THE SUPREME COURT COSTS OFFICE GUIDE

2006

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Foreword by the Right Honourable Sir Anthony Clarke, Master of the Rolls, Head of Civil Justice

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LIST OF COSTS JUDGES AND COSTS OFFICERS

Costs Judge	Room
Chief Master Hurst (*Senior Costs Judge*)	2.08
Master Wright	2.12
Master Rogers	2.24
Master O'Hare	2.17
Master Campbell	2.23
Master Simons	2.22
Master Gordon-Saker	2.03
Master Haworth	2.02

Costs Officer	Room
Mr D P O'Riordan (*Principal Costs Officer*)	2.07
Mr J Lambert (*Principal Costs Officer*)	1.05
Mr C J Baker	1.09
Mr J Martin	1.17
Mr F Edwards	1.12
Miss C Bowstead (Acting *Court Manager*)	2.18
Mr P Emery	1.07
Miss M Myers	1.19
Mrs I Sainthouse	2.25
Mrs A Alese	1.13
Mrs. V Campbell	1.15

SCCO postal address

Clifford's Inn
Fetter Lane
London EC4A 1DQ
(DX 44454 Strand)

Telephone numbers

PA to Senior Costs Judge	020 7947 6618
Costs Judges Section	020 7947 7124
Costs Officers Section	020 7947 6385
Court of Protection	020 7947 6469
Issue Section	020 7947 6163

Certificates

Costs Judges'	020 7947 7124
Costs Officers'	020 7947 6385

Fax Numbers

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

LIST OF REGIONAL COSTS JUDGES

Northern Circuit District Judge Duerden Bury County Court Tenterden Street Bury, Lancs BL9 0HJ DX 702615 BURY 2 Tel Number: 0161 7641344 Fax Number: 0161 7634995	 Bury	**Wales and Chester 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	 Carmarthen
District Judge Heyworth Liverpool County Court 35 Vernon Street Liverpool L2 1BX DX 702600 LIVERPOOL 5 Tel Number: 0151 296 2200 Fax Number: 0151 296 2201	Liverpool	District Judge Evans 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	Newport
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	Carlisle	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	Macclesfield
District Judge Smedley Liverpool County Court Queen Elizabeth II Law Courts Derby Square Liverpool L2 1XA DX 702600 LIVERPOOL 5 Tel Number: 0151 4737373 Fax Number: 0151 2581587	Liverpool	**Western Circuit** 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	 Bournemouth
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	Blackpool	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	Aldershot & Farnham

North-Eastern Circuit

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

Hull

District Judge Hill
Scarborough County Court
Pavilion House
Valley Bridge Road
Scarborough
North Yorkshire YO11 2JS
DX 65140 SCARBOROUGH 2
Tel Number: 01723 366361
Fax Number: 01723 501992

Scarborough

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

Leeds

Midland 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

Worcester

District Judge Middleton
Birmingham County Court
The Priory Courts
33 Bull Street
Birmingham B4 6DS
DX 701987
Tel Number: 0121 6814441
Fax Number: 0121 681 3001/2

Birmingham

District Judge Millard
Nottingham County Court
60 Canal Street
Nottingham NG1 7EJ
DX 702381 NOTTINGHAM 7
Tel Number: 0115 9103500
Fax Number: 0115 9103510

Nottingham

District Judge Wainwright
Exeter County Court
The Castle
Exeter
Devon EX4 3PS
DX 98440 EXETER 2
Tel Number: 01392 210655
Fax Number: 01392 433546

Exeter

South-Eastern (North) Circuit

District Judge Bazley-White
Ipswich County Court
8 Arcade Street
Ipswich, Suffolk IP1 1EJ
DX 97730 IPSWICH 3
Tel Number: 01473 214256
Fax Number: 01473 251797

Ipswich

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

Norwich

District Judge Pearl
Watford County Court
Cassiobury House
11/19 Station Road
Hertford, Herts WD17 1EZ
DX 122740 WATFORD 5
Tel Number: 01923 699400/699401
Fax Number: 01923 251317

Watford

South-East (South) Circuit

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 515515
Fax Number: 01892 513676

Tunbridge Wells

District Judge Matthews
Oxford County Court
St Aldates
Oxford OX1 1TL
DX 964500 OXFORD 4
Tel Number: 01865 264200
Fax Number: 01865 790773

Oxford

FOREWORD

Dealing with the costs of a case can often be just as complicated as the substantive issues themselves. This, the third (and largest) edition of the Supreme Court Costs Office Guide has been written by the Masters and Officers of the Supreme Court Costs Office who deal with the many complexities of costs issues 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. As ever, like its predecessors, it will be an invaluable friend to anyone who uses it – whether they are lawyers or litigants.

THE RIGHT HONOURABLE THE SIR ANTHONY CLARKE
MASTER OF THE ROLLS, HEAD OF CIVIL JUSTICE

July 2006

GLOSSARY

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 (defined below) 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).
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 2.13.
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 Supreme Court 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 2.13.
Conditional fee agreement	An agreement with a legal representative which provides for the payment of fees or part of them only in specified circumstances. 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.
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 "LSC only costs" (costs payable by the Legal Services Commission 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.
Counsel	One or more barristers acting for a litigant. Very senior barristers are awarded the title "Queen's Counsel".
CPD	The Costs Practice Direction, supplementing the CPR (defined below).
CPR	The Civil Procedure Rules which, supplemented by the CPD (defined above) 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. Most 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 by the LSC 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, eg, 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 CPD (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).
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.
Litigant in person	A party to any proceedings who does not have a solicitor or other legal representative duly authorised to represent him or her in those proceedings.
LSC	The Legal Services Commission, which is the body set up by Parliament to provide financial help as to the costs of legal services provided to litigants in civil claims and defendants in criminal cases who come within certain eligibility criteria.
LSC funded client	A litigant who has been granted financial help by the Legal Services Commission.
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.
Offer to settle	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, 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. The letter containing the offer should include the words "without prejudice save as to the costs of the detailed assessment" or words to that effect.
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 or payment	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. After proceedings have started an offer by a defendant to settle a money claim should be supported by a payment into court of the specific sum offered.

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 solicitor which are not "disbursements" (defined above).
Provisional assessment	An assessment of costs made without a hearing. Subsequently the court notifies the receiving party of the sum proposed to be allowed and requires the receiving party to so inform the court office within 14 days if he wishes a hearing to be convened.
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 Regional Costs Judge is 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 larger and more difficult cases.
SCCO	The Supreme Court Costs Office the postal address of which is Clifford's Inn, Fetter Lane, London, EC4A 1DQ.
Sitting Master	Each day the Master so nominated for that day deals with any applications in matters not yet assigned to other Masters and is also available to give guidance on points of practice to the Judges of the Supreme Court and other courts throughout the country and (via his clerk) to any litigants or lawyers seeking his help.
Solicitor and client costs	See "costs between the parties" above.

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.
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.
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 Supreme Court Costs Office (SCCO) is a distinct part of the High Court, separate from the Queens Bench Division, Chancery Division and Family Division. It has two ranks of judicial officer: Costs Judges (also known as Taxing Masters and as Masters of the SCCO) and 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 a 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 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 SCCO was created. 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 one day; and/or the sum claimed exceeds £50,000; 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 were appointed Regional Costs Judges in 2005 is set out on pages 12 and 13, above.

1.2 Representation

(a) *Solicitors*

In most cases parties will be represented by the solicitors 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 solicitor is set out on the Statement of Parties which is lodged when a request for a detailed assessment hearing is made (see further, Section 8, 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.

Solicitors 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 should 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 firm of solicitors in London to act on their behalf as an agent at any hearing.

(b) *Bankrupt Party*

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

(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 draftsmen*

At present 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 instructing them. They have no rights of audience on behalf of a litigant in person (but see McKenzie Friend below). It has been proposed that the Association of Law Costs Draftsmen should be authorised to grant rights of audience and rights to conduct litigation to certain of its members when participating in detailed assessments.

(e) *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.

(f) *Counsel and counsel's clerks*

Counsel properly briefed by solicitors or by the litigant 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.

(g) *McKenzie Friend*

As a general rule, a litigant in person will be allowed to receive the assistance of a friend at the hearing to give advice and to take notes (but not to act as advocate). However, in a particular case, the court may refuse to allow such assistance to be given, or to be continued, if there are strong and compelling reasons for believing that such assistance will impede the efficient administration of justice.

1.3 Sitting Master

Costs Judges act from time to time on a rota basis as Sitting Master to hear applications, in detailed assessment proceedings which have not been assigned to a particular Costs Judge or

costs officer, to hear applications under the Solicitors Act 1974 and to deal with enquiries relating to practice and law arising out of assessments. Such enquiries may be made indirectly, via his clerk, or, in the case of Judges of the Supreme Court or other courts throughout the country, directly.

1.4 Office hours

(a) 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 the Tuesday after Easter Monday.

(b) During the month of August it is not possible to issue or file documents in the SCCO after 2.30 pm. However cases may still be listed for hearing throughout the day and therefore the office remains open to lawyers, litigants and the public wishing to attend such hearings.

1.5 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 will 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 the Principal Costs Officer or to a designated senior clerk who will endeavour to help, possibly after consultation with the Costs Judge or costs officer to whom the case has been allocated.

1.6 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, eg, correspondence, witness statements, notes of hearings and the orders made thereon. 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 5.4).

1.7 Referrals to the RCJ Citizens Advice Bureau

(a) The Citizens 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.

(b) 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.

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

1.8 Contacting the SCCO by Letter or 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. All such documentation should be sent with a covering letter stating any SCCO references relevant to the documentation. 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
Supreme Court Costs Office
Cliffords Inn
Fetter Lane
London EC4A 1DQ

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, eg 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.

1.9 Contacting the SCCO by Telephone

(a) The SCCO can be contacted via the telephone numbers set out in the List of Costs Judges and Costs Officers (see page 11, 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 thereon the SCCO notepaper and compliments slips will show the telephone number of the relevant clerk. Parties should use this number when contact by letter 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. Most telephone hearings concern cases in which only one party 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.

1.10 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 www.hmcourts-service.gov.uk/infoabout/scco/index.htm.

SECTION 2 - ENTITLEMENT TO COSTS

2.1 The Meaning of "Costs"

(a) The word "costs" is defined in CPR 43.2. Costs normally fall into two categories:

(i) expenses of a type which solicitors 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 solicitor charges to his client. These are known as "solicitors' charges" or "profit costs".

(b) Costs payable by one party to another can, in appropriate circumstances, include costs incurred before the issue of proceedings (*In* r*e 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 44.3(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 solicitor and client are payable to the solicitor according to the terms of any contract he has made with the client or, alternatively, in the case of an LSC funded client, according to the Regulations made under the Legal Aid Act 1988 and the Access to Justice Act 1999.

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 has succeeded on part of his case, even if not wholly successful; and whether or not there has been a payment into court or an offer of settlement: (CPR 44.3(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 44.3(6)).

(c) The court has, in addition, the power to order a party to pay an amount on account of costs before the costs are assessed (CPR 44.3(8)).

(d) Paragraph 8.5 of the Costs Practice Direction ("CPD") 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 44.4(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 44.4(3)).

(d) In LSC funded 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 48.8 and CPD Section 54).

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 44.7; CPD Sections 12, 13 and 14).

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 and conditional fee agreements. There have been calls for the total abolition of the principle. Unless and until that occurs the following three propositions continue to 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 solicitors: *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 solicitor must notify the client in writing of the costs order no later than seven days after the solicitor receives notice of the order (CPR 44.2).

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 36.13(1) (claimant's right to costs where he accepts defendants' Part 36 offer or Part 36 payment);

(iii) CPR 36.14 (claimant's right to costs where defendant accepts the claimant's Part 36 offer); or

(iv) 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 44.13(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 44.13(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 44.13(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.

2.9 Costs Where Money is Payable by or to a Child or Patient

(a) Where a child or patient 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 patient is liable to pay money to his or her solicitor the court must order a detailed assessment of those costs (CPR 48.5) unless the case falls within one of those circumstances described in CPD Section 51 (eg another party has agreed to pay a specified sum in respect of costs and the solicitor acting for the child or patient has waived the right to claim further costs).

2.10 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 48.4).

2.11 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. CPD Section 50 sets out the principles which apply to litigation costs relating to a mortgage (CPR 48.3).

2.12 Group Litigation Orders

CPR Part 19 deals with Group Litigation Orders. CPR 48.6A 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 48.6A(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 48.6A(6)). Paragraph 16 of the Practice Direction Supplementing Part 19 provides that the Costs Judge will apportion the amounts of common costs and individual costs, if the court has not already done so.

2.13 Costs in the Companies Court

In the Companies Court "the usual compulsory order" made on a winding-up petition includes provision for the payment of the petitioner's costs and one set of costs for the supporting creditors out of the assets of the company. Thus in a simple case if the usual compulsory order is made it will not generally be necessary to ask for a separate order for costs. If however there are opposing creditors and the petition succeeds, the costs of the opposing creditors are not paid out of the company's assets unless they are expressly allowed by the court.

2.14 Costs in Family Proceedings

In family proceedings CPR Parts 43, 44 (except CPR 44.9 to 44.12), 47 and 48 apply to the assessment of costs; CPR 44.3(2) (costs follow the event) does not apply (Family Proceedings (Miscellaneous Amendments) Rules 1999 SI 1999 No.1012). The Costs Practice Direction applies to the extent that the CPR apply and references in the Direction to "claimant" and "defendant" should be read as references to the equivalent terms used in family proceedings.

2.15 Success Fees and Insurance Premiums

In certain cases the Access to Justice Act 1999 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. Further information about these items of costs is given in Section 19 (below) and the procedures to be followed to deal with possible success fee disputes between legal representatives and clients are given in Section 20, below. 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.

2.16 Costs in Relation to Pre Commencement Disclosure and Orders for Disclosure Against a Non Party

Sections 33 and 34 of the Supreme Court 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 48.1).

2.17 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 48.2 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 recently 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).

2.18 Costs Following Acceptance of an Offer to Settle

(a) CPR Part 36 deals with offers to settle and payments into court. Where a defendant's Part 36 offer or Part 36 payment is accepted without needing the permission of the court, the claimant is entitled to the costs of the proceedings up to the date of serving notice of acceptance (CPR 36.13(1)). Where a claimant's Part 36 offer is accepted without needing the permission of the court, the claimant is entitled to the costs of the proceedings up to the date upon which the defendant serves notice of acceptance (CPR 36.14). In these cases an order for costs is deemed to be made (see para 2.8 above).

(b) Where a claimant fails to do better than the defendant's Part 36 offer or Part 36 payment, the court will, unless it considers it unjust to do so, order the claimant to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted without needing the permission of the court (CPR 36.20).

(c) Where a claimant does better than was proposed in the claimant's Part 36 offer, the court may order interest at a rate not exceeding 10% above base rate, on the whole or part of the sum of money awarded to the claimant, for some or all of the periods starting with the latest date on which the defendant could have accepted the offer without needing the permission of the court. The court also has the power to order that the claimant is entitled to costs on the indemnity basis (as to which, see para 2.4, above) and to award interest on those costs at a rate not exceeding 10% above base rate (as to which, see Section 15, below). The court will make an order in such terms unless it considers it unjust to do so (CPR 36.21(4)).

(d) In deciding whether or not it would be unjust to make such an order, the court will take into account all the circumstances including the terms of the Part 36 offer, the stage in the proceedings when the offer was made, the information available to the parties at the time when the offer was made and the conduct of the parties with regard to the giving or refusing to give information for the purpose of enabling the offer to be made or evaluated (CPR 36.21(5)).

2.19 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, 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 of the Practice Direction Supplementing CPR Part 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) Where the parties consent to a claim being allocated to the small claims track, even though the amount of the claim exceeds the financial limit for small claims, the claim is treated for the purpose of costs as if it were proceeding on the fast track. In those circumstances the trial costs are in the discretion of the court but will not exceed the appropriate amount (having regard to the size of the claim) of fast track trial costs (CPR 27.14(5)).

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

2.20 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 46. Where the value of the claim does not exceed £3,000 the trial costs which the court may award will be £350. Where the value of the claim is more than £3,000 but not more than £10,000 the trial costs are £500 and where the value of the claim is more than £10,000 the trial costs are £750. 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 46.3 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 46.2(2)).

(b) The exceptional cases in which higher costs may be ordered are set out in CPR 46.3. These cover additional legal representatives, an additional liability in respect of a funding arrangement (see Section 19 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 44.10).

2.21 Costs Following Allocation and Reallocation

The special rules which apply to small claims and fast track trial costs do not apply until the claim is allocated to a particular track. Once the claim is allocated to a particular track those special rules apply to the period before as well as after allocation except where the court or a Practice Direction provides otherwise (CPR 44.9). Any costs orders made before a claim is allocated to the small claims or fast track will not be affected by the allocation (CPR 44.11(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 44.11(2)).

2.22 Time for Complying With Orders for Costs

When the court makes an order for the payment of costs the paying party must make the payment within 14 days of the date of the order specifying the amount payable (CPR 44.8). The court may extend the time for payment, but if it does not do so and the costs are not paid within the 14 day period, the receiving party may take steps to enforce the order.

2.23 VAT

(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 solicitors 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) CPD Section 5 sets out some special provisions relating to VAT.

SECTION 3 – FORM AND LAYOUT OF BILLS

3.1 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 CPD 40.4).

(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. There may also be a further matter to deal with if the party whose bill it is previously filed an estimate of costs in these proceedings. If there is a difference of 20% or more between the costs in the estimate and the costs (excluding the amount of any additional liability) claimed in the bill, the background information should state the reasons for that difference. See further as to differences between estimates and bills in paragraph 9.3 below.

(c) 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.

(d) 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 3.5 below).

3.2 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 LSC 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.

3.3 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 just given, the word "attendances" includes interviews and meetings and the word "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 (eg "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.

3.4 Model Forms of Bills of Costs

The CPD contains several model forms of bill of costs. The use of these model forms 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, para A-1.

3.5 Certificates in Bills of Costs

The final part of the bill of costs should contain such one or more 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, para A-2.

3.6 Disk Copies of Bills

If the bill of costs is capable of being copied onto a computer disk, the paying party is entitled to demand a disk copy free of charge (CPD para 32.11).

SECTION 4 – COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS

4.1 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 (CPD para 28.1).

(b) Similarly where costs are payable out of the Community Legal Services Fund, detailed assessment should not be sought until the conclusion of the proceedings or until the discharge of the LSC 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 appeal court.

4.2 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 32, 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)).

4.3 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 (CPD para 32.10).

4.4 Documents to Accompany the Notice of Commencement

(a) The list of documents to be served together with a notice of commencement depends upon whether or not the receiving party is seeking to recover an "additional liability", as to which see Section 19, below.

(b) If the detailed assessment is in respect of costs without any additional liability, 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 £250, 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 (CPD para 32.3).

(c) If the detailed assessment is in respect of an additional liability only, the receiving party must serve, in addition to the notice of commencement and bill of costs, the relevant details of the additional liability and a statement of parties (CPD para 32.4). (Paragraph 19.6 below sets out the relevant details of additional liability which must be given.)

(d) If the detailed assessment is in respect of both costs and an additional liability, the receiving party must serve all the documents set out in (b) and (c) above.

4.5 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, para 17.9, below).

4.6 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 LSC funded client which are payable only out of the Community Legal Service Fund (CPR 47.17 and see Form N258A).

(ii) Costs payable out of a fund other than the Community Legal Service Fund (CPR 47.17A and see Form N258B).

(iii) Costs to be assessed pursuant to an order under Part 3 of the Solicitors Act 1974 (CPR 48.8 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 5 – POINTS OF DISPUTE AND REPLY

5.1 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 6, below: (CPR 47.9(4)).

5.2 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 (see Appendix, para A-3).

(b) The points of dispute should identify each item in the bill of costs which is disputed; state concisely the nature and grounds of the dispute and, where practicable, suggest a figure to be allowed instead of the figure which has been claimed. As a general rule, where details of an item are given in a schedule to the bill (eg, the Documents Item) it is not necessary for the Points of Dispute to deal separately with each individual entry in that schedule.

(c) A paying party may dispute a bill on the basis that the costs claimed therein exceed the amount of costs shown in an estimate of costs 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 estimate of costs filed by the receiving party; or

(ii) wishes to rely upon the costs shown in the estimate 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 9.3, below.)

(d) Where the receiving party claims an additional liability, a party serving points of dispute may include a request for information about other methods of financing costs which were available to the receiving party (CPD para 35.7(1)).

(e) The points of dispute should be signed by the party or his solicitor. If the points of dispute are capable of being copied onto a computer disk, the receiving party is entitled to demand a disk copy free of charge (CPD para 35.6).

5.3 Time Limit for Replies and Their Format

(a) Where points of dispute are served the receiving party may serve a reply on the other parties to the assessment proceedings. The time limit for a reply is 21 days after service on him of the points of dispute (CPR 47.13).

(b) There is no obligation upon a receiving party to serve a reply. Before doing so the receiving party should consider whether the expense of a reply can be justified: it probably cannot if the reply will merely deny the points in dispute.

(c) The reply may take the form of an annotation to the points of dispute (see para 5.2(d) above) or may be set out on a separate document. Serving a reply on a separate document does not avoid the obligation to file points of dispute annotated as necessary in order to show which items have been agreed and their value and which items remain in dispute and their value (see further para 8.2, below).

5.4 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 Section 20, below.

SECTION 6 - OBTAINING A DEFAULT COSTS CERTIFICATE

6.1 When and How to Apply

(a) The deadline for serving points of dispute is 21 days after the date of service of notice of commencement (see para 5.1, 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 6.2, 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 CPD para 40.4). 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.

6.2 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 47.14).

(b) The default costs certificate procedure does not apply to costs of a LSC funded client which are payable out of the Community Legal Service Fund, costs payable out of a fund other than the Community Legal Service Fund, or costs to be assessed pursuant to an order under

Part 3 of the Solicitors Act 1974. Further information concerning these cases is given in paras 4.6 and 8.1 of this Guide.

6.3 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 solicitor'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.

6.4 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 44.8).

(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 17, below). Proceedings for enforcement of a default costs certificate may not be issued in the SCCO (CPD para 37.7).

(c) Default costs certificates are addressed to the paying party. Where the receiving party is funded by the LSC, 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 out of the Community Legal Service Fund (CPD para 37.5, and see further Section 24, below).

SECTION 7 – APPLYING TO SET ASIDE A DEFAULT COSTS CERTIFICATE

7.1 Application by Receiving Party

(a) Where (i) the receiving party has purported to serve the notice of commencement on the paying party; (ii) a default costs certificate has been issued; and (iii) the receiving party subsequently discovers that the notice of commencement did not reach the paying party at least 21 days before the default costs certificate was issued, the receiving party must file a request for the default costs certificate to be set aside (which can be done by a court clerk without any hearing) or apply to the court for directions. The receiving party may take no further steps in the detailed assessment proceedings or the enforcement of the default costs certificate until the certificate has been set aside or the court has given directions (CPR 47.12(4)).

(b) A receiving party who has obtained a default costs certificate for the wrong amount (whether for too much or for too little) may apply to the court for an order varying the certificate (as to applications generally, see Section 17, below).

7.2 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) 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).

7.3 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 8 - REQUESTS FOR A DETAILED ASSESSMENT HEARING

8.1 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/LSC only).

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

(iv) N258C: request for detailed assessment hearing pursuant to an order under Part 3 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 8.2, 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 17.5, below.

8.2 Detailed Assessment by the SCCO of Costs of Civil 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: Barnet, Bow, Brentford, Bromley, Central London, Clerkenwell, Croydon, Edmonton, Ilford, Lambeth, Mayors and City of London, Romford, Shoreditch, Uxbridge, Wandsworth, West London, Willesden and Woolwich.

8.3 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 the Costs Practice Direction at para 40.2.

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

8.4 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.

(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 allocate the case by ballot to a particular costs officer or Costs Judge. The court clerk will then prepare

an acknowledgement 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 allocate the case to a Costs Judge.

(d) If, after a case has been allocated 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.

8.5 Obtaining the Date for the Hearing

(a) On receipt of the request for a detailed assessment hearing the court will fix a date for the hearing, or, if the costs officer or Costs Judge so decides, will give directions or fix a date for a preliminary 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) Cases assigned to a costs officer are usually given a date for hearing not more than 12 weeks later than the date the request for a hearing was filed. Cases assigned to a Costs Judge are usually given a date for hearing not more than six 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 his knowledge, a detailed assessment hearing would be inconvenient for any party likely to attend.

(d) One or two cases every day will be listed before the Principal Costs Officer in Room 2.07 each day. The cases will be allocated on the day to a Costs Judge or costs officer who becomes available.

(e) As to the making of an application to change the date for hearing once fixed, see para 17.6.

8.6 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 17, 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 allocated to a Deputy Costs Judge the application will be heard by the Sitting Master (see para 1.3).

(b) In determining what, if any, interim certificate to make, the court will consider, amongst other things, the bill of costs, points of dispute thereon and any reply thereto 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 Office, Kingsway, WC2B 6LE (DX 44455 Strand). Cheques must be made payable to the "Accountant General of the Supreme Court". The general form is the Form 100 Requests for Lodgment which must be accompanied by the relevant request for lodgment and proof that court proceedings exist.

(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.

8.7 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 seven 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 pleadings to the extent that they have not already been filed in court;

(v) correspondence, files and attendance notes;

(vi) where the claim also includes a claim in respect of an additional liability (as to which, see Section 19, below) any papers relevant to the issues raised by the claim for additional liability.

(c) Where a claim is in respect of an additional liability only, the papers to be filed are such of those papers listed at (b) above as are relevant to the issues raised by the claim for additional liability.

(d) Further information about lodging documents and about orders for the production of documents is given in Section 10, below.

8.8 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 9 – THE DETAILED ASSESSMENT HEARING

9.1 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 the Practice Direction to CPR 39. 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" (CPR 39 Practice Direction 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). As to the rights of audience of persons claiming to represent such parties, see para 1.2, above.

(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.

9.2 The Decisions Made at the Hearing

(a) A hearing that takes place at a court will usually be tape recorded by the court. A party may obtain a transcript of such a recording on payment of the proper transcribing charges (Practice Direction para 5 to CPD 27). 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 rulings that may be made if a receiving party fails to abide by any estimate of costs he previously gave in the proceedings is considered in paragraph 9.3, 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 11, 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 13, below.

9.3 Relevance of Estimates of Costs Previously Given

(a) On an assessment of the costs of a party, the court may have regard to any estimate previously filed by that party, or by any other party in the same proceedings. Such an estimate may be taken into account as a factor, among others, when assessing the reasonableness and proportionality of any costs claimed.

(b) If there is a difference of 20% or more between the costs claimed by a receiving party (excluding the amount of any additional liability claimed) and the costs shown in an estimate of costs 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 estimate of costs.

9.4 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 him 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.

9.5 Hearing 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 10 – PRODUCTION OF CONFIDENTIAL DOCUMENTS IN DETAILED ASSESSMENT HEARINGS

10.1 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) The CPD gives further details about "the papers in support of the bill" (see para 8.7, 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 CPD does not amount to a waiver of any privilege in those documents.

10.2 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 (CPD 40.14).

(b) The court's power to order production to the court of documents which the receiving party does not wish to produce will not be used to require production of those documents to the paying party. 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.

10.3 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 therefor 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 the paying party.

10.4 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 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 become 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. If a conditional fee agreement with a success fee relates to court proceedings the Conditional Fee Agreements Regulations 2000 state that the agreement must provide for disclosure of the reasons for setting the percentage increase at the level stated in the agreement.

(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 and the privilege can be re-asserted in any subsequent context.

10.5 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 11 – COSTS OF DETAILED ASSESSMENT PROCEEDINGS

11.1 Entitlement

(a) As a general rule the receiving party is entitled to the costs of the detailed assessment proceedings (CPR 47.18). For exceptions concerning non acceptance of offers to settle, findings of delay or misconduct and the special rules applicable to assessments under the Solicitors Act 1974, see below, para 11.4 and Sections 16 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 at the end of the hearing, but, in an exceptional case, may be assessed at a subsequent hearing. It is not necessary to provide details of those costs in advance unless the court makes an order to that effect.

11.2 Offers to Settle: General Provisions

(a) 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. A subsequent increased offer may be made.

11.3 Where an Offer to Settle is Accepted

If an offer to settle is accepted an application may be made for an agreed costs certificate (as to which, see para 17.9, below). 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 numbers are: 020 7947 6247 (Room 2.13) or 6344 (General Office).

11.4 Where an Offer to Settle is Not Accepted

(a) The existence of an offer to settle 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 (CPR 47.19).

(b) 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:

(i) disallow the receiving party, wholly or in part, any costs of the detailed assessment, and/or

(ii) award costs in the detailed assessment to the paying party who made the offer.

SECTION 12 - FINAL COSTS CERTIFICATES

12.1 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.

12.2 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 17, below.

12.3 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 47.16).

(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 44.8).

12.4 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.

12.5 Enforcement of Certificate

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

SECTION 13 - APPEALS AGAINST DECISIONS IN DETAILED ASSESSMENT PROCEEDINGS

13.1 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 he 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.

13.2 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 his appellant's notice (as to which, see para 13.4, below).

(c) In order to bring a further appeal to the Court of Appeal from the decision of a High Court Judge or a 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) A permission to appeal may limit the issues which may be raised on the appeal and may be made subject to conditions.

13.3 Time Limits for Appeals

(a) An intending appellant must file an appeal notice within 14 days after the date of the decision he wishes to appeal against (CPR 47.22 and 52.4). If a party has good reason for seeking a longer period in which to appeal he should apply for an extension of time, either on the occasion when the decision is made, or by including such an application in his appeal notice.

(b) The time for appeal runs from the date of the decision to be appealed against, not from the end of the detailed assessment. However, a costs officer or Costs Judge may make a direction that the time for appeal will not begin to run until the detailed assessment has been concluded.

13.4 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, ie, 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 he intends to rely solely upon the judgment of the court below for the reasons given by that court.

13.5 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 two assessors, one of whom will be a Costs Judge and the other will be a practising barrister or solicitor.

SECTION 14 – CORRECTING ACCIDENTAL SLIPS OR OMISSIONS IN FINAL COSTS CERTIFICATES

14.1 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.

14.2 Applications for Amendment

An application under the slip rule may be made informally (eg, by letter) or formally, by application under Part 23 (as to which see Section 17, 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 15 - INTEREST ON COSTS

15.1 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 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) unless the court otherwise orders (CPR 40.8 and 44.3(6)(g)). 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; and

(ii) Under CPR 44.3(6)g the court has power to order interest on costs to run from a date other than the date of judgment.

(b) In respect of costs payable by contract (eg, costs payable to a solicitor by his client or former client) the entitlement to interest normally depends upon the terms of that contract. However a statutory right to interest may arise under the Solicitors (Non Contentious Business) Remuneration Order 1994 or the Late Payment of Commercial Debts (Interest) Act 1998.

15.2 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 (eg 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 his 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 16 – APPLICATIONS CONCERNING DELAY, MISCONDUCT OR WASTED COSTS

16.1 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 4 above).

(b) Permission to commence detailed assessment proceedings out of time is not required (CPD 33.4) 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 44.14 (powers in relation to misconduct, see below).

16.2 Misconduct by Litigants or Legal Representatives

(a) The court may make an order under CPR 44.14 where –

(i) a litigant or his 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 his legal representative, before or during the proceedings which gave rise to the assessment proceedings, was unreasonable or improper.

(b) Examples of conduct which is unreasonable or improper includes 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 his 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 attend a hearing to give reasons why such an order should not be made.

(e) Where the court makes an order under CPR 44.14 against a legally represented party and that party is not present when the order is made, that party's solicitor must notify his client in writing of the order no later than seven days after the solicitor receives notice of the order.

16.3 Personal Liability of Legal Representatives for Costs - Wasted Costs Orders

(a) In addition to the court's powers under CPR 44.14 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 48.7).

(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; and

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

(c) Before making a wasted costs order a Court may direct a Costs Judge to inquire into the matter and report back to the Court. It may also refer the matter to a Costs Judge to deal with outright.

<u>16.4 Principles on Which Wasted Costs Orders are Made</u>

(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 disbarrment 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.

16.5 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 17, below) or by making an application orally in the course of any hearing (CPD 53.3).

(b) A Part 23 application must be supported by evidence (CPD 53.8) which:

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

(ii) identifies the costs that he may be ordered to pay or which are sought against him.

(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.

16.6 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 (CPD paragraph 53.6):

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 give his reasons.

SECTION 17 – OTHER APPLICATIONS IN DETAILED ASSESSMENT PROCEEDINGS

17.1 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 Supreme Court Costs Office if that is the "appropriate office" for the purposes of CPR 47.4 (and see para 8.1, 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 a "liberty to apply" which entitles the parties seeking a further order or directions to write to the court requesting it to restore the previous application rather than issuing a new one.

17.2 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) Part C of Form N244 enables the applicant to identify 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 litigant, 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.

17.3 Extension of Time for Commencing Detailed Assessment Proceedings

The time limit for commencing detailed assessment proceedings is summarised in para 4.2, 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.

17.4 Extensions of Time for Service of Points of Dispute

The time limit for service of points of dispute is summarised in para 5.1, 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 6, 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.

17.5 Extension of Other Time Limits

The time limit for serving a reply to points of dispute is summarised in para 5.1 above and the time limit for filing a request for a detailed assessment hearing is summarised in para 8.1, 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.

17.6 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. The current fax numbers are: 020 7947 6247 or 6344. In other cases, if one or all parties wishes to vary a date fixed, he or they must make an application in Form N244 or request the court to restore a previous application for hearing, if a "liberty to apply" has previously been given..

17.7 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.

17.8 Case Management Directions

Where appropriate any party can apply for case management directions, such as timetable directions for the exchange of witness statements and facilitating cross examination, or timetable directions concerning the detailed assessment of "linked bills", ie other bills of costs made in the same proceedings. Especially in the case of larger bills of costs, ie, bills exceeding £200,000, 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 particular points of dispute (perhaps relating to VAT entitlement, solicitor's hourly rates, and all fees claimed in respect of the trial) with a four day appointment for the remaining points of dispute to take place some four weeks later. Splitting the hearing into two appointments usually enables the court to give an earlier appointment than it otherwise could. Also, 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.

17.9 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 heard by a Costs Judge.

17.10 Change of Solicitor

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

(b) In practice, when a solicitor and client fall out and the client is not intending to instruct another solicitor, the former solicitor will often prepare a notice of change and either obtain the client's signature to it and then file it or will send it to the former client for him to sign and file. The former solicitor will no doubt warn the client that, if he refuses or unreasonably fails to serve and/or file the notice the solicitor may apply for an order that the solicitor has ceased to act together with an order for the costs of the application.

(c) An application for an order declaring that a solicitor has ceased to be the solicitor acting for 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 solicitor 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 liberty 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.

17.11 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.

17.12 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 the Costs Judge who assessed the costs in question or, if the costs were assessed by a costs officer, by the Sitting Master. 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 sent 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.

17.13 Other Applications

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

- for assessment before conclusion of main proceedings (para 4.1),
- for an order setting aside a default costs certificate (paras 7.1 and 7.2),
- for assignment from a costs officer to a Costs Judge (para 8.3),
- for an interim costs certificate (para 8.5),
- for permission to appeal (para 13.2),
- for correcting accidental slips or omissions in certificates (para 14.2),
- for sanctions for failure to commence in time (para 16.1), and
- for a wasted costs order (para 16.3).

SECTION 18 - CASES TRANSFERRED FROM OTHER COURTS

18.1 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 the 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 that 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 as early a hearing date as possible can be given. If this is not done, the parties may find themselves at the end of the queue of cases awaiting a hearing date at the SCCO.

(c) 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. Receiving parties seeking such arrangements should request them by letter lodged with the Judge's clerk when the request for detailed assessment is lodged or when the matter has been transferred to the SCCO.

18.2 Assessment of Costs Awarded by Other Tribunals and Bodies

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

(i) Election petitions

(ii) Proceedings under the Arbitration Acts

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

(iv) Proceedings before the Employment Appeal Tribunal

(v) Proceedings before VAT tribunals

(vi) Determinations by the Secretary of State for Environment or 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 before the Financial Services and Markets Tribunal.

(xi) Proceedings under the Justices and Justices’ Clerks (Costs) Regulations 2001

(xii) Proceedings under the General Commissioners of Income Tax (Costs) Regulations 2001.

SECTION 19 – FUNDING ARRANGEMENTS

19.1 Introduction

(a) The Access to Justice Act 1999 permits the recovery of costs under a conditional fee agreement which provides for a success fee. The Act also provides for recovery of after the event insurance premiums by way of costs, and recovery of an additional amount where a membership organisation undertakes to meet liabilities which members of the organisation, or other persons who are party to the proceedings may incur, to pay the costs of other parties to the proceedings (see Sections 27, 29 and 30 Access to Justice Act 1999). These arrangements are known as “funding arrangements” (CPR 43.2) and the percentage increase, insurance premium or additional amount in respect of provision made by a membership organisation is known as an “additional liability”. Premiums in respect of before the event insurance polices (such as household and motor insurance policies) are not recoverable.

(b) 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).

19.2 Providing Information About Funding Arrangements

(a) 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 of the insurer, the date of the policy and must identify the claim or claims to which it relates.

(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.

SECTION 20 – ASSESSMENT OF SUCCESS FEES AND AFTER THE EVENT INSURANCE PREMIUMS

20.1 Compliance with Conditional Fee Agreement and Collective Conditional Fee Agreement 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 now 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) Until their revocation (see below) the Regulations which governed conditional fee agreements were the Conditional Fee Agreements Regulations 2000, the Access to Justice (Membership Organisations) Regulations 2000 and the Collective Conditional Fee Agreements Regulations 2000. With effect from 1 November 2005 the Access to Justice (Membership Organisations) Regulations 2000 are replaced by new Regulations and the Conditional Fee Agreements Regulations 2000 and the Collective Conditional Fee Agreements Regulations 2000 have been replaced by the Solicitors Practice (Client Care) Amendment Rules 2005 and a new Law Society's Model CFA Agreement (for use in personal injury and clinical negligence cases).

(c) 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).

(d) However the court will not declare a conditional fee agreement unenforceable unless the failure to satisfy those conditions has a materially adverse effect on the protection of the interests of the client or the proper administration of justice.

(e) 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.

20.2 Documents to accompany the bill

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:

(a) In the case of a conditional fee agreement with a success fee:

(i) a statement showing the amount of costs which have been summarily assessed or agreed and the percentage increase which has been claimed in respect of those costs; and

(ii) a statement of the reasons for the percentage increase (where the CFA or CCFA was entered into before 1 November 2005).

(b) 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.

(c) 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.

20.3 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.

20.4 Fixed Success Fees

CPR Part 45 provides for fixed success fees in certain road traffic accident disputes and certain Employers Liability claims.

20.5 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 corporate, 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 21 – COSTS ONLY PROCEEDINGS

21.1 Introduction

(a) CPR 44.12A 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 and 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 plus success fee and disbursements: applications for greater amounts will be entertained only if the court considers that exceptional circumstances make it appropriate to do so).

(c) In cases in which CPR 45 Section II does not apply, the court will dismiss the claim without a hearing if it is opposed, ie, if the defendant files an acknowledgment of service stating that he intends to contest the proceedings or to seek a different remedy. 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 44.12A are illustrated in the Appendix, below, para A-5.

(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 44.12A will be treated as an order for the amount of costs to be decided by a detailed assessment to which Part 47 applies, as to which, see Sections 3 to 17, 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 8.5 above.

(c) In cases in which an additional liability is claimed (as to which, see Section 19, above) the court will have regard to the time when and the extent to which the claim has been settled and to the fact that the claim has been settled without the need to commence proceedings.

(d) CPR 45.13 and 45.14 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 success fee, 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 court in which he or she is not represented by a solicitor or firm of solicitors. 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 authorised litigator who is acting for himself. However, the term does not include a solicitor who, instead of acting for himself, is represented in proceedings by his firm or by himself in his firm's name (CPD 52.5).

(b) Litigants in person have rights of audience in all detailed assessment proceedings. As to their entitlement to have a MacKenzie Friend present, see Section 1 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 and by CPR 48.6. 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 individual solicitors or costs draftsmen 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 Section 1 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 Section 1 paras 1.5, 1.8 and 1.9). Most of the "N" forms mentioned in this Guide can be supplied free of charge.

22.2 Costs Recoverable by Litigants in Person

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

(i) 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 solicitor had a solicitor acted for the litigant in person.

(ii) 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, Fellow of the Association of Law Costs Draftsmen, or a law costs draftsman who is a member of the Academy of Experts or the Expert Witness Institute. However, a litigant in person cannot recover any costs in respect of a person or entity whose services he retains to provide general assistance in litigation unless that person or entity has a right to conduct litigation within the meaning of s 28 Courts and Legal Services Act 1990 (see *Agassi v HM Inspector of Taxes*) [2005] EWCA Civ 1507. (Such a right is conferred by the Law Society, the Bar Council, the Institute of Legal Executives or an appropriate professional body.)

(iii) 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).

(iv) 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 3 to 17 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 solicitor, had a solicitor 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 £9.25 per hour under CPD Section 52.4 (£25 per hour in the Employment Appeal Tribunal).

(iv) If all the items of work for which costs are recoverable had been undertaken by a solicitor, what would a solicitor'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 solicitor could reasonably have charged for doing the work (CPR Section 46(2)).

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) The Court of Protection is an office of the Supreme Court and exercises jurisdiction in respect of the protection and management of the property and affairs of persons of who, by reason of mental disorder, are incapable of managing their own affairs ("patients").

(b) The relevant statutes and rules include the Mental Health Act 1983, the Enduring Powers of Attorney Act 1985 and the Court of Protection Rules 2001, relevant passages of all of which are set out and annotated in Volume 2 of the Supreme Court Practice.

(c) The Judges of the Court of Protection include the Master and his Deputies, from whom an appeal lies to the Judges of the Chancery and Family Divisions. A judge, the Master, or any nominated officer authorised under section 94 of the Mental Health Act 1983, may exercise the functions of the court.

(d) This Section of the Guide is published with the assistance and approval of the Master of the Court of Protection.

23.2 Orders and Directions as to Costs

(a) All orders as to costs are at the discretion of the court 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,
- Detailed assessment of costs.

23.3 Agreed Costs

(a) Agreed costs are not generally available. The procedure is now governed by the Practice Note of 11 October 2004. 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 used to seek agreement.

(b) The Court of Protection recognises that in certain circumstances it would not be in the client's best interests to request an assessment, for example where the cost of assessment is 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 solicitors consider 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) The Master of the Court of Protection specifies the amounts allowed under the categories of fixed costs in consultation with the Law Society. The rates are published annually in practice notes issued by the Master. The amounts allowed under each category are maximum amounts. Where there are reasonable grounds for thinking that costs will not exceed the maximum amount allowed, solicitors may take a lower figure without further reference to the Court or the PGO. For example if the professional reasonably believes the general management costs for the year will not exceed £400, then they may take that figure without drawing a bill.

(b) Solicitors may also take fixed costs for general management pro-rata if the period covered by the bill is less than one year, for example where the patient dies or the receiver retires before the anniversary date.

(c) Although fixed costs are set in consultation with the Law Society and apply mainly to the work of solicitors, accountants may elect to take an amount not exceeding fixed costs for any work covered in categories II III and VII below. The court may also apply the fixed costs procedure to any other non-solicitor if it is appropriate to do so, and it is open to any other professional to apply to the court for authority to receive fixed costs at any time.

(d) The categories of fixed costs are:

Category I	Work up to and including the date upon which the First General Order or Short Order is entered
Category II	(a) Preparation and lodgment of a receivership account (b) Preparation and lodgment of a receivership account which has been certified by a solicitor under the provisions of the Practice Notes dated 13 September 1984 and 5 March 1985 reported at [1984] 3 All ER 320 and [1985] 1 All ER 884 respectively
Category III	General management costs in the first year (a) where there are lay receivers and the court has authorised the receiver to employ solicitors to carry out work not usually requiring professional assistance under rule 87 of the Court of Protection Rules 2001 (b) where there are professional receivers General management work in the second and subsequent years (c) where there are lay receivers and the court has authorised the receiver to employ solicitors to carry out work not usually requiring professional assistance under rule 87 of the Court of Protection Rules 2001 (d) where there are professional receivers (e) Where a professional is dealing with the affairs of an

	individual under an order of the court, and the assets of the individual are less than £16,000, then the professional may take a general management fee of 2.5% of the patient's assets on the anniversary of the order appointing the professional to act (plus VAT).
Category IV	Applications under s.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 the patient and applications under section 96(1)(k) of the Mental Health Act 1983 for the authority to exercise any power vested in the patient whether beneficially, or as guardian or trustee, or otherwise.
Category V	Conveyancing costs, except where the sale or purchase is made by trustees.
Category VI	Work up to and including the date upon which an order appointing a replacement receiver is entered.
Category VII	Preparation of an Inland Revenue income tax return on behalf of a patient.

(e) In most straightforward or routine receivership cases, solicitors 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, solicitors may, if they prefer, apply for an assessment of their costs.

23.5 Commencing Detailed Assessment

(a) The detailed assessment of costs under orders or directions of the Court of Protection is dealt with in accordance with the CPR. Solicitors should lodge a request for a detailed assessment at the Supreme Court Costs Office (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, together with the authority for assessment, the bill of costs, all supporting papers and a lodgment fee (currently £200, or £100 for bills below £3,000 fee 4 COP Rules as amended).

(b) The authority for assessing a Court of Protection bill of costs must derive from an order or direction of the Court of Protection. The general rule is "one order-one bill" so the request should not consolidate two or more orders in one bill. The exception is a bill for the preparation of a receivership account, which may be included in a bill for general management.

23.6 Bill Format

(a) The bill of costs should be prepared in accordance with the model forms set out in the CPD (see para 3.4, above) except where the short form bill (described below) is appropriate. The bill should state correct title of the matter, the name and address, telephone number and reference of the solicitor. 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 (e.g. from 21 December 2004 to 20 December 2005).

(b) Where the amount of the bill does not exceed £3,000, excluding VAT and disbursements the solicitor may request the Costs Office to assess the costs using the short form bill. The procedure is the same as that for an application for detailed assessment, except that solicitors may use a simplified form of bill, which will not require the services of a costs draftsman. The cost of drawing a long form of 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 First General Order is the authority to assess the costs of the application to appoint the receiver. The Costs Office will treat costs of the application as ending on the issue date of the First General Order (which may be some time after the actual date of the order). The costs officer will treat any costs incurred after the issue of the order as general management costs.

(b) If the order provides for fixed costs, but solicitors elect for assessment, it is not necessary to apply to the Court of Protection for an amended direction. Instead, under a

general direction issued by the Court of Protection and dated the 25 July 1990, solicitors may elect for assessment simply by lodging a bill with the Costs Office. The bill should contain a certificate stating that fixed costs have not been taken.

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

(d) Any other solicitor in the matter will need to send the direction of the court, usually a letter, authorising the receiver to employ a solicitor to do work not usually requiring professional assistance (see para 23.9, below). They should also lodge a copy of the First General Order so that the Costs Office can record who is receiver and note any specific directions.

(e) Costs for preparing the receiver's annual account are assessed after passing the receiver's account. Solicitors should enclose with their bill a copy of the letter from the PGO sent out when the account has been passed.

(f) In all cases, where fixed costs are available, solicitors 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 add an endorsement to the bill.

23.8 The Detailed Assessment

(a) The Costs Office will deal with most assessments on a provisional basis by post. If the solicitor is not satisfied with the assessment he must inform the costs officer within 14 days of receipt of the provisional assessment. The Costs Office will then fix a date for hearing. In practice the costs officer will deal with any enquiries by telephone or letter.

(b) If the order provides for costs to be paid other than from the patient's estate, the solicitor must provide a statement of parties and Notice of Commencement. The Costs Office will send an appointment for the hearing to all parties. Rule 47.17A of the Civil Procedure Rules 1998 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 interest in the outcome of a detailed assessment, therefore solicitors 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 receiver prior to lodgement, as this will help to allay disputes where the receiver is unaware that costs have been claimed from the patient's estate until receipt of the final costs certificate.

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

23.9 Solicitors and Other Professional Persons Carrying out Receiver's Work

(a) Rule 87(1) of the Court of Protection Rules 2001 states that no receiver for a patient, other than the Official Solicitor, shall, unless authorised by the Court of Protection, be entitled at the expense of the patient's estate to employ a solicitor or other professional person to do any work not usually requiring professional assistance.

(b) The court may authorise professionals to be paid costs formally by way of an order or informally for example by letter. Although this guide describes the procedure in relation to solicitors' costs, the Court of Protection and the Costs Office will treat other professionals in a similar way.

(c) The Court of Protection has discretion to order assessment on either the standard or indemnity basis (rule 43 (remuneration) and rules 84 – 89 (costs) COP Rules). Definitions of standard and indemnity bases of costs are set out in para 2.4, above.

(d) As a general principle, the court will require assessment of costs on the standard basis. This is because the legal definition of the standard basis will only allow costs

that are proportionate to the matters in issue. There is no test of proportionality in the definition of the indemnity basis, which precludes the costs officer from taking into account the amount of money involved, the financial position of the client and the complexity of the case.

(e) Following the Practice Direction issued by the Master of the Court of Protection on 2 March 2005, all orders providing for costs made on or after 1 April 2005 will, unless the court specifically directs otherwise, provide for assessment on the standard basis. This includes orders issued on or after that date providing for fixed costs, where the professional elects to seek an assessment pursuant to the general direction dated the 25 July 1990.

(f) The Court of Protection retains the discretion to order costs on the indemnity basis. Solicitors may apply to the court for an order for costs on the indemnity basis, if they feel the circumstances of the case justify it. However, solicitors undertaking work in expectation of receiving costs on the indemnity basis do so at their own risk that such an order may not be made.

(g) It is not possible to define exactly what circumstances might persuade the court to agree to assessment on the indemnity rather than 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 solicitors to persuade the court that costs should be paid on the indemnity basis.

23.10 Non-Professional Receivers

(a) In cases where the receiver is not a professional person, he or she is required to carry out the full range of receivership duties. These duties are set out in the Receiver's Handbook published by the Public Guardianship Office and the Receiver's Declaration that applicants submit on applying for appointment as receiver.

(b) On occasions, the receiver may wish to employ at the client's expense a solicitor or other professional person to do work not usually requiring professional assistance.

If a receiver engages a solicitor to assist in this way, the receiver or solicitor must apply to the court for authorisation under rule 87 of the COP Rules.

(c) Where an authorisation under rule 87 has been granted the solicitor must provide a copy of it to the Costs Office when submitting a bill for assessment. If no such authority has been obtained, the costs officer will disallow the claim, although they may still apply 'out of time' to the Court of Protection, for directions under rule 87. The court will usually provide retrospective authorisation where the professional has acted in good faith, for example in cases of emergency or where urgent action is required to protect the client's property. In most cases the court would expect the professional to seek advance authorisation.

(e) The court considers the completion of annual accounts to be work that sometimes requires professional assistance and therefore solicitors do not need to apply for directions under rule 87 if they are instructed by a receiver to prepare annual accounts.

23.11 General Management Work

(a) The Court of Protection's jurisdiction extends only to the management and administration of the client's financial affairs. The court cannot give directions concerning aspects of clients' affairs that are not financial. It follows that solicitors will only be allowed costs for work relating to the client's financial affairs.

(b) If the costs officer disallows an item in a bill that the solicitor feels is properly chargeable as work relating to financial affairs, they should raise this upon review of the provisional assessment and if that is unsuccessful, take the question to appeal. Neither the court nor the PGO can intervene in the assessment process since this function is reserved to the Supreme Court Costs Office by reason of rule 86 COP Rules.

(c) If the receiver is a solicitor or other professional person then, subject to the terms of the order appointing them as receiver, they may be paid costs for the whole of the receivership duties, as long as those duties relate to the management of the client's financial affairs. The interpretation of those duties may cause difficulties for professional receivers, as some of the duties listed in the Receiver's Handbook (published by the PGO) and the

Receiver's Declaration do not relate directly to financial affairs. As a general rule the court would not expect professional receivers to undertake the non-financial duties of a receiver, but would expect the receiver to take reasonable steps to ensure that, wherever possible those duties were undertaken by someone else.

(d) On occasions some non-financial activities, such as visits to clients or attendance at case conferences, may be necessary in order to safeguard a client's financial affairs. 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 receiver to be actively involved in the management of the client's day-to-day affairs, then the receiver 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 receivership work, be it legal or non-legal, be undertaken by an appropriate fee earner in the firm, which may not necessarily be the appointed receiver.

23.12 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. The estate agent's charges should appear in the completion statement and not as a disbursement on the bill.

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

23.13 Deceased Patients

If the patient dies when the assessment of costs are pending, the solicitor should inform the Costs Office, who will suspend the assessment until after the court gives final directions. The solicitor must serve a copy of his bill upon the patient's personal representative upon resumption of the assessment process.

SECTION 24 - LEGAL AID/LSC CASES

24.1 Introduction

(a) Because of changes made by the Administration of Justice Act 1999 the old legal aid scheme, the Legal Aid Board and the Legal Aid Fund have all been replaced by a new funding scheme, the Legal Services Commission ("LSC") and the Community Legal Service Fund. Cases started under the old scheme continue largely as before but, on conclusion, will be paid for out of the Community Legal Service Fund.

(b) Under the old scheme legal aid paid for legal services supplied to "assisted persons". Under the new scheme legal aid provides legal services for "clients". In this Guide the term "LSC funded client" is used to cover both assisted persons and "clients".

(c) The modern form of order for what used to be called "legal aid taxation" is now "detailed assessment of the costs of the [party] which are payable out of the Community Legal Service Fund".

24.2 Costs Payable by Another Person as Well as Out of the Fund

(a) Where the costs are payable by another person as well as out of the Community Legal Service 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 (see Sections 3 and 17 above). The Schedule of Costs Precedents includes model forms of bills for use in such cases (Precedents C and D).

(b) The request for detailed assessment hearing must (in addition to the items set out in Section 8 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 LSC funded client 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 Community Legal Service Fund are prescribed rates (ie if the Civil Legal Aid (Remuneration) Regulations 1994 apply), 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 LSC funded client 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 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 LSC funded client's solicitor 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 LSC funded client 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 Community Legal Service 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 11 above.)

(b) The LSC funded client will not be required to make any contribution to the Community Legal Service 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 Community Legal Service Fund

(a) Where costs are payable only out of the Community Legal Service Fund, the solicitor representing the LSC funded client 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 43.3 of the Costs Practice Direction.

(b) Where the solicitor has certified that the LSC funded client 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 solicitor has certified that the LSC funded client 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 solicitor 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 LSC funded client's solicitor 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 solicitor 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

(a) Where the Civil Legal Aid (Remuneration) Regulations 1994 do not apply to the detailed assessment (which is generally the case where the legal aid certificate was issued before 25 February 1994) the Civil Legal Aid (General) Regulations 1989, Regulation 106 remains applicable and an agreement of between the parties costs is not possible unless the agreement is accepted in full and final settlement of the costs ie with no further claim against the Fund. Therefore where in such cases the receiving party wishes to make a claim against the Fund, the parties will be informed that there will have to be a detailed assessment of the whole bill. However, because of the measure of agreement which has been reached, the detailed assessment of the between the parties sections of the bill may not take very long to complete.

(b) In cases where the Civil Legal Aid (Remuneration) Regulations do apply the Civil Legal Aid (General) Regulations 1989, Regulation 106A permits the LSC funded client's solicitor 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 solicitor for a LSC funded client 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 LSC funded client notifies the solicitor that he is dissatisfied with the decision the solicitor must appeal on counsel's behalf. The costs of any such appeal will only be payable out of the Community Legal Services Fund to the extent that the court hearing the appeal so orders. For the detailed Regulations relating to appeals involving LSC funded clients see Civil Legal Aid (General) Regulations 1989, Regulation 113 as amended and CPR 47.20(2).

SECTION 25 - COSTS ORDERS AGAINST LSC FUNDED CLIENTS AND/OR THE LSC

25.1 The Access to Justice Act 1999 and the Regulations

(a) Any costs ordered to be paid by a LSC funded client must not exceed the amount which is a reasonable one for him to pay having regard to all the circumstances including the financial resources of all the parties to the proceedings and their conduct in connection with the dispute to which the proceedings relate (Access to Justice Act 1999, Section 11).

(b) The Community Legal Service (Costs) Regulations 2000 as amended ("the Costs Regulations") and the Community Legal Service (Costs Protection) Regulations 2000 as amended ("the Costs Protection Regulations") are Regulations made under the Access to Justice Act 1999 and provide a code governing orders for costs against assisted persons/ LSC funded clients and against the LSC.

(c) The ordinary rules governing the assessment of costs (Parts 44 to 48 of the CPR) do not apply to the assessment of such costs. The procedure to be followed in such cases is set out in Sections 21 - 23 of the Costs Practice Direction.

25.2 Orders Which the Court Awarding Costs May Make

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

(b) If the court decides to make an order that the amount payable by the LSC funded client is to be determined by a Costs Judge or District Judge it may also state the amount which 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 facts 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 LSC funded client is to pay unless it considers that 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 that the LSC funded client must pay.

(d) If the LSC funded client 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 LSC funded client had costs protection and the sum payable in respect of which he did not have costs protection. (See Section 22 of the Costs Practice Direction.)

(e) A specimen order for costs against a claimant who is a LSC funded client is set out in the Appendix, below, para A-6.

25.3 Costs Against the LSC

(a) If an application for an order for costs against the LSC is made the criteria set out in Regulation 5 of the Costs Protection Regulations will apply. Before the LSC can be ordered to pay the whole or any part of the costs incurred by a non-funded party all of several conditions must be satisfied:

(i) the costs ordered to be paid by the LSC funded client must be less than the full costs (ie the amount which that person would, had costs protection not applied, have been ordered to pay);

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

(iii) the non funded party must provide written notice of intention to seek an order against the LSC within 3 months of the making of the order for costs against the LSC funded client;

(iv) the court must be satisfied that it is just and equitable in the circumstances that provision for the costs should be made out of public funds; and,

(v) where the costs are incurred in a court of first instance, the proceedings must have been instituted by the LSC funded client and, the court must be satisfied that the non-funded party will suffer severe financial hardship unless the order is made.

(b) Where the application for funded services was made on or after 3 December 2001 the three months time limit referred to in (iii) above may be extended if there is a good reason for the delay; and in (v) above only a non funded party who is an individual may apply but the court will not have to be satisfied that the financial hardship he or she will suffer will be severe.

25.4 Orders Which A Costs Judge or District Judge May Subsequently Make

(a) An order for costs to which Section 11(1) of the Access to Justice Act 1999 applies may specify the amount of full costs and may specify the amount payable by the LSC funded client. Where appropriate an application 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 LSC funded client;

(iii) the amount payable by the LSC itself.

(b) The procedure for determination is set out in Section 23 of the Costs Practice Direction which is summarised below.

25.5 Form of Application

Applications for such orders must be made in the appropriate court office on an application in Form N244 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); and

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

25.6 The Response by the LSC Funded Client

(a) Within 21 days of being served with the application, the LSC funded client must respond by filing a statement of resources (defined below) and serving a copy of it on the receiving party and, where relevant, on the Regional Director. The LSC funded client 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 or by order of the court.

25.7 Effect of Non Compliance by the LSC Funded Client

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

25.8 Further Procedure Where a Statement of Resources by the LSC Funded Client is Filed or is not Required

(a) When the LSC funded client 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 LSC the court may fix a hearing date at the time of issue of the application.

(b) Applications which proceed to a hearing to determine the liability of the LSC funded client 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 Regional Director of the LSC

The Regional Director of the LSC may appear at any hearing at which a costs order may be made against the LSC or may file a written statement as described in para 23.10 of the Costs Practice Direction.

25.10 Costs of Application

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

25.11 Statements of Resources

(a) A "statement of resources" should set out details of the financial resources and expectations of the maker of the statement and of his "partner" (a person with whom he or she lives as a couple). The resources of a partner are not treated as the LSC client's resources if the partner has a contrary interest in the proceedings.

(b) A full definition of "statement of resources" is given in para 22.1 of the Costs Practice Direction. 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 Costs Regulations provide for the filing of statements of resources not only by the LSC funded client 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. In such cases a statement of resources stating merely that the applicant is "able to pay its 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 severe financial hardship if the application fails.

(d) Where the court is determining an application for a costs order against the LSC and the costs were not incurred in a court of first instance, a statement of resources does not have to filed by the receiving 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 an LSC funded client and also a specimen order for use by a Costs Judge or District Judge when determining the amount of costs payable by an LSC funded client.

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. Such persons generally have no right to require the solicitor to make the application. In practice solicitors make the application against their client or former client only where they wish to escape the consequences of a remuneration certificate issued by the Law Society. Although, in other cases, the solicitors may have a right to apply under Section 70 they almost invariably bring simple 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).

(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).

(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 to abide the event.

(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)

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 H M Paymaster General (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 2.13, who will list it for hearing before a Costs Judge. The court will serve the application unless there are particular reasons why the applicant should serve it. The application will usually be listed for a short appointment (15 minutes). If the hearing is likely to exceed the allotted time it may be necessary to adjourn it to a new date with a realistic time estimate. This step may become due, for example, when evidence is filed in reply to the application.

(c) In most cases, witness statement evidence is not required unless the application becomes contested, a certificate of special circumstances under Section 70(3) of the Act is sought or the Costs Judge so directs.

26.5 The Hearing of the Application

(a) Where an application is made by a litigant in person, an order will not 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 48.10 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.

(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. Copies will then be served on the parties.

26.6 The Costs of the Assessment

(a) 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 more than one fifth (excluding VAT) 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. The Costs Judge may order otherwise if there are special circumstances.

(b) If on a detailed assessment of non-contentious costs, the costs allowed are less than one half of the costs claimed, the Costs Judge will report those facts to the Council of the Law Society. The report will be addressed to The Law Society Consumer Complaints Service, Victoria Court, 8 Dormer Place, Royal Leamington Spa, Warwickshire CV32 5AE.

SECTION 27 - COURT FEES PAYABLE IN THE SCCO

27.1. Introductory

(a) The fees payable for proceedings within the SCCO are set out in the Supreme Court (Review of Taxation in Criminal Cases) Fees Order 1984 (1994 No.340) as amended, the Civil Proceedings Fees Order 2004 and the Family Proceedings Fees Order 2004. Certain fees are prescribed by the Court of Protection Rules 2001 as amended. All of these orders and rules, except the first mentioned, are set out in practitioners' books such as the White Book and the Green Book. In cases of difficulty enquiry may be made at the Costs Office (see paras 1.5, 1.8 and 1.9, above).

(b) The following list, while not exhaustive, includes the fees most commonly encountered in matters before the Supreme Court Costs Office, and are valid at the time of publication. The County Court fees and fees in Family Proceedings appear in brackets:

		High Court	County Court	Family Proceedings
i)	Request for a default costs certificate:	£50	(£45)	(£60)
ii)	Request or application to set aside a default costs certificate:	£100	(£65)	(£65)
iii)	On filing request for a detailed assessment where the applicant is legally aided or publicly funded and no other party is ordered to pay the costs of the proceedings:	£120	(£105)	(£140)
iv)	On filing request for a detailed assessment other than (iii) above (including	£600	(£300)	(£250)

	assessment of costs payable to a solicitor by his client):			
v)	On applying for the court's approval of a certificate of costs payable from the Community Service Fund:	£50	(£35)	(£35)
vi)	On any appeal against decisions in detailed assessment proceedings:	£200	(£105)	(£105)
vii)	On an application for an order under Part III of the Solicitors Act 1974 for the assessment of costs payable to a solicitor by his client or on the commencement of costs only proceedings:	£50	(£35)	(£35)
	The above fees apply to all cases where the order or authority for assessment of costs was made on or after 10 January 2006.			

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 HM Paymaster General. 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 and is not in receipt of legal aid or LSC funding for the purposes of the proceedings.

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

(i) income support;

(ii) working tax credit provided that:

> (a) child tax credit is being paid to the party or otherwise following a claim for child tax credit made jointly by members of a married couple or an unmarried couple as defined in Sections 3(5) and (6) of the Tax Credits Act 2002, which includes the party; or
>
> (b) there is a disability element or severe disability element (or both) to the tax credit received by the party –
>
> AND that the gross annual income taken into account for the calculations of the working tax credit is £14,600 or less;
>
> (c) income based job seeker's allowance
>
> (d) guarantee credit under the State Pension Credit Act, 2002.

(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.

(e) In family proceedings no fee is payable by a person under 18 or in respect of whom an order for financial relief (under paragraph 2 of Schedule 1 to the Children Act 1989) is in force or is being applied for, provided that that person is not a beneficiary of a trust fund in court of a value of more than £50,000.

27.4 Appeal Fee

An appeal, whether from a Costs Judge to a High Court Judge, or from a costs officer to a Costs Judge, attracts a fee (currently £200). 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 the Mechanical Recording Department at the RCJ, who will release the tapes only to one of the official tape transcribers (a list of whom is available from the Mechanical Recording Department). 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 court fee charged is £1 for the first page and 20p for each subsequent page. For electronic copies the charge is £3 per disk.

SECTION 28 - REMUNERATION OF COURT APPOINTED OFFICE HOLDERS

28.1 Introduction

(a) Trustees in Bankruptcy, Joint Provisional Receivers and Liquidators are frequently appointed by Judges of the Companies Court to manage or wind up bankrupt estates or insolvent companies. The remuneration of such Court appointed Office Holders is generally met out of the assets of the insolvent estate in question. The amount which they are entitled to charge is fixed by the Court taking into account factors set out in the Insolvency Rules 1986 (see rule 4.30 and 6.138). These include the complexity of the case and the value and nature of the property the Trustee, the Receiver or Liquidator has to deal with.

(b) Guidance about the evidence required to support claims by Office Holders for remuneration is given in *Mirror Group Newspapers v Maxwell* [1998] BCC 324, Ferris J. Assistance can also be found in the report of Mr Justice Ferris' Working Party on the Remuneration of Office Holders dated July 1998 (in particular paragraph 4.3, and Section 8). The Statement of Insolvency Practice 9 (SIP9) issued by the Society of Insolvency Practitioners (now called 3R) gives additional guidance, in particular paragraph 3. Costs are now likely to be assessed on the indemnity if requested following *BAI (Run Off) Ltd* (Neuberger LJ, 5 July 2004 unreported). Attention is also drawn to the Insolvency Practice Statement – "The fixing and approval of the remuneration of appointees" (2004).

28.2 Reference to a Costs Judge for Report

(a) The costs involved in receiverships and liquidations can be large, sometimes exceeding £1,000,000. In cases where substantial sums are involved, Judges and Registrars of the Companies Court may refer any request for remuneration made by a Court Appointed Office Holder to a Costs Judge for a report.

(b) The Companies Court order will direct the Court Appointed Office Holder to lodge a duplicate bundle of the documents presented to the Judge or Registrar at the Costs Office. It will also require him to apply to the Costs Judge assigned to the matter for a

directions hearing. At that hearing the Costs Judge will give directions for the filing of any further evidence or documents.

(c) When all relevant material has been lodged, the Costs Judge will prepare a report for the use of the Companies Court Judge or Registrar. This report contains recommendations about the level of remuneration to allow. These are not binding and the ultimate decision as to the amount of the Office Holders' remuneration is taken by the Judge or Registrar.

28.3 Applications for Interim Payments

In long running liquidations and receiverships, Office Holders frequently apply for interim payments of remuneration. Such applications can be made informally to the Costs Judge to whom the matter has been assigned. He will then make a recommendation to the Companies Court about the level of interim remuneration to allow.

SECTION 29 – JUSTICES OF THE PEACE, JUSTICES' CLERKS AND GENERAL COMMISSIONERS OF INCOME TAX

29.1 Introduction

(a) This Section of the Guide deals with the determination of costs where the court has made an order that the Lord Chancellor pay the costs of proceedings under Section 53A of the Justices of the Peace Act 1997 ("Section 53A") or under Section 2A of the Taxes Management Act 1970 ("Section 2A"). The amount of costs payable by the Lord Chancellor will be determined in accordance with the Justices and Justices Clerks (Costs) Regulations 2001 (SI 2001 No.1296) or the General Commissioners of Income Tax (Costs) Regulations 2001 (SI 2001 No.1304), and not in accordance with the CPR 47.

(b) The costs payable by the Lord Chancellor under an order under Section 53A are the costs of proceedings in respect of any act or omission of a Justice of the Peace or a Justices' Clerk in the execution (or purported execution) of his duty –

(i) as a single Justice; or

(ii) as a Justices' Clerk exercising, by virtue of any statutory provision, any of the functions of a single Justice.

(c) The costs payable by the Lord Chancellor under an order made under Section 2A are the costs of proceedings in respect of any act or omission of a General Commissioner in the execution (or purported execution) of his duty as a General Commissioner.

(d) The court will normally, when making the order for costs, determine the amount it considers sufficient reasonably to compensate the receiving party for any costs properly incurred by him in the proceedings and specify that amount in the order.

(e) The court may direct that the amount of costs be determined by a Costs Judge, where the hearing has lasted more than one day, or there is insufficient time for the court to determine the costs on the day of the hearing, or the court considers that there is other good reason for the Costs Judge to determine the amount of the costs.

(f) A court which makes an order under Section 53A or Section 2A which determines the amount payable by the Lord Chancellor or which directs that the amount be determined by a Costs Judge, must serve that order on the receiving party and on the Lord Chancellor.

29.2 Time Limit for Proceedings in the SCCO

(a) Where the court orders the costs to be determined by a Costs Judge the receiving party is required by the Regulations to file a claim for costs and a copy of the order in the Supreme Court Costs Office and to serve a copy of the claim on the Lord Chancellor.

(b) The time for filing and serving such a claim is no later than three months from (but excluding) the date on which the order was made. The Costs Judge may on the application of the receiving party, in exceptional circumstances, extend the period of three months.

29.3 Form of Application

(a) A claim for costs to be determined by a Costs Judge following an order under Section 53A or Section 2A is made by a claim form to which CPR Part 8 applies (Form N208) accompanied by copies of:

(i) the order of the court giving the right to costs;

(ii) a statement signed by the receiving party or his solicitor giving the name, address for service, reference and telephone number and fax number, if any, of (a) the receiving party and (b) the Lord Chancellor;

(iii) copies of any orders made by the court relating to the costs of the proceedings which are to be determined;

(iv) any fee notes of counsel;

(v) receipts or accounts for other disbursements relating to items claimed; and,

(vi) the relevant papers in support of the costs claimed.

(b) In respect of the costs claimed, the receiving party may either:

(i) file with the claim form a bill of costs, the form and layout of which is similar to the bills referred to in Section 3 above; or

(ii) set out in the claim form a summary of the items of work done by a legal representative, or the receiving party as a litigant in person, as appropriate; the dates on which items of work were done; the time taken; and the sums claimed. The claims form must specify any disbursements claimed, including counsel's fees; the circumstances in which they were incurred and the amounts claimed in respect of them.

(c) If the receiving party wishes to draw any special circumstances to the attention of the Costs Judge those circumstances must be specified in the bill or in the claim form.

(d) The current court fee payable in respect of determinations under these Regulations is £120.

29.4 Service on the Lord Chancellor

(a) Within three months from the date on which the order under Section 53A or Section 2A was made, the receiving party must serve a sealed copy of the claim form together with copies of:

(i) the order of the court giving the right to costs;

(ii) any bill of costs filed;

(iii) any fee notes of counsel;

(iv) receipts or accounts for other disbursements relating to items claimed.

(b) The procedure for service of the claim form is governed by RSC Order 77 rule 4 which is scheduled to the CPR.

29.5 Written Representations and Replies

(a) The Lord Chancellor may, if so advised, no later than one month from (but excluding) the date on which he received the claim from the receiving party, file written representations in respect of the claim, at the Supreme Court Costs Office and at the same time serve a copy of them on the receiving party.

(b) Where the Lord Chancellor makes written representations the receiving party may, if so advised, file a reply at the Supreme Court Costs Office within 21 days after service of the written representations on the receiving party. A copy of the reply must be served on the Lord Chancellor at the same time.

29.6 Case Management Directions

The Costs Judge may give directions in respect of:

(i) the claim;

(ii) any written representations or reply;

(iii) the filing and serving of any further particulars or documents; and,

(iv) to ensure that the determination of costs is dealt with justly.

29.7 The Determination

(a) After receiving points of dispute and/or a reply, or after the time for filing such documents has expired, if earlier, the Costs Judge will provisionally determine the amount of costs without the attendance of either party unless –

(i) either party has required the court to fix a date for a hearing; or

(ii) the court considers that a hearing is necessary.

(b) After a provisional determination, the court will give both parties notice of the amount which the court proposes to allow.

(c) The court will fix a date for hearing if either party informs the court, within 14 days after receipt of notice of provisional determination, that he wants the court to hold a hearing.

(d) Where the court fixes a date for a determination hearing, it will give at least 14 days notice to each party of the place, date and time of the hearing.

29.8 Costs of Proceedings in the SCCO

In respect of costs incurred in the SCCO CPR 44.3 gives the court a discretion as to whether the costs of the application are payable by one party to another, the amount of those costs and when they are to be paid.

29.9 Result of the Determination

(a) On a provisional determination, or at a determination hearing, the court will note on the bill of costs or claim form all items allowed, disallowed or reduced.

(b) Once the determination has been concluded –

(i) if the receiving party is legally represented, the legal representative should within the next 14 days make clear to the court the correct figures agreed or allowed in respect of each item and should recalculate the amount to be allowed; or

(ii) if the receiving party is not legally represented, the Lord Chancellor should, within the next 14 days make clear to the court the correct figures agreed or allowed in respect of each item and should recalculate the amount to be allowed.

(c) On the completion of the determination the court will draw up an order specifying the amount payable by the Lord Chancellor under the order made under Section 53A or Section 2A and specify what if any order for the costs of the proceedings in the SCCO was made and (if appropriate) the amount of those costs.

29.10 Appeals

CPR Part 52 applies to any appeal brought in respect of proceedings to which this section applies. Information about appeals and the time limits which apply is given in Section 13, above.

SECTION 30 - THE FINANCIAL SERVICES AND MARKETS ACT 2000

30.1 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 3 to 17 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).

30.2 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.3732) 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.

30.3 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 Supreme Court Costs Office. 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)).

30.4 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 Supreme Court Costs Office. 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)).

30.5 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 the 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.

30.6 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).

30.7 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.

30.8 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.

30.9 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 Judges 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.

30.10 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 para 30.8 , above.

SECTION 31 – CRIMINAL FEE APPEALS

31.1 Introductory

(a) 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 Legal Aid Act 1988 (as to which see the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989).

(iii) Appeals by solicitors and advocates entitled to remuneration under the Access to Justice Act, 1999 and the Criminal Defence Service (Funding) Order 2001.

(iv) Appeals by solicitors and advocates entitled to remuneration under the Criminal Procedure Rules 2005 (formerly the Crown Court Rules 1982 Part IV).

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

(b) Under certain agreements made between interested bodies and the Senior Costs Judge, Costs Judges also determine fees payable to prosecution counsel in cases referred to the SCCO by the Crown Prosecution Service, the Serious Fraud Office, the Department of Social Security and H.M. Customs and Excise.

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) [2004] 1 WLR 2657; [2004] 2 All ER 1070; [2004] 2 Cr App R395 (the "Criminal Costs Practice Direction).

31.3 Nominated Masters

At present there are five Costs Judges who deal with criminal fee appeals, namely Chief Master Hurst (Senior Costs Judge), Master Rogers, 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; (under the Criminal Procedure Rules 2005 the period is 14 days). Papers are lodged with the Clerk of Appeals in Room 2.14.

(b) The Notice of Appeal should follow the Form A in Schedule 3 to the Criminal Costs Practice Direction and illustrated in the Appendix (para 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 Determining 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) The Grounds of Appeal should correspond with the Notice of Appeal. Points raised in the Notice of Appeal which are not supported by grounds may be dismissed and conversely matters included in the Grounds of Appeal which are not mentioned in the Notice of Appeal may not be separately decided.

(b) The Grounds of Appeal are an integral part of the Notice of Appeal and should be submitted at the same time. 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) Uncertified decisions of Costs Judges are not binding on Costs Judges or Determining Officers and will rarely if ever be of any assistance.

(e) Only in exceptional cases will a Costs Judge consider material not before the Determining Officer (leave is required in Schedule 1 to the 2001 Funding Order para 21(11) of Reg. 15(11) of the 1989 Regs; Reg. 9(11) of the 1986 Regs) or Reg 78.5(5) of the Criminal Procedure Rules 2005. Requests to consider such material should always be included in the Notice of Appeal.

31.6 Supplementary Grounds of Appeal

Occasionally the Determining Officer does not give written Reasons in respect of all matters upon 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 Determining 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 depositions 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 Grounds 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 draftsperson. Such oral hearings are informal and conducted in private. 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 and Grounds 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. 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 Department of Constitutional Affairs has an independent right of appeal against any decisions adverse to the LSC Fund or Central Funds and in those cases no leave from the Costs Judge is required.

(b) In other cases, whether Central Funds or LSC funded 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 Master's written

Reasons (14 days in the case of proposed appeals under the Criminal Procedure Rules 2005) for a certificate to be granted by the Costs Judge 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 two assessors one of whom will be another Costs Judge.

(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 Determining Officer has taken many months to produce his or her 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 are 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 (14 days in the case of Criminal Procedure Rules 2005 appeals) 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 21/14 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 Costs Judge Rogers. He is treated as the Determining Officer in accordance with the 1986 Regulations. A dissatisfied party may ask him to redetermine 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.

SECTION 32 – CIVIL RECOVERY PROCEEDINGS UNDER THE PROCEEDS OF CRIME ACT 2002

32.1 Introductory

(a) The Proceeds of Crime Act 2002 makes provision for the confiscation of the assets of persons convicted of criminal offences and, in certain circumstances, of those "tainted" by criminality. Where the Director of the Assets Recovery Agency is empowered to bring proceedings for a recovery order under the Act he may also apply to the High Court for a property freezing order or an interim receiving order which prohibits any person, to whose property the order applies, from dealing with that property. The court may make exclusions from that prohibition for certain purposes including the meeting of reasonable legal expenses.

(b) The Proceeds of Crime Act 2002 and the Regulations made thereunder make special provision for two types of proceedings in the Supreme Court Costs Office:-

(i) during civil recovery proceedings, referrals to determine the amount which exclusions should allow for reasonable legal costs: and

(ii) at the conclusion of civil recovery proceedings, the assessment of any person's reasonable legal expenses in those proceedings where the court has made a recovery order which provides for the payment of those expenses.

(c) The Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005 (SI 2005/3382) specify the hourly rates of remuneration which may be allowed in respect of work done by legal representatives. Higher rates may be allowed for cases involving substantial, novel or complex issues of law or fact and the rates are increase for legal representatives whose offices are situated in certain London post code areas and districts.

32.2 Exclusions to Meet Reasonable Legal Expenses

(a) Where the court makes a property freezing order, or an interim receiving order, on an application without notice it will normally make an exclusion from the order to enable the respondent to meet his reasonable legal costs of taking advice in relation to the order, preparing a statement of assets and, if so advised, apply for the order to be set aside or varied. The initial exclusion will not normally exceed £3,000.

(b) When the court makes a property freezing order or an interim receiving order before a claim for a recovery order has been commenced, the court may also make an exclusion to enable the respondent to meet his reasonable legal costs, so that, when the claim is commenced, he may file an acknowledgment of service and any written evidence on which he intends to rely, or may apply for a further exclusion for the purpose of enabling him to meet his reasonable costs of the proceedings.

(c) Save as mentioned below, when the court makes an order or gives directions in civil recovery proceedings it will at the same time consider whether it is appropriate to make or vary an exclusion for the purpose of enabling any person affected by the order or directions to meet his reasonable legal costs. However, in order to obtain an exclusion going beyond the preliminary steps mentioned in sub paragraphs (a) and (b) above the person whose costs are to be provided for must make and file a statement of assets.

(d) The court will normally refer to a Costs Judge any question relating to the amount which an exclusion should allow for reasonable legal costs in respect of proceedings or a stage in the proceedings.

(e) An exclusion made for the purpose of enabling a person to meet his reasonable legal costs will specify:

(i) the stage or stages of civil recovery proceedings to which it relates;

(ii) the maximum amount which may be released in respect of legal costs for each specified stage; and

(iii) the total amount which may be released in respect of legal costs pursuant to the exclusion.

(f) Once expenses provided for by an exclusion have been incurred a person may seek the Director's agreement to the release of an interim payment in respect of those expenses. The amount which may be released is the amount which the Director agrees, or 65% of the amount claimed, whichever is the greater.

(g) If a person becomes aware that his legal costs have exceeded or will exceed the maximum amount allowed for a specified stage, or the total amount allowed for all stages, he should apply for a further exclusion or for a variation in the existing exclusion as soon as reasonably practicable.

32.3 Procedure on Referrals Relating to Exclusions

(a) Where a matter has been referred to a Costs Judge, either party may make an application to the SCCO on Form N244 accompanied by a copy of the relevant order, copies of any evidence relied on in support and a statement of parties.

(b) If the application is made by the person whose reasonable legal costs are to be provided for:

(i) the evidence in support should include an estimate of costs substantially in the form illustrated in Precedent H in the Schedule of Costs Precedents annexed to the Costs Practice Direction; and

(ii) when fixing the date for hearing the Costs Judge will also give a direction as to the filing and service of any points of dispute on the estimated costs.

(c) A specimen form of order for directions on applications made by a person whose costs are to be provided for is included in the Appendix, below, para A-11.

(d) On receipt of an application the SCCