under CPR 46.14 is an order for the payment of costs the amount of which is to be determined by assessment (as to which, see Sections 4 to 19, or, where appropriate, for the payment of fixed costs (as to which see for example, para 21.3(b), above).

(b) As to the receiving party's entitlement to apply for an interim costs certificate once a request for a detailed assessment hearing has been made, see para 9.5 above.

(c) CPR 45.14 and 45.15 provides that a costs penalty will be imposed upon any claimant in proceedings governed by CPR 45 Section II who claims costs greater than the fixed recoverable costs plus success fee and disbursements but fails to achieve an increase greater than 20% of the amount in respect of fixed recoverable costs: the claimant will be awarded only the fixed recoverable costs (unless in fact a lower sum has been assessed), plus disbursements and will be ordered to pay the defendant's costs of the proceedings.

SECTION 22 - LITIGANTS IN PERSON

22.1 Introduction

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

(b) Litigants in person have rights of audience in all detailed assessment proceedings. As to their entitlement to have a McKenzie Friend present, see para 1.2, above.

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

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

(e) Advice and assistance may be available from the Citizen's Advice Bureau in the Royal Courts of Justice. Further information as to this is given in para 1.7, above.

(f) A litigant in person who is unable to obtain copies of any prescribed form needed may ask the Costs Office for help (see paras 1.4, 1.7 and 1.8). Most forms mentioned in this Guide can be supplied free of charge.

(g) In addition to the Citizens Advice Bureau (see para. 1.6 above), litigants in person can obtain help from the Personal Support Unit, or PSU, who can provide volunteers to attend

court. They can be contacted in Room M104 Royal Courts of Justice; by telephone on 020 7947 7701/7703 or by email to rcj@thepsu.org.uk.

22.2 Costs recoverable by litigants in person

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

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

(2) Payments made to obtain *expert assistance* in connection with assessing the claim for costs. For this purpose a person is an expert if he is a barrister, solicitor, Fellow of the Institute of Legal Executives, a Costs Lawyer, or a law costs draftsman who is a member of the Academy of Experts or The Expert Witness Institute.

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

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

22.3 Procedure on detailed assessment

(a) The procedure by which a litigant in person seeks to obtain costs from another party is as set out in Sections 4 to 19 of this Guide (briefly, service of a bill plus notice of commencement and certain other documents, obtaining a default costs certificate or, if points of dispute are served, serving a reply and/or filing a request for a detailed assessment hearing).

(b) Where a litigant in person wishes to prove that he has suffered financial loss he should produce to the court any written evidence he relies on to support that claim and must

serve a copy of that evidence on the paying party at the same time as serving the notice of commencement.

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

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

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

(ii) In respect of each item, how long was it reasonable for the litigant in person to spend? The time allowed may be less than the time actually spent by the litigant in person and more than the time that would have been spent by a lawyer, had a lawyer been employed to undertake that item.

(iii) What hourly rate or other rate is it reasonable to apply in respect of time reasonably spent by the litigant in person? Unless financial loss can be shown the rate allowed is £18.00 per hour under CPD 46 Section 3.4 (£32 per hour in the Employment Appeal Tribunal).

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

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

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

22.5 Calculation of disbursements

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

(i) were these disbursements actually incurred?

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

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

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

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

SECTION 23 COURT OF PROTECTION CASES

23.1 Introduction

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

(b) The relevant statutory provisions are the Mental Capacity Act 2005 and Court of Protection Rules 2007. The Act, together with guidance and explanatory leaflets, can be found in the Office of the Public Guardian pages on the Ministry of Justice website. The full Rules can be found in the standard practitioners' texts.

23.2 Orders and directions as to costs

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

(b) There are three methods of quantifying costs:

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

23.3 Agreed costs

(a) Agreed costs are not generally available. As a general principle, all bills of costs must be assessed, except where fixed costs are available. The procedure to assess bills below £3,000 should be used for all bills where professionals in the past used to seek agreement.

(b) The Court of Protection recognises that in certain circumstances it would not be in P's best interests to request an assessment, for example where the costs of assessment are disproportionate to the amount of the bill. The court may agree costs in such circumstances,

as long as the fixed costs provisions do not cover the work. If a professional deputy considers that a costs assessment would not be appropriate, they should apply to the court setting out the reasons and requesting the court to agree the bill. Any request must be accompanied by a narrative bill setting out the hours spent and the level and status of the fee earner concerned, together with fee notes and vouchers for any disbursements. The court may also exercise its discretion to agree costs at any time whether or not it is in the context of a formal application.

23.4 Fixed costs

(a) Practice Direction 19B (Fixed Costs in the Court of Protection) supplementing Part 19 of the COP Rules 2007 set out fixed costs that may be claimed by solicitors and office holders in public authorities appointed to act as deputy for P.

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

(c) Usually the Court Order or Direction will state whether fixed costs or remuneration applies, or whether there is to be a detailed assessment by a Costs Officer. Where a Court Order or Direction provides for a detailed assessment of costs, professional Deputies may elect to take fixed costs or remuneration in lieu of detailed assessment.

(d) The categories of fixed costs are as follows:-

Solicitors' costs in Court proceedings

Category I: Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs.

Category II: Applications under sections 36(9) or 54 of the Trustee Act 1925 or section 20 of the Trusts of Land and Appointment of Trustees Act 1996 for the appointment of a new trustee in the place of "P" and applications under section 18(1)(j) of the Mental Capacity Act

2005 for authority to exercise any power vested in P, whether beneficially, or as a trustee, or otherwise.

Category I and II apply to all orders appointing a deputy for property and affairs or to all applications for appointment of a new trustee made on or after 1st February 2011

Remuneration of solicitors appointed as deputy for P

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

(a) for the first year;

(b) for the second and subsequent years; Where the net assets of P are below £16000.00, the professional deputy for property and affairs may take an annual management fee not exceeding 4.5% of P's net assets on the anniversary of the court order appointing the professional as a deputy.

Category IV: Where the court appoints a professional deputy for health and welfare, the deputy may take an annual management fee not exceeding 2.5% of P's net assets on the anniversary of the court order appointing the professional as deputy for personal welfare up to a maximum of £500.

Category V: Preparation and lodgement of the annual report or annual account to the Public Guardian.

Category VI: Preparation of an HMRC income tax return on behalf of P.

In cases where fixed costs are not appropriate, professional deputies may, if preferred, apply to the SCCO for a detailed assessment of costs excepting cases where P's assets are below £16,000.

Remuneration of public authority deputies

Separate categories of fixed rates of remuneration apply where the Court appoints a holder of an office of a public authority to act as deputy. Those categories are as follows:

Category I: Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs.

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

(a) for the first year;

(b) for the second year and subsequent years;

(c) Where the net assets of P are below £16,000, the local authority deputy for property and affairs may take an annual management fee not exceeding 3% of P's net assets on the anniversary of the court order appointing the local authority as deputy.

(d) Where the court appoints a local authority for personal welfare, the local authority may take an annual management fee not exceeding 2.5% of P's net assets on the anniversary of the court order appointing the local authority as deputy for personal welfare up to a maximum of £500.

Category III: Annual property management fee to include work involved in preparing property for sale, instructing agents, conveyancers, etc, or the ongoing maintenance of property including management and letting of a rental property.

Category IV: Preparation and lodgement of an annual report or account to the Public Guardian.

(e) In most straight forward or routine cases, solicitor deputies will usually opt to take fixed costs because they can be paid quickly and easily. However, the Court recognises that

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

23.5 Commencing a detailed assessment

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

(i) a copy of the bill of costs;

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

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

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

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

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

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

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

(ix) the relevant lodgement fee.

(b) Attention is drawn to paragraph 17.2(2) of the Practice Direction to Part 47. In cases which are to be dealt with by a Costs Officer (normally bills totalling £100,000.00 or less) the relevant papers in support of the bill as described in paragraph 13.12 of the CPR Practice Direction 47. In cases over £100,000.00, complex or other cases to be dealt with by a Master, the relevant papers in support of the bill must only be lodged if requested by the Master.

23.6 Bill format

(a) The bill of costs should be prepared in accordance with the model form set out in the CPR Practice Direction 47 (see para 4.4 above) except where the short form bill (described below) is appropriate. The bill should state the correct title of the matter, the name and address, telephone number and reference of the professional deputy. The bill should list each chargeable item of work in chronological order with dates. It should also show any relevant events, even if it does not constitute a chargeable item. If the bill is for general management, it should state the year covered (eg from 21 December 2012 to 20 December 2013).

(b) Where the amount of the bill does not exceed £3,000 excluding VAT and disbursements, professional deputies may request the SCCO to assess the costs using a short form bill. The procedure is the same as that for an application for detailed assessment except that professional deputies may use a simplified form of bill which will not require the services of the costs draftsman or costs lawyer. The costs of drawing a long form bill will not usually be recoverable in cases where a short form bill is appropriate. A copy of the model short form bill is set out in the Appendix below, para A-10.

23.7 Authorities to assess costs

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

(b) If the order provides for fixed costs but a professional deputy elects for assessment, it is not necessary to apply to the Court of Protection for an amended direction. Professional

deputies may elect for assessment simply by lodging a bill with the SCCO. The bill should contain a statement stating that fixed costs have not been taken.

(c) If the application is for an assessment of general management costs, the Costs Officer will need to know that the Court has agreed that the professional deputy is to be paid general management costs. When lodging the first year's general management bill, the deputy should send a copy of the order authorising him or her to be paid professional costs. The SCCO keeps a record so it is not necessary to send a copy of that order in subsequent years. Unless there are any special circumstances, general management costs should be claimed annually, usually after the passing of the annual account.

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

23.8 The detailed assessment

(a) The SCCO will deal with most assessments on a provisional basis by post. If the deputy is not satisfied with the assessment, he must inform the Costs Officer within 14 days of receipt of the provisional assessment. It has been the practice of the SCCO for some time to carry out an informal review of a provisional assessment where the deputy is not satisfied with one or more items in the bill. If the deputy remains dissatisfied after any informal review takes place (which will be carried out at the sole discretion of the Costs Officer), the SCCO will then fix a date for an oral hearing. In practice, the Costs Officer will deal with any enquiries by telephone or letter.

(b) The SCCO will send an appointment for the hearing to all parties. CPR 47.19 provides that a trustee, receiver or any other party managing the patient's fund or litigation is a person who will be treated as having a financial income interest in the outcome of a detailed assessment. Attention is drawn in particular to paragraph 18.2 of Practice Direction 47 with regard to the definition of "financial interest". Where a professional deputy considers that there is or may be a person with a financial interest in the outcome of the assessment, he or she must provide their name, address and reference in case the Costs Officer decides they

should be sent the bill of costs or Notice of Assessment. As a matter of good practice, solicitors must serve a copy of the bill on the deputy (if they are not acting in that capacity) prior to lodgement, as this will help to allay disputes which sometimes arise where the deputy is unaware that costs have been claimed from P's estate until receipt of the final costs certificate.

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

23.9 Employment of a solicitor by two or more persons

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

23.10 Incidence of costs – the general rule

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

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

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

(d) The court may depart from the general principles referred to sub-paragraphs (a)-(c) above if the circumstances justify. The court will have regard to all the circumstances including:

(a) the conduct of the parties;

(b) whether a party succeeded on part of his case, even if he has not been wholly successful; and

(c) the role of any public body involved in the proceeding.

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

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

23.11 Non-professional deputies

In cases where the deputy is not a professional person, he or she is required to carry out the full range of deputy duties. These duties are set out in the Deputies Handbook published by the Public Guardianship Office.

23.12 Where proceedings concern P's property and affairs

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

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

23.13 Remuneration of a deputy, donee or attorney

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

(a) he be paid a fixed amount;

(b) he be paid at a specified rate, or

(c) the amount of the remuneration should be determined in accordance with the schedule of fees set out in the relevant Court of Protection Practice Direction,

(d) any amount permitted by the court shall constitute a debt due from P's estate and the court may order a detailed assessment of the remuneration by a Costs Officer.

23.14 Costs of sale or purchase of property

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

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

(c) The following fixed rates apply (except where the sale is by trustees): a value element of 0.15% of the consideration with a minimum sum of £350 and a maximum of £1500 plus disbursements

23.15 Costs following P's death

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

(b) If P dies when the assessment of costs are pending, a professional deputy should inform the SCCO which will suspend the assessment until after the court gives final direction. The deputy must serve a copy of his bill upon these personal representatives upon resumption of the assessment process.

23.16 Payments on account

(a) Attention is drawn to section 6 of the Court of Protection Practice Direction 19B which allows professional deputies who elect for detailed assessment of their annual management charges to take payments on account for the first, second and third quarters of the year which are both proportionate and reasonable n relation to the size of the estate and the functions they have performed. Interim quarterly bills must not exceed 20% of the estimated annual management charges, that is to say, not more than 60% for the whole year.

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

SECTION 24 - LEGAL AID CASES

24.1 Introduction

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

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

(a) Where the costs are payable by another person as well as out of the legal aid fund, the rules governing commencement of detailed assessment proceedings, points of dispute and replies are the same as those which apply to between the parties cases generally. The Schedule of Costs Precedents includes model forms of bills for use in such cases (Precedents C and D).

(b) The request for a detailed assessment hearing must (in addition to the items set out in Section 9 above) be accompanied by:

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

(ii) a certificate in Precedent F(3) and where appropriate a certificate in Precedent F(4) of the Schedule of Costs Precedents (as to which, see Appendix para A-2);

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

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

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

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

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

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

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

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

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

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

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

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

24.4 Costs of detailed assessment proceedings

(a) Costs incurred on behalf of a legally aided party in respect of a detailed assessment between the parties are treated in the same way as other costs incurred on his behalf, and whether or not they are payable by the other party, may also be claimed against the legal aid fund. In general the party whose bill is the subject of detailed assessment is entitled to the costs of the detailed assessment proceedings. However the court may make some other order in relation to all or part of the costs of the detailed assessment proceedings. (See Section 13 above.)

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

24.5 Costs payable only out of the legal aid fund

(a) Where costs are payable only out of the legal aid fund, the legally aided party's legal representative may request a detailed assessment of costs within 3 months after the date upon which the right to detailed assessment arose. The request must be in Form N258A and must be accompanied by a copy of the bill of costs and the other documents listed in paragraph 13.2 of Practice Direction 47.

(b) Where the legal representative has certified that the legally aided party has a financial interest and wishes to attend, the court will, on receipt of the request for detailed assessment, fix a date for the detailed assessment hearing.

(c) Where the legal representative has certified that the legally aided party has no financial interest or does not wish to attend the detailed assessment, the court will provisionally assess the costs without the attendance of the solicitor, unless it considers that a hearing is necessary. After the court has provisionally assessed the bill, it will return it to the solicitor. If the legal representative informs the court within 14 days after he receives the provisionally assessed bill that he wants the court to hold a detailed assessment hearing, the court will fix a date for such hearing.

24.6 Duty to inform counsel

It is the duty of the legally aided party's legal representative to notify counsel in writing within 7 days after the detailed or provisional assessment where the fees claimed on his behalf have been reduced or disallowed on assessment and the legal representative must endorse the bill with the date on which such notice was given or that no such notice is necessary. If the bill is endorsed with the date upon which notice was given to counsel the court may not issue the certificate until 14 days have elapsed from the date so endorsed (see Civil Legal Aid (General) Regulations 1989, Regulation 112 and Precedent F(4) of the Schedule of Costs Precedents in Appendix 1, below, para A-2).

24.7 Completing the bill and the legal aid assessment certificate

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

24.8 Agreement of between the parties costs

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

24.9 Costs appeals

The legal representative for a legally aided party may appeal against a decision of a Costs Judge or District Judge in detailed assessment proceedings in accordance with rules of court (ie CPR Part 52) and if counsel acting for the legally aided party notifies the legal representative that he is dissatisfied with the decision the legal representative must appeal on counsel's behalf. The costs of any such appeal will only be payable out of the legal aid fund to the extent that the court hearing the appeal so orders. For the detailed Regulations relating to appeals involving legally aided parties see Civil Legal Aid (General) Regulations 1989, Regulation 113 as amended.

24.10 VAT on costs payable out of the legal aid fund

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

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

(ii) the legally aided party –

(aa) belongs in the United Kingdom or another member state of the European Union; and

(bb) is a private individual or receives the supply for non-business purposes.

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

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

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

(e) Any summary of costs payable out of the legal aid fund must be drawn so as to show the total VAT on Counsel’s fees as a separate item from the VAT on other disbursements and the VAT on profit costs. The different calculations of VAT will also be shown separately in any costs certificate payable out of the legal aid fund.

SECTION 25 – COSTS ORDERS AGAINST LEGALLY AIDED PARTIES AND/OR THE LORD CHANCELLOR

25.1 The Legal Aid Sentencing and Punishment of Offenders Act 2012 and the Regulations

(a) On 1 April 2013 Section 26 of the Legal Aid Sentencing and Punishment of Offenders Act (the Act) replaced Section 11 of the Access to Justice Act 1999. Section 26(1) of the Act provides that costs ordered against an individual who is a legally aided party in relevant civil proceedings must not exceed the amount (if any) which it is reasonable for that party to pay having regard to all the circumstances, including:

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

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

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

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

25.2 Orders which the court awarding costs may make

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

(b) If the court decided to make an order that the amount payable by the legally aided party is to be determined by a Costs Judge or District Judge, it may also state the amount that

that person would, had costs protection not applied, have been ordered to pay, ie, the full costs which would be determined by summary assessment. Alternatively the court may make findings of fact, eg, about the conduct of all the parties which must be taken into account by the Costs Judge or District Judge in the subsequent determination proceedings.

(c) The court will not make an order which specifies the amount which the legally aided party is to pay, unless it considers it has sufficient information before it to decide what amount is reasonable and either the order also states the amount of the full costs (ie, the amount which that person would had costs protection not applied have been ordered to pay) or the court is satisfied that the full costs would exceed the amount which it has specified the legally aided party must pay.

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

(e) A specimen order for costs made against a claimant, who is a legally aided party, is set out in the Appendix below, at para A-6.

25.3 Costs against the Lord Chancellor

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

(i) a Section 26(1) order is made against the legally aided party in the proceedings and the amount (if any) which the legally aided party is required to pay is less than the amount of the full costs;

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

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

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

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

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

(c) Where the application for funded services was made on or after December 2001 the three months time limit referred to in sub-paragraph (b) above may be extended if there is a good reason for the delay.

25.4 Orders which a Costs Judge or District Judge may subsequently make

(a) An order for costs to which Section 26 of the Act applies may specify the amount of full costs and may specify the amount payable by the legally aided party. Where appropriate a request may be made to the District Judge or Costs Judge of the relevant court to determine:

(i) the amount of full costs;

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

(iii) the amount payable by the Lord Chancellor.

(b) The procedures for determining the liability of a legally aided party under a Section 26(1) costs order and for obtaining a costs order against the Lord Chancellor are set out at paragraph 9 to 20 of the Regulations which are briefly summarised below.

25.5 Form of request

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

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

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

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

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

25.6 The response by the legally aided party

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

(b) The 21 day time limit mentioned above may be extended by agreement between the parties and/or by order of the court.

25.7 Effect of non compliance by the legally aided party

If the legally aided party fails to file the statement of resources without good reason the court will determine his liability (and the full amount of costs if relevant) and need not hold an oral hearing for any such determination.

25.8 Further procedure where a statement of resources by the legally aided party is filed or is not required

(a) When the legally aided party files a statement of resources the court will fix a hearing date and give the relevant parties at least 14 days notice. If the application is made only against the Lord Chancellor, the court may fix a hearing date at the time of issue of the request.

(b) The request which proceeds to a hearing to determine liability of the legally aided party will, in the first instance, be listed as a hearing to be held in private. At the start of the hearing or during it any party may request the court to rule that thereafter the hearing should be conducted in public.

25.9 Response by the Lord Chancellor

The Lord Chancellor or his representative may appear at any hearing at which a costs order may be made against him.

25.10 Costs of request

When dealing with the request the court has a discretion as to whether the costs of the request or application are payable by one party to another, the amount of those costs and (if relevant) when they are to be paid.

25.11 Statement of resources

(a) A "statement of resources" should set out the details of the financial resources and expectations of the maker of the statement and of his "partner" (the person with whom he or

she lives as a couple). The resources of a partner are not treated as the legally aided party's resources if the partner has a contrary interest in the proceedings.

(b) The full definition of "statement of resources" is given in paragraph 14 of the Regulations. In order to comply with that paragraph the party making a statement of resources may be able to adapt the text of Form N9A a copy of which is obtainable from the court office or from a Citizens Advice Bureau.

(c) The Regulations provide for the filing of statements of resources not only by the legally aided party, but also by the receiving party. As regards costs incurred in appeal proceedings, applications are often made by large commercial companies or litigants who are insured or who are publicly funded and so are not expecting to receive any costs from the legally aided party. In such cases a statement of resources stating merely "the applicant is able to pay his costs out of its own resources" or "is insured" or "is a publicly funded body" will suffice. In such cases the court will assume that the applicant will not suffer any financial hardship if the application against the legally aided party fails.

(d) Where the court is determining a request for a costs order against the Lord Chancellor and the costs were not incurred in appeal proceedings, a statement of resources does not have to be filed by the non legally aided party.

25.12 Specimen forms of order

Para A-6 of the Appendix below sets out a specimen order for costs against a claimant who is a legally aided party and also a specimen order for use by a Costs Judge or District Judge when determining the amount of costs payable by a legally aided party.

SECTION 26 - APPLICATIONS UNDER THE SOLICITORS ACT 1974

26.1 Introduction

(a) Application may be made under Section 70 of the Solicitors Act 1974 for an order for the detailed assessment of a solicitor's bill of costs. The application can relate to the whole bill, or can be limited to the profit costs only or to the disbursements only. Most such applications are made by the client or former client of the solicitor who delivered the bill. It is unusual for solicitors to make the application even though there is no time limit under the Act for doing so. More often, solicitors who have bills that are unpaid, bring debt proceedings instead and, if prevented from obtaining a default judgment, seek summary judgment for an amount "to be assessed" (see High Court Practice Form 15). The court will then make an order that the bill(s) be assessed under the Act and that the solicitors will be entitled to judgment for any sum certified as being due at the conclusion of that process.

(b) Application may also be made under Section 71 of the 1974 Act where a bill of costs is payable by a party who is not the client of the solicitors. For example beneficiaries under a will or a borrower whose mortgage or charge obliges him to pay the legal costs of the lender (usually a bank or a building society). However, in *Tim Martin Interiors v Akin Gump* LLP 3 Costs LR 325, the Court of Appeal stated that following its judgment in that case, "third party proceedings will become rare" (Lloyd LJ at 102). Instead, the third party seeking an assessment under s.71 should bring a claim in the Chancery Division for an account.

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

26.2 Detailed assessment as of right or on terms

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

(b) If the application is made more than one calendar month, but less than a year from receipt of the bill, the Costs Judge may impose conditions, for example, that the amount of

the bill should be paid into court and to remain there until the result of the detailed assessment is known.

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

(i) 12 months have elapsed from the delivery of the bill or

(ii) Judgment has been obtained for the recovery of the costs covered by the bill or

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

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

26.3 The forms to use

(a) Application for the detailed assessment of a solicitor's bill of costs is made by a claim form to which CPR Part 8 applies. The specimen form is set out in the Appendix, below, para A-7. This form is also used for other applications under the Act.

(b) If an order for detailed assessment is made there are two standard forms of order: precedents L and M in the Schedule of Costs Precedents included in the Costs Practice Direction (see further, para 26.5, below) depending upon whether the solicitors or the client issued the application.

26.4 Commencing the application

(a) Applicants must send or bring to the SCCO

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

(ii) A cheque for the fee made payable to HMCTS or HM Courts and Tribunals Service (as to which, see para 27.1, below).

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

(b) Once the payment of the fee has been processed, the application will be passed to the application clerk in Room 7.12 Thomas More Building, Royal Courts of Justice, who will list it for hearing before a Costs Judge. The court will serve the application unless, for example, the applicant requests permission to serve it. The application will usually be listed for a short appointment (15 minutes). If a second hearing is needed the matter will be adjourned to a new date with a longer time estimate. This step may become due, for example, when evidence is filed in reply to the application.

(c) The application notice must be supported by a statement of truth, but in most cases, witness statement evidence is not required unless the application is contested. This may occur where the applicant needs to show special circumstances under Section 70(3) of the Act or where the Costs Judge directs.

26.5 The hearing of the application

(a) Where an application is made by a litigant in person, an order for detailed assessment will not normally be made in the absence of the parties. The litigant in person must attend in order that the Costs Judge may explain the effect of Section 70(9) of the Act ("the one-fifth rule", as to which, see para 26.6 below).

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

(c) It is now common practice for a time-table to be incorporated into the order, based upon Rule 46.10 dealing with service of a breakdown of the bill, service of points of dispute, any reply and the request for a hearing date. A specimen order is included in the Appendix, below, para A-8.

(d) The costs of the application will usually be treated as part of the costs of the detailed assessment and dealt with at the conclusion of the detailed assessment hearing unless the

application is unsuccessful, in which case the applicant will usually be ordered to pay the costs.

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

26.6 The costs of the assessment

Statutory provisions apply where costs are assessed under Sections 70 or 71 of the Solicitors Act 1974. If the bill or bills are reduced by one fifth or more the solicitors will be ordered to pay the costs of the detailed assessment. If the bill or bills are reduced by less than one fifth the other party will be ordered to pay the costs of the detailed assessment (see section 70(9)). However, if the Costs Judge is satisfied that there are special circumstances relating to the bill or to the assessment, he may make such order about the costs of the assessment as he thinks fit.

SECTION 27 - COURT FEES PAYABLE IN THE SCCO IN CIVIL CASES

27.1. Introduction

(a) The fees payable for civil proceedings within the SCCO are set out in the Civil Proceedings Fees Amendment No. 2) Order 2013 (SI 2013 No 1410 (L.13) which came into force on 1 July 2013. It sets out the fees payable in the Senior Courts and County Courts of England and Wales.

(b) The following list, whilst not exhaustive, includes the fees most commonly encountered in matters before the Senior Courts Costs Office, and are valid at the time of publication. The paragraph numbers are those which appear in the Order.

5 Determination of costs (Senior Court and county court)	
Fee 5 does not apply to the determination in the Senior Courts of costs incurred in the Court of Protection.	
5.1 On filing a request for detailed assessment where the party filing the request is legally aided, is funded by the Legal Services Commission or is a person for whom civil legal services have been made available under arrangements made by the Lord Chancellor under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(h) and no other party is ordered to pay the costs of the proceedings.	£195
5.2 On the filing of a request for detailed assessment in any case where fee 5.1 does not apply; or on filing a request for a hearing date for the assessment of costs payable to a solicitor by a client pursuant to an order under Part 3 of the Solicitors Act 1974 where the amount of the costs claimed:	
(a) does not exceed £15,000;	£325
(b) exceeds £15,000 but does not exceed £50,000;	£655
(c) exceeds £50,000 but does not exceed £100,000;	£980
(d) exceeds £100,000 but does not exceed £150,000;	£1,310
(e) exceeds £150,000 but does not exceed £200,000;	£1,635

(f)	exceeds £200,000 but does not exceed £300,000;	£2,455
(g)	exceeds £300,000 but does not exceed £500,000;	£4,090
(h)	exceeds £500,000.	£5,455
Where there is a combined party and party and legal aid, or a combined party and party and Legal Services Commission, or a combined party and party and Lord Chancellor, or a combined party and party and one or more of legal aid, Legal Services Commission or Lord Chancellor determination of costs, fee 5.2 will be attributed proportionately to the party and party, legal aid, Legal Services Commission or Lord Chancellor (as the case may be) portions of the bill on the basis of the amount allowed.		
5.3	On a request for the issue of a default costs certificate.	£60
5.4	On commencing an appeal against a decision made in detailed assessment proceedings.	£205
5.5	On a request or application to set aside a default costs certificate.	£105
6	**Determination in the Senior Court of costs incurred in the Court of Protection**	
6.1	On the filing of a request for detailed assessment:	
(a)	where the amount of the costs to be assessed (excluding VAT and disbursements) does not exceed £3,000;	£110
(b)	in all other cases.	£220
6.2	On an appeal against a decision made in detailed assessment proceedings.	£65
6.3	On a request or application to set aside a default costs certificate.	£65
1.8	**(Starting proceedings)**	
(b)	On an application for an order under Part 3 of the Solicitors Act 1974(b) for the assessment of costs payable to a solicitor by a client or on starting costs-only proceedings.	£45
	(General fees)	
2.6	On an application on notice where no other fee is specified.	£80
2.7	On an application by consent or without notice where no other fee is specified.	£45

27.2 Time for payment

Normally a request, an application or an appeal will not be accepted by the court office unless the appropriate fee is first paid. This should be in the form of a cheque payable to HMCTS or HM Courts and Tribunals Service. In exceptional circumstances a costs officer may allow an application to be issued on an undertaking by the applicant or his solicitors that the appropriate fee will be paid within a limited period thereafter.

27.3 Exemptions

(a) No fee is payable by a party who, at the time when the fee would otherwise be payable, is in receipt of a qualifying benefit or is in receipt of legal aid for the purposes of the proceedings.

(b) "Qualifying benefits" referred to above are as follows:

(i) income support;

(ii) Guarantee Credit under the State Pension Credit Act (Northern Ireland) 2002

(iii) Income based job seekers allowance

(iv) Working Tax Credit provided that the applicant's gross annual income is less than the current cut-off (this changes in each financial year).

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

(d) Where a fee has been paid which was not payable under the above provisions, or which has been reduced because of undue financial hardship, the fee will be refunded provided the party who paid the fee applies within six months of payment. The six month

time limit may be extended if there is good reason for the application being made after the end of the six month period.

27.4 Appeal fee

An appeal, whether from a Costs Judge or from a Costs Officer, attracts a fee (currently £205). It is to be noted that informal appeals from Costs Officers to Costs Judges by letter are not permissible. The appropriate appeal notice must be used and the fee paid.

27.5 Fee for transcripts

Although proceedings in the SCCO are recorded no transcripts of the recordings are made unless and until a party applies for a transcript and pays the fee. Application must be made by letter or telephone call to Courts Recording and Transcriptions Unit (CRATU) at the RCJ, who will release the tapes only to one of the official tape transcribers (a list of whom is available from CRATU. The amount of the fee payable for transcription will depend on the nature and length of the hearing.

27.6 Fee for providing copies

In certain circumstances parties and other persons can inspect the SCCO file of a case and obtain copies of any document thereon (see para 1.6, above). The current fees are the following (paragraph references are to the Civil Proceedings Fees (Amendment No.2) Order 2013):-

4.1	On a request for a copy of a document (other than where fee 4.2 applies):	
(a)	for ten pages or less;	£5
(b)	for each subsequent page.	50p

The fee payable under fee 4.1 includes:

where the court allows a party to fax to the court for the use of that party a document that has not been requested by the court and is not intended to be placed on the court file;

where a party requests that the court fax a copy of a document from the court file; or

where the court provides a subsequent copy of a document which it has previously provided.

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

SECTION 28 – ASSESSMENT UNDER THE HIGH COURT ENFORCEMENT OFFICERS REGULATIONS 2004

28.1 Introduction

(a) The responsibilities which sheriffs used to have concerning the enforcement of certain civil judgments have now passed to High Court Enforcement Officers ("enforcement officers") who are appointed by the Lord Chancellor. Further details about them can be found in the Courts Act 2003, section 99 and Schedule 7, and the High Court Enforcement Officers Regulations 2004 (SI No.2004/400).

(b) Once appointed and assigned to a district, an enforcement officer must undertake enforcement action for all writs of execution received which are to be executed at addresses which fall within his assigned district.

28.2 Prescribed fees chargeable by enforcement officers

(a) Schedule 3 to the High Court Enforcement Officers Regulations 2004 sets out the fees which may be charged by enforcement officers.

(b) In respect of executions against goods the main fees are a percentage of the amount recovered (Fee 1), mileage (at 29.2 pence per mile) in respect of one journey to seize goods and, if appropriate, one journey to remove the goods (Fee 2) and, if goods are sold by auction further percentage fees to cover auctioneer's expenses (Fee 6). There are also several nominal fees for administrative steps: for example, a sum not exceeding £2 for making enquiries as to claims for rent or to goods, including giving notice to parties of any such enquiries (Fee 4(1)) and a further sum not exceeding £2 for all expenses actually and reasonably incurred in relation to such work including any postage, telephone, fax and e-mail charges (Fee 4(2)).

(c) A particular fee which sometimes leads to disputes is Fee 12, which states as follows:

> "*Miscellaneous* For any matter not otherwise provided for, such sum as a Master, district judge or costs judge may allow upon application."

(d) Where a High Court writ for execution against goods is completed by sale, fees 1, 2, 3, 4, 5, 6(1) and 7 may be levied by deducting them from the proceeds of sale.

28.3 Applications for detailed assessment of fees charged by enforcement officers

(a) An enforcement officer or a party liable to pay any fees under Schedule 3 of the Regulations mentioned above may apply to a Costs Judge or a District Judge of the High Court for an assessment of the amount payable by the detailed assessment procedure in accordance with the Civil Procedure Rules 1998.

(b) The notice of application should be in Form N244 seeking "an order for detailed assessment pursuant to Regulation 13 of the High Court Enforcement Officers Regulations 2004". Three copies of the application should be filed together with copies of any relevant documents (such as the bill delivered by the enforcement officer) and the appropriate court fee or fee exemption certificate (see Section 27, above).

(c) Once the formalities of filing have been completed, the application will be listed for a first hearing and each side will be given at least 14 days' notice of the hearing date.

(d) The first hearing is a directions hearing only: the costs judge will decide whether to make an order for detailed assessment and, if he does so, will give timetable directions which, as far as possible, are convenient to all parties. The parties should attend the first hearing ready to inform the Costs Judge of any dates within the next 4 months upon which they will not be available to attend a detailed assessment.

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28.4 Procedure where detailed assessment is ordered

(a) If detailed assessment is ordered the Costs Judge will usually identify the document to be subject to detailed assessment, and give directions which:

(i) dispense with the requirement for filing a Notice of Commencement,

(ii) dispense with the requirement to serve Points of Dispute (if, for example, these have already been set out clearly in an earlier document),

(iii) specify the dates by which the parties must exchange any witness statements or other evidence they wish to rely upon at the detailed assessment,

(iv) specify the date by which the enforcement officer must serve any reply to the points of dispute he wishes to rely upon,

(v) specify a later date upon which the enforcement officer must file a request for detailed assessment, and

(vi) deal with the costs of the application (for example, making an order that the costs of the application shall be treated as part of the costs of the assessment).

(b) The directions will also include provision for either side to request further orders or directions if their opponent fails to comply with the timetable set down, or if there is any substantial change of circumstances warranting some further or other directions.

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SECTION 29 - THE FINANCIAL SERVICES AND MARKETS ACT 2000

29.1 Orders for costs between the parties

(a) The Financial Services and Markets Act 2000, Section 132 provides for the establishment of the Financial Services and Markets Tribunal as part of the scheme for the regulation of financial services and markets. Schedule 13 to the Act empowers the Tribunal to order payment of costs in certain circumstances by one party to another in proceedings before the Tribunal.

(b) The Financial Services and Markets Tribunal Rules 2001 (SI 2001 No.2476) provide that where the Tribunal makes a costs order it may order that an amount fixed by the Tribunal shall be paid by one party to another, or that the costs shall be assessed on such basis as it may specify "by a costs official" (Rule 21(3)).

(c) Where an order for costs to be assessed is made by the Tribunal the costs will be assessed in the SCCO in accordance with the procedure set out in Sections 4 to 19 of this Guide (briefly, service of a bill plus notice of commencement and certain other documents, obtaining a default costs certificate, or, if points of dispute are served, serving a reply and/or filing a request for a detailed assessment hearing).

29.2 Costs under the Financial Services and Markets Tribunal Legal Assistance Scheme

(a) The Financial Services and Markets Tribunal (Legal Assistance) Regulations 2001 (SI 2001 No.3632) and The Financial Services and Markets Tribunal (Legal Assistance) Scheme (Costs) Regulations 2001 (SI 2001 No.3633) are long and detailed. The provisions are similar to but not the same as those governing the assessment of costs in criminal proceedings. This Guide contains the barest outline and should not be relied upon as a comprehensive version of the Regulations. Reference should therefore be made to the Regulations themselves.

(b) The Legal Assistance Regulations govern the provision of legal assistance in respect of matters which are referred to the Tribunal by individuals against whom the Financial Services Authority has decided to take action in respect of alleged market abuse. The Costs Regulations make provision for the remuneration of work done under a legal assistance order in respect of cases before the Tribunal. They make provision for interim and staged payments in long cases and also for hardship payments. The two Schedules to the Costs Regulations set out details of the fees in respect of solicitors and advocates which are payable.

29.3 Claims for costs by solicitors

(a) Solicitors are required to submit their claims for costs within three months of the conclusion of the proceedings to which the claim relates. The costs will be determined by a costs officer of the SCCO. The claim should be documented in the same way, as far as possible, as a claim to a Crown Court determining officer would be, in respect of costs payable under a criminal legal aid order.

(b) The classes of work in respect of which a claim for costs may be made are:

(i) preparation, including taking instructions, advising, interviewing witnesses, ascertaining the Authority's case, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing the advocacy, instructing an advocate and expert witnesses, conferences and consultations;

(ii) advocacy;

(iii) attending at court where an advocate is assigned, including conferences with the advocate at court;

(iv) travelling and waiting; and

(v) dealing with routine letters written and routine telephone calls (Regulation 13(1)).

(c) Fees will be allowed, as appropriate, to the following grades of fee earner:

(i) senior solicitor;

(ii) solicitor, legal executive or fee earner of equivalent experience;

(iii) trainee or fee earner of equivalent experience (Regulation 13(6)).

29.4 Claims for fees by an advocate

(a) An advocate wishing to claim fees in respect of work done under a legal assistance order must submit the claim within three months of the conclusion of the proceedings to which it relates. The costs claimed will be determined by a costs officer of the SCCO. The claim should be documented in the same way, as far as possible, as a claim to a Crown Court determining officer would be, in respect of costs payable under a criminal legal aid order.

(b) The classes of fee which may be allowed are as follows:

(i) a basic fee for preparation, including preparation for any hearing before the main hearing, and, where appropriate, the first day of the main hearing including where they took place on that day, short conferences, consultations, applications and appearances and any other preparation;

(ii) a refresher fee for any day or part of a day during which a hearing continued, including, where it took place on that day, short conferences, consultations, applications and appearances, and any other preparation;

(iii) subsidiary fees for:

(a) attendance at conferences and consultations not covered by (a) or (b) above;

(b) written advices or other written work; and

(c) attendance at hearings before the main hearing, applications and appearances not covered by (a) or (b) above (Regulation 16(2)).

29.5 Interim payments, staged payments and hardship payments

(a) The Financial Services and Markets Tribunal (Legal Assistance) Scheme (Costs) Regulations 2001, Regs 6, 8, 9 and 10 permit the making of applications to a costs officer in respect of the interim payment of disbursements already made, staged payments in long cases, interim payments in respect of attendances already made before the Tribunal and hardship payments in certain other circumstances. The application should be made in writing addressed to a Principal Costs Officer and should be in a form similar to that used in similar applications to Crown Court determining officers.

(b) The procedures for redetermination, appeal and further appeal (see below) do not apply to decisions made by a costs officer concerning interim payments or staged payments.

(c) At the conclusion of a case in which an interim payment, staged payment or hardship payment has been allowed:

(i) the representative must submit a claim for the determination of his overall remuneration whether or not such a claim will result in any payment additional to those already made; and

(ii) the costs officer will take into account any payments already made when determining what, if any, further sum is payable to the representative, or, as the case may be, what, if any, sum should be repaid by him.

29.6 Redetermination of costs

(a) Where a representative is dissatisfied with the costs which have been determined, application may be made for redetermination of the costs. The application must be made within 21 days of the receipt of notification of the costs payable. The application should be

made in writing to the costs officer specifying the matters in respect of which the application is made and the grounds of objection.

(b) The form of application should be similar to the form of application for redetermination used in the Crown Courts and should be accompanied by the particulars, information and documents supplied in connection with the original claim and must also state whether the applicant wishes to appear or be represented. If the applicant does wish to appear or be represented the costs officer will notify the applicant of the time and date of hearing.

(c) Having considered the applicant's submissions the costs officer will redetermine the costs, whether by way of increase or decrease, and will notify the applicant of the decision. The applicant may then request in writing that the appropriate officer give reasons for his decision. Such a request must be made within 21 days of the receipt of the notification of the decision on redetermination (Regulation 19).

29.7 Appeals to a Costs Judge

(a) Where a costs officer has given reasons for the decision on determination and redetermination a representative who is dissatisfied with the decision may appeal to a Costs Judge. The appeal must be brought within 21 days of the receipt of the costs officer's reasons. The appeal is by notice in writing to the Senior Costs Judge in a similar form to that used in criminal fee appeals (see Appendix , para A-9).

(b) The notice of appeal must specify separately:

(i) each item appealed against, showing, where appropriate, the amount claimed for the item;

(ii) the amount determined and the grounds of the objection to the determination; and

(iii) state whether the appellant wishes to appear or to be represented, or whether he will accept a decision given in his absence.

(c) The notice of appeal must be accompanied by:

(i) a copy of the written representations made to the costs officer on the application for redetermination;

(ii) the costs officer's reasons for his decision on redetermination; and

(iii) the particulars, information and documents supplied to the costs officer on redetermination.

(d) If so directed by the Lord Chancellor, or in any other case where it appears appropriate to do so, the Senior Costs Judge will send to the Lord Chancellor a copy of the notice of appeal together with the supporting documents. The Lord Chancellor may arrange for written or oral representations to be made on his behalf and if he intends to do so he will inform the Senior Costs Judge and the appellant. The appellant will be permitted a reasonable opportunity to make representations in reply.

29.8 Conduct of the appeal

(a) The Costs Judge will inform the interested parties of the date of any hearing and may give directions as to the conduct of the appeal.

(b) The Costs Judge may consult the Tribunal or the costs officer and may require the appellant to provide any further information which is required for the purpose of the appeal.

(c) Unless the Costs Judge otherwise directs no further evidence will be received on the hearing of the appeal and no ground of objection will be valid which was not raised on the application for redetermination.

(d) The Costs Judge has the same powers as the costs officer and may alter the redetermination of the costs officer in respect of any sum allowed, whether by increase or decrease as he thinks fit.

(e) The decision of the Costs Judge will be given to the interested parties and the costs officer in writing. Except where he confirms or decreases sums redetermined, the Costs Judge may allow the appellant a sum in respect of part or all of any reasonable costs incurred in connection with the appeal.

29.9 Further appeals to a High Court Judge

(a) The decision of the Costs Judge on appeal is final unless the Costs Judge certifies a point of principle of general importance. A representative who is dissatisfied with the decision of the Costs Judge on appeal may apply for such a certificate. That application must be made within 21 days of the notification of the Costs Judge's decision on appeal. Where the Costs Judge certifies a point of principle of general importance the representative may appeal to the High Court against the decision of the Costs Judge and the Lord Chancellor must be made a respondent to such an appeal. The appeal must be brought within 21 days of receipt of the Costs Judge's certificate.

(b) If the Lord Chancellor is dissatisfied with the decision of the Costs Judge on appeal he may, if no appeal has been made by the representative, appeal to the High Court against that decision.

(c) An appeal to the High Court must be brought in the Queen's Bench Division and follow the procedure set out in CPR Part 8. The appeal will be heard and determined by a Single Judge whose decision is final. The Judge has the same powers as the costs officer and the Costs Judge and may reverse, affirm or amend the decision appealed against or make such other order as he thinks fit.

29.10 Extension of time limits

(a) All the time limits referred to may for good reason be extended by the costs officer, the Costs Judge or the High Court as appropriate.

(b) Where a representative, without good reason has failed to comply with the time limit, time may be extended in exceptional circumstances and in such circumstances the costs officer, Costs Judge or High Court Judge will consider whether it is reasonable in the

circumstances to reduce the costs. The representative will be allowed a reasonable opportunity to show cause orally or in writing why the costs should not be reduced. A representative may appeal to a Costs Judge against a decision under these provisions made by a costs officer under the procedure described in paragraph 29.8 above.

SECTION 30 – TRANSITIONAL PROVISIONS RELATING TO SUCCESS FEES AND ATE INSURANCE PREMIUMS

30.1 Cases covered in this section

(a) In certain cases the Access to Justice Act 1999 still permits the recovery of costs under a conditional fee agreement which provides for a success fee and permits the recovery of sums paid or payable in respect of after the event insurance. It should be noted that, although family proceedings cannot be the subject of an enforceable conditional fee agreement (with or without a success fee) the reasonable cost of after the event insurance premiums in such proceedings may be recoverable.

(b) As from 1 April 2013 the Government has implemented the recommendations made by Jackson L.J. (in his Review of Civil Litigation Costs: Final Report (December 2009)) to abolish the general recovery of success fees and ATE premiums from the losing side. There is however a very large group of cases which are not affected by these changes; instead, they are governed by the CPR in force prior to April 2013 in which the definition of "costs" specifically included success fees and insurance premiums. The current CPR refer to these cases as "proceedings where the claimant has entered into a pre-commencement funding arrangement as defined in the new r.48.2". The term pre-commencement in this context does not simply mean "before 1 April 2013". The list of funding arrangements given below demonstrates that there are circumstances in which the old rules will govern new cases which are commenced long after 1 April 2013.

1. A conditional fee agreement ("CFA") with success fee entered into before 1 April 2013, whether proceedings in relation to it are commenced before or after 1 April 2013 (new r.48.2(1)(a)(i)(aa)).

2. A collective CFA (see Ch.2) with success fee entered into before 1 April 2013 but only if advocacy or litigation services for the person by whom the success fee is payable were provided before 1 April 2013 (new r.48.2(1)(a)(i)(bb)).

3. An ATE insurance policy taken out before 1 April 2013 (new r.48.2(1)(a)(ii)).

4. A sum claimed in respect of "self insurance" notionally incurred by a litigant whose case is funded by a trade union or similar "membership organisation" where, before 1

April 2013, that organisation specifically agreed to indemnify the person now claiming that sum from another party (new r.48.2(1)(a)(iii)).

5. In certain insolvency proceedings (including claims brought by a trustee in bankruptcy or the liquidator of a company) a CFA with success fee, a collective CFA with success fee or an ATE policy entered into or taken out before the arrival of a date upon which the new laws as to success fees and insurance costs comes into force in proceedings of this type (new r.48.2(1)(b)).

6. In certain publication and privacy proceedings (including defamation, misuse of private information, and breach of confidence involving publication to the general public) a CFA with success fee, a collective CFA with success fee or an ATE policy entered into or taken out before the arrival of a date upon which the new laws as to success fees and insurance costs comes into force in proceedings of this type (new r.48.2(1)(b) again).

7. In certain claims for damages in respect of diffuse mesothelioma (e.g. injuries caused by exposure to asbestos dust particles in the air) a CFA with success fee, a collective CFA with success fee or an ATE policy entered into or taken out before the arrival of a date upon which the new laws as to success fees and insurance costs comes into force in proceedings of this type (new r.48.2(1)(b) again).

(c) Further information about success fees and ATE premiums, and the procedures to be followed to deal with possible success fee disputes between legal representatives and clients are given below.

30.2 Glossary of terms used in this section

Additional liability	Items of costs which are recoverable in certain circumstances: that part of a success fee (defined below) under a conditional fee agreement (also defined below) which is recoverable from a paying party and/or a reasonable sum in respect of a relevant insurance premium (also defined below) and/or an additional amount which is sometimes recoverable in respect of "self insurance" notionally incurred by a litigant whose case is funded by a trade union or similar body. These three forms of additional liability are the items about which the paying party should have received a notice of funding (defined below).
Conditional fee	An agreement with a legal representative which provides for the

agreement	payment of fees or part of them only in specified circumstances ("CFA"). A party who wishes to recover a success fee payable under the agreement from his opponent should serve a notice of funding on the opponent at the outset of the claim.
CPD	The Costs Practice Direction, supplementing the CPR which were in force before 1 April 2013
Funding arrangement	An arrangement made by a litigant which gives rise to an additional liability (defined above).
Insurance premium	The sum paid or payable by a litigant who has taken out an "after the event" insurance policy taken out in respect of particular litigation and covering against the risk of losing that litigation.
Notice of Funding	A notice (usually in Form N251) by which one party warns another of any additional liability (defined above) which may later be recoverable.
Success fees	An additional fee which is payable in certain circumstances under the terms of a conditional fee agreement. The success fee must be expressed as a percentage of the other profit costs payable under the agreement.

30.3 Compliance with CFA and Collective CFA Regulations

(a) The indemnity principle provides that a successful party cannot recover from an unsuccessful party more by way of costs than the successful party is liable to pay to his or her legal representatives (see Section 2.6). However, the Access to Justice Act 1999 provides that a conditional fee agreement can be made whereby the fees and expenses of the successful party's legal representatives will be payable even though the indemnity principle would otherwise prevent it.

(b) In the transitional cases listed in paragraph 30.1 above, a conditional fee agreement is unenforceable unless it satisfies all the conditions imposed by Section 58 of the Courts and Legal Services Act 1990 (as amended by the Access to Justice Act 1999) and the Regulations made under it (where the CFA or CCFA was entered into before 1 November 2005).

(c) If the court rules that a conditional fee agreement is unenforceable, the client under that agreement will not be liable to pay any fees or disbursements under it. Similarly, because of the indemnity principle, he will not be able to recover any of those fees and disbursements from any other litigant. However, the client may be able to recover any disbursements which he has already paid.

30.4 Notices of funding

(a) In cases covered in this Section, a party who wishes to claim an additional liability from a paying party must give any other party information about the funding arrangement and must also provide similar information when the funding arrangement changes. Information is given on Form N251. The party must state whether he has entered into a conditional fee agreement which provides for a success fee; taken out an insurance policy to which Section 29 of the Access to Justice Act 1999 applies; or made an arrangement with a membership organisation for the purpose of Section 30 of the Access to Justice Act 1999 (CPR 44.15). CPD Section 19 gives further details about the information to be given.

(b) When giving notice of funding in respect of a conditional fee agreement with a success fee, the party must state the date of the agreement and identify the claim or claims to which it relates.

(c) Where the funding arrangement is an after the event insurance policy, the party must state, when giving notice of funding, the name and address of the insurer, the policy number and the date of the policy and must identify the claim or claims to which it relates. The party must also state the level of cover provided by the insurance and state whether the premium payble under it is staged and, if so, the points at which an increased premium is payable.

(d) To be recoverable, the insurance premium must have been paid or must be payable for insurance against the risk of incurring a costs liability in the proceedings, which was taken out *after* the event that is the subject matter of the claim (CPR 43.2(1)(m)).

(e) Where the funding arrangement is with a membership organisation, the party must state when giving notice of funding, the name of the body and must set out the date and terms of the undertaking it has given and must identify the claim or claims to which it relates.

(f) Where a party has entered into more than one funding arrangement in respect of a claim, for example a conditional fee agreement and an insurance policy, a single notice containing the information set out in Form N251 may contain the required information about both or all of them.

30.5 Earliest time for detailed assessment of additional liabilities

The court will not assess any additional liability until the conclusion of the proceedings, or that part of the proceedings to which the funding arrangement relates. At the conclusion of the proceedings the court may make a summary assessment of all the costs, including any additional liability; make an order for detailed assessment of the additional liability but make a summary assessment of the other costs; or make an order for detailed assessment of all the costs (CPR 44.3A).

30.6 Documents to accompany the Notice of Commencement

(a) Where a party seeks the detailed assessment of an additional liability the details which he must give together with the bill and notice of commencement are as follows:

- In the case of a conditional fee agreement with a success fee:

  (i) a statement showing the amount of any costs which have been summarily assessed or agreed and the percentage increase which has been claimed in respect of those costs;

  (ii) a statement of the reasons for the percentage increase (where the CFA or CCFA was entered into before 1 November 2005); and

  (iii) a copy of the agreement itself or, alternatively, a statement setting out information a to the definitions of "win" and, if applicable "lose", details of the receiving party's liability to pay costs in the event of a win, loss or failure to beat a Part 36 offer.

- If the additional liability is an after the event insurance premium a copy of the insurance certificate showing whether the policy covers:

  (i) the receiving party's own costs;

  (ii) his opponent's costs; or

  (iii) his own costs and his opponent's costs; and

  (iv) the maximum extent of that cover and the amount of the premium paid or payable.

- If the receiving party claims an additional amount under Section 30 of the Access to Justice Act 1999 (Membership Organisations) a statement setting out the basis upon which the receiving party's liability for the additional amount is calculated.

30.6 Where points of dispute challenge success fees

If a paying party challenges the amount of a success fee claimed on behalf of counsel or a solicitor, it may become necessary for the court to rule not only upon that point of dispute, but also upon the liability of the receiving party to pay to his legal representatives any disallowed amount. The procedure to be followed in such cases is set out in paragraph 30.9 below.

30.7 Factors to be taken into account during assessment

(a) A party may not recover as an additional liability –

  (i) any proportion of a success fee which is to compensate the legal representative for the fact that he will have to wait to be paid his fees and expenses; or

  (ii) any amount (when the agreement is made with a membership organisation) which exceeds the likely cost of taking out after the event insurance to cover another party's costs; or

(iii) any additional liability during a period in which he (or she) failed to provide to the other party the information required by the court or by the Rules and Practice Directions about the funding arrangements or the reasons for setting the level of a success fee.

(b) Where a success fee is irrecoverable for the reasons given in (a)(iii) above, the court may consider granting relief from the sanctions. CPR 3.9 sets out the circumstances in which the court may grant relief.

(c) The court will consider the amount of any additional liability separately from the base costs and a success fee will not be reduced simply because, when added to the base costs, it appears to be disproportionate.

(d) In deciding whether the base costs are reasonable the court will consider the factors set out in CPR 44.5.

(e) When considering the amount of an additional liability the court will have regard to the facts and circumstances as they reasonably appeared when the agreement was made (or varied).

(f) Factors to be taken into account in deciding whether a success fee is reasonable include:

(i) the risk that fees or expenses might not become payable;

(ii) the legal representative's liability to fund disbursements;

(iii) what other methods of funding the costs were available.

(g) In costs only proceedings (see Section 21) the court will have regard to the time when and the extent to which the claim had been settled without the need to commence proceedings.

(h) Factors to be taken into account in deciding whether an after the event insurance premium is reasonable include:

(i) how its cost compares with the likely cost of funding the case with a conditional fee agreement with a success fee and supporting insurance (if it is not already so funded);

(ii) the level and extent of the insurance cover provided;

(iii) the availability of pre-existing insurance cover;

(iv) whether any part of the premium would be rebated in the event of early settlement;

(v) the amount of commission payable to the receiving party or his legal representatives or agents.

(i) The additional amount recoverable in respect of the membership organisation must not exceed the likely cost of the premium of an insurance policy against the risk of incurring a liability to pay the costs of other parties to the proceedings.

30.8 Fixed success fees

CPR Part 45 provides for fixed success fees in certain road traffic accident disputes and certain Employers' Liability claims.

30.9 Disputes between legal representatives and their clients

(a) The following notes in this section apply only to cases in which the relevant CFA or CCFA was entered into before 1 November 2005. The Regulations which continue to govern such agreements (see above) provide that, in certain circumstances, if a success fee allowed on assessment is lower than the contractual success fee, the disallowed amount ceases to be payable under the agreement unless the court is satisfied that it should continue to be so payable. CPR

44.16 and CPD Section 20 set out the procedure, summarised below, by which a ruling can be obtained as to whether the disallowed amount should continue to be payable by the client.

(b) If the points of dispute served by the paying party challenge a success fee claimed in respect of counsel's fees, the solicitor must so inform counsel within three days and counsel must reply within ten days or be taken to accept the reduction (unless the court otherwise orders).

(c) If points of dispute served by the paying party challenge the success fee of the solicitor or counsel, the solicitor must write to the client within three days giving a clear written explanation of the dispute and the effect it will have if it is upheld in whole or in part. The letter must also explain the client's right to attend any subsequent hearing at court when the matter is raised and should invite the client to inform the solicitors whether or not the client wishes to attend any subsequent hearings.

(d) When requesting a hearing date (see Section 8.1) the solicitor must certify:

(i) the existence of any dispute as to the success fee,

(ii) the intention (if it be the case) to apply for any disallowed amount to continue to be payable by the client,

(iii) that he has given a written explanation to the client, and

(iv) whether the client wishes to attend any subsequent hearing.

(e) On receipt of notice from the court of the date for an assessment hearing, the solicitor must, within the next seven days, give written notice to the client and, if appropriate, to counsel, stating the date, time and place of the hearing.

(f) At the hearing attended by the paying party the receiving party, the solicitor and counsel may attend or may be separately represented and may make oral or written submissions.

(g) If a success fee payable by the paying party is assessed at a figure lower than the contractually agreed figure and the legal representative still wishes to recover the contractually agreed figure he may apply for an order that the disallowed amount should continue to be payable by his client and the court may adjourn the hearing to enable the client to be notified of the order sought and, if necessary to be separately represented (CPR 44.16). The order sought does not affect the paying party and, therefore, the paying party need not attend the adjourned hearing.

(h) The court may decide the issue, whether the disallowed amount should continue to be payable, without an adjournment if the receiving party and all relevant legal representatives consent to the court doing so, and if the receiving party (or, if a corporate body, an officer thereof) is present in court and if the court is satisfied that the issue can be fairly decided without an adjournment. In any other case the court will give directions and fix the date for the hearing of the application.

SECTION 31 – CRIMINAL FEE APPEALS

31.1 Introduction

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

(i) Appeals by parties awarded costs out of Central Funds (as to which see the Costs in Criminal Cases (General) Regulations 1986).

(ii) Appeals by solicitors and advocates entitled to remuneration under the Criminal Defence Service (Funding) Order 2007 (as amended) and the Criminal Legal Aid (Remuneration) Regulations 2013, which contain the Advocates' and Litigators' Graduated Fee Schemes.

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

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

31.2 The Criminal Costs Practice Direction

Detailed guidance as to the SCCO practice on criminal fee appeals and the procedure on further appeals to a High Court Judge is set out in the Practice Direction (Criminal Proceedings: Costs) (a new edition of which is expected before 2014).

31.3 Nominated Masters

At present there are four Costs Judges who deal with criminal fee appeals, namely Chief Master Hurst (Senior Costs Judge), Master Campbell, Master Simons and Master Gordon-Saker.

31.4 The Notice of Appeal

(a) The Notice of Appeal must be in writing and must be lodged with the Clerk of Appeals, together with the fee (currently £100) and the additional material referred to in the Criminal Costs Practice Direction within 21 days of receipt of the reasons given for the decision or within such longer time as the Costs Judge may direct. Papers are lodged with the Clerk of Appeals in Room 7.12.

(b) The Notice of Appeal should follow the form in Schedule 3 to the Criminal Costs Practice Direction and illustrated in the Appendix (A-9) below. It is important that the Notice of Appeal should clearly identify (i) the matters which are being appealed to the Costs Judge and (ii) the amount in dispute in relation to each item.

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

(d) It occasionally happens that appellants fail to serve the appropriate officer with a copy of the Notice of Appeal. The Regulations are mandatory in this respect and failure to do so may result in the appeal being dismissed without the merits being considered.

31.5 The grounds of appeal

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

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

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

(d) The Appellant must also lodge the reasons given by the appropriate officer for his decisions upon re-determination.

(e) Only in exceptional cases will a Costs Judge consider material not before the appropriate officer (leave is required under article 30(11) of Funding Order 2007; under Reg. 29(11) of the 2013 Regulations; Reg. 9(11) of the 1986 Regulations or Reg 76.12(4) of the current Criminal Procedure Rules. Requests to consider such material should always be included in the Notice of Appeal.

31.6 Supplementary grounds of appeal

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

31.7 Lodging of documents in support of appeal

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

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

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

31.8 Appeals on paper only

(a) Appeals made on paper only and without an attendance may be dealt with more quickly than appeals dealt with by way of a hearing. All appellants should give careful

consideration, at the stage of lodging their appeals, to the question of whether or not they consider it necessary to attend.

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

31.9 The hearing of an appeal

All hearings may be attended by the counsel or representatives of the solicitors concerned in the matter or a duly authorised agent on their behalf, who may include another solicitor, another counsel or a costs lawyer. Such oral hearings are informal but are conducted in open court. They are seldom of lengthy duration but where an appellant considers that an unusually lengthy hearing is necessary this should be indicated in a covering letter with the Notice of Appeal.

31.10 Multi-handed appeals

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

31.11 Appeals by same advocate

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

31.12 Appeals by telephone or video link

All Costs Judges are prepared to hear criminal appeals by telephone or video link, especially where the sums involved are small or disproportionate to the costs of travel to London. Requests for any such hearing should be made to the Clerk of Appeals when lodging the appeal. Telephone appeals can usually be listed quite quickly but video appeals take longer because of pressure on the limited video facilities in the RCJ.

31.13 Procedure subsequent to the appeal

(a) In every case the Regulations require that the Master should give his reasons in writing. Therefore it is unusual for the Appellant to be notified of the outcome of the appeal on the day of the hearing. There is inevitably a time lag between the oral hearing and the despatch of the written reasons. Only rarely will the Costs Judge consider material submitted after the hearing.

(b) A successful appellant is entitled to ask for his costs which are normally assessed by the Costs Judge at the end of the hearing. It is important that any appellant should submit details to the Costs Judge at the hearing of travelling expenses or any unusual expenditure in relation to the appeal.

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

31.14 Further appeal

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

(b) In other cases, whether Central Funds or legal aid cases, a further, and final, appeal is possible where the Costs Judge has certified that a point of principle of general importance is

involved. It is necessary to apply within 21 days of receipt of the Costs Judge's written reasons for a certificate to be granted by him and, in accordance with the Criminal Costs Practice Direction, the form of certificate sought should wherever possible be submitted with the application.

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

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

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

31.15 Time limits

(a) The time limits laid down by the Regulations and the Practice Direction should always be complied with. It is not a sufficient reason for granting an extension of time that the appropriate officer took many months to produce the written reasons which are being appealed to the Costs Judge. Further it is not sufficient to justify an extension of time that all the papers needed to support the appeal were not immediately available.

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

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

(d) Such applications are in the first instance dealt with by one of the Costs Judges on the papers. Where such an application is refused the appellant may renew his application by asking for an oral hearing before the Costs Judge. Permission is sometimes granted subject to

a percentage penalty reducing the amount of any increase in costs which would otherwise have been obtained on the appeal.

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

31.16 Divisional Court/Administrative Court Central Funds Assessments

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

APPENDIX *Some standard forms and precedents*

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A-1 Bill of costs: Schedule of Costs Precedents, Precedent A http://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/new-precedent-a.pdf
A-2 Certificates in bills : Schedule of Costs Precedents, Precedent F http://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/new-precedent-f.pdf
A-3 Points of dispute : Schedule of Costs Precedents, Precedent G http://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/new-precedent-g.pdf

A-4 Standard orders made on applications to set aside default costs certificates

(a) Conditional order

O R D E R

In the High Court of Justice Senior Courts Costs Office	
SCCO Ref:	
Claimant (include Ref)	
Defendants (include Ref)	
Date	

To Claimant's Solicitor

To Defendant's Solicitor

MASTER [ ] Costs Judge

UPON THE APPLICATION of the Claimant
AND UPON HEARING.

IT IS ORDERED as follows:

(1) On or before 4 pm on [ ] the [ ] must pay to the [ ] [into court] the sum of [£] on account of the costs claimed by the [ ] herein and must forthwith give notice of any payment into court to the [ ].

(2) If and when the [ ] complies with paragraph (1) the default costs certificate issued herein will be automatically set aside and, on receiving notice of the payment, the [ ] must forthwith return the original certificate to the Senior Courts Costs Office to be so marked.

(3) If the default costs certificate issued herein is automatically set aside the following directions shall apply:

(a) Within [14 days] of the payment referred to in paragraph (1) the [ ] must serve Points of Dispute on the [ ] [and on the other parties hereto]. Points of Dispute should not be filed in court at that stage.

(b) Within [28] days of receipt of the Points of Dispute the [ ] must file a request for a detailed assessment hearing in Form N258.

(a) The [ ] having already served Points of Dispute, the [ ] must on or before 4 pm on [ ] file a request for a detailed assessment hearing in Form N258.

( ) The Form N258 to be filed by the [ ] must be duly completed and must specify the SCCO reference for this application.

( ) The [ ] has permission to serve a reply to the Points of Dispute if he does so before filing the request in Form N258.

(4) Enforcement of the default costs certificate is stayed until [ ] upon which date if it has not by then been automatically set aside, the [ ] can proceed to enforce it.

(5) The costs of and thrown away by this application are awarded to the [ ] and are summarily assessed at £ [including VAT] [VAT not recoverable] which sum is payable on or before [ ]

(6) There shall be a detailed assessment of the costs of the [ ] which are payable by the Lord Chancellor out of legal aid funds.

( ) Any party hereto may request a further hearing of this application in order to obtain further or other directions.

(b) Unconditional order

[Heading and opening words as in A-4(a) above]

IT IS ORDERED as follows:

(1) The default costs certificate issued herein dated [ ] is hereby set aside and the [ ] must forthwith return the original certificate to the Senior Courts Costs Office to be so marked.

(2) On or before 4 pm on [ ] the [ ] must serve Points of Dispute on the [ ] [and on the other parties hereto]. Points of Dispute should not be filed in court at that stage.

(3) Within [28] days of receipt of the Points of Dispute the [ ] must file a request for a detailed assessment hearing in Form N258.

( ) The [ ] having already served Points of Dispute, the [ ] must on or before 4 pm on [ ] file a request for a detailed assessment hearing in Form N258.

( ) The Form N258 to be filed by the [ ] must be duly completed and must specify the SCCO reference for this application.

( ) The [ ] has permission to serve a reply to the Points of Dispute if he does so before filing the request in Form N258.

( ) The costs of and thrown away by this application are awarded to the [ ] and are summarily assessed at £ (including VAT) (VAT not recoverable) which sum [may be set off against any costs payable by the [ ] to the [ ]] [is payable on or before [ ]].

( ) There shall be a detailed assessment of the costs of the [ ] which are payable by the Lord Chancellor out of legal aid funds.

( ) Any party hereto may request a further hearing of this application in order to obtain further or other directions.

(c) Dismissal of application

[Heading and opening words as in A-4(a) above]

IT IS ORDERED as follows:

(1) The application to set aside the default costs certificate herein is dismissed
(2) Enforcement of the default costs certificate issued herein is stayed

(3) The costs of this application are awarded to the [ ] and are summarily assessed at £ (including VAT) (VAT not recoverable) which sum is payable on or before [ ].
(4) The costs of the application are awarded to [ ] to be assessed if not agreed.

(5) There shall be a detailed assessment of the costs of the [ ] which are payable by the Lord Chancellor out of legal aid funds.

(d) Adjournment of application

[Heading and opening words as in A-4(a) above]

IT IS ORDERED as follows:

(1) This application is adjourned to [ ] [a date to be fixed].

(2) Enforcement of the default costs certificate issued herein is stayed until the conclusion of this application or further order.

A-5 Standard order made in costs-only proceedings

O R D E R

In the High Court of Justice Senior Courts Costs Office	
SCCO Ref:	
Claimant (include Ref)	
Defendants (include Ref)	
Date	

To Claimant's Solicitor

To Defendant's Solicitor

MASTER [ ] Costs Judge

UPON THE APPLICATION of the Claimant AND UPON READING the documents on the Court file.

IT IS ORDERED as follows:

(1) The Defendant must pay the Claimants costs of the claim relating to [the accident on] in respect of which terms of settlement have been agreed.

(2) The Claimant must commence detailed assessment proceedings in accordance with CPR, Rule 47.6 for assessment on the Standard basis. (Rule 47.6 provides for the service of a Notice of Commencement and other documents).

(3) The costs of this application are costs in the assessment.

A-6 Standard orders made against parties granted legal aid

(a) Award of costs against a Claimant who is legally aided

[Heading and opening words as in A-4(a) above]

IT IS ORDERED THAT:

1. The claim is dismissed.

2. The full costs of this claim which have been incurred by the defendant are [summarily assessed at £] [to be determined by a Costs Judge or District Judge].

3. The claimant (a legally aided party) do pay to the Defendant [nil] [£] [an amount to be determined by a Costs Judge or District Judge]. [When determining such costs the Costs Judge or District Judge should take into account the following facts:

> [Here list any findings as to the party's conduct in the proceedings or otherwise which are relevant to the determination of the costs payable by the legally aided party]

4. On or before (date) the claimant must pay into court £ on account of the costs payable under paragraph 2, above.

5. There be a detailed assessment of the costs of the claimant which are payable by the Lord Chancellor out of legal aid funds.

A-6 Standard orders made against parties granted legal aid

(b) Order specifying the amounts payable, for use by a costs judge

[Heading and opening words as in A-4(a) above with (if relevant)
the addition of the words "sitting in private"]

IT IS ORDERED as follows

1. The full costs of the [defendant] herein, [including the costs of this application] are assessed at £

2. The amount of costs which it is reasonable for the [claimant] to pay to the [defendant] is [nil] [£ which sum is payable to the [defendant] on or before (date)].

3. The sum of £ paid into court on account of the costs specified in paragraph 2 above and any interest accruing thereon shall be paid out to the [defendant in part satisfaction] [claimant] as specified in the payment schedule to this Order.

4. The amount of costs payable by the Lord Chancellor out of legal aid funds to the [defendant] [including the costs of this application] is £ which sum is payable to the [defendant] on or before (date).

[Schedule in Form 200 (see Court Funds Rules 1987)]

A-7 Claim form for remedies under Solicitors Act 1974: Schedule of Costs Precedents, Precedent J

ROYAL ARMS

IN THE HIGH COURT OF JUSTICE Claim No.

SENIOR COURTS COSTS OFFICE

IN THE MATTER OF [name of solicitor or solicitors' firm]

Claimant

SEAL

Defendant(s)

CLAIM FORM (CPR Part 8)

Details of claim (see also overleaf)

The following orders are applied for:

( ) An order in standard form for the delivery of a bill of costs in [all causes and matters] [the following causes and matters ....] in which the Defendant has acted for the Claimant(s).

( ) An order in standard form for the detailed assessment of the bill(s) dated ....[and] [bearing the invoice numbers ..... delivered by the [claimant/Defendant] to the [Defendant/Claimant/person named .....]

( ) An order dealing with the costs of this application

Defendant's name and address £

Court fee
Solicitor's costs
Issue date

The court office at Thomas More Building, Royal Courts of Justice, Strand London WC2A 2LL is open between 10 am and 4.30 pm Monday to Friday. Address all communications to the Court Manager quoting the SCCO reference number

Claim No.

Details of claim (continued)

Statement of Truth
*(I believe) (The Claimant believes) that the facts stated in these particulars of claim are true.
*I am duly authorised by the Claimant to sign this statement.

Full name .....
Name of Claimant's solicitor's firm

Signed ..... position or office held .....

*(Claimant) (Litigation friend) (Claimant's solicitor) (if signing on behalf of firm or company)

*delete as appropriate

Claimant's or claimant's solicitor's address to which documents should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.

A-8 Standard order in claim under Solicitors Act 1974: order on client's application

[Heading and opening words as in A-4(a) above]

IT IS ORDERED that:

(1) A detailed assessment must be made of the bill dated [ ] delivered to the Claimant by the Defendants.

(2) On making the detailed assessment, the court must also assess the costs of these proceedings and certify what is due to or from either party in respect of the bill and the costs of these proceedings.

(3) Until these proceedings are concluded the Defendants must not commence or continue any proceedings against the Claimant in respect of the bill mentioned above.

(4) Upon payment by the Claimant of any sum certified as due to the Defendants in these proceedings the Defendants must deliver to the Claimant all the documentation in the Defendant's possession or control which belong to the Claimant.

(5) CPR 46.10 applies, varied as follows:

(a) on or before the Defendants must serve a breakdown of costs (including a cash account);

(b) within 28 days of service of the breakdown of costs the Claimant must serve Points of Dispute thereon (ie, a brief statement identifying each item in the breakdown which is disputed, summarising the nature and grounds of dispute in respect of that item and, where practicable, suggesting a figure to be allowed for each item in respect of which a reduction is sought);

(c) if the Defendants wish to serve a reply, they must do so within 14 days of service on them of the Points of Dispute;

(d) either party may file a request for a hearing date upon payment of the appropriate fee and the filing of a time estimate –

(i) after Points of Dispute have been served, but;

(ii) no later than ;

(e) if a request for a hearing date is filed the matter is reserved to Master [ ] who has provisionally appointed it for hearing on .

(6) The costs of this application shall be treated as costs of the detailed assessment.

A-9 Notice of appeal prescribed for criminal costs appeals

Appellant's Notice

(Criminal Costs Appeal to a Costs Judge)

For Court use only	
SCCO Ref No	
Date filed	

SEAL

Section 1 Details of the case in which you are appealing

Court

Name of the case R v

Case no.

Details of the Appellant Name

Address (including postcode)

Tel No.	
Fax	
DX	
E mail	
Ref.	

Do you wish to attend the hearing of the appeal? YES / NO

Section 2 Details of the decision under appeal

Name and address of the Determining Authority
(the appellant must send a copy of this Notice to the Determining Authority)

Date of written reasons

Section 3 Extensions of Time

Do you need an extension of time to pursue the appeal? YES / NO

If yes, please set out the grounds relied on

Section 4 Grounds of appeal

Please identify (briefly) the items in the written reasons which you wish to appeal and the grounds of appeal in relation to each such item

(if necessary, continue on a separate page)

Section 5 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate box.

- ☐ a copy of the solicitor's bill or counsel's fee claim (as appropriate) with any supporting submissions
- ☐ a copy of the original determination and redetermination
- ☐ a copy of the appellant's representations on redetermination
- ☐ a copy of the written reasons by the determining authority
- ☐ a copy of the representation order and any authorities granted under it
- ☐ relevant supporting papers

I confirm that a copy of this notice has been served on the determining authority

Statement of truth
I believe (The appellant believes) that the facts stated in this notice are true.

Full name

Name of appellant's solicitor's firm

signed
Appellant ('s solicitor)

position or office held
(if signing on behalf of firm or company)

Form A-10 Model Short Form Bill

IN THE COURT OF PROTECTION

Case No: - .....

SCCO reference .....

IN THE MATTER OF *(to be completed by the court)*

..... (A person who lacks capacity)

Short form bill of costs of the Deputy of *(e.g.) General Management for the period .....to be assessed pursuant to the Order appointing a deputy for property and affairs dated ..... and the General Direction dated **19/11/82***

Summary of work carried out

Fee earner category ..... Rate claimed .....

Work done:-	**Charge:-**
Time spent in personal attendances *e.g. 22/9/02 45mins Upon Mr [name]*	.....
Time spent in travel	.....
Letters Sent	.....
Telephone Calls	.....
Time spent on documents	.....
Other work *(give details)*	
.....	
.....	.....
Sub Total	.....
V.A.T.	.....
Disbursements (list below)	
.....	
.....	
Disbursements	.....
V.A.T.	.....
Grand Total	.....

I certify that this bill is both accurate and complete.

..... (name and position)

Name, address and reference of person filing bill

Short form bill of costs for use in Court of Protection assessments where the total costs claimed do not exceed £3000 excluding VAT and disbursements

A-11 Standard order for directions on a referral made in Civil Recovery Proceedings

[Heading as in A-4(a) above]

UPON THE APPLICATION of the Defendant AND UPON READING the documents on the court file IT IS ORDERED as follows:

1 This matter now stands adjourned to a hearing before Master [ ] in Room [ ] in the Senior Courts Costs Office on [*date to be fixed*] (2 hours allowed) for the Claimant to show cause why the exclusion in respect of the Defendant's reasonable legal costs should not specify:-

(1) the stage or stages in the civil recovery proceedings;
(2) the maximum amount which may be released in respect of legal costs for each specified stage; and
(3) the total amount which may be released in respect of legal costs pursuant to the exclusion

in the manner, and in the amounts, set out in the Defendant's estimate of costs which is referred to in the application notice herein.

2 On or before [*date to be fixed*] the Claimant must file in court and serve on the Defendant Points of Dispute on the estimate (i.e., a brief statement identifying each item in the estimate which is disputed, summarising the nature and grounds of dispute in respect of that item and, where practicable, suggesting a figure to be allowed for each item in respect of which a reduction is sought).

3 Liberty to [both] [all] parties to apply by letter to the Court requesting the Court to stay, set aside or vary this Order.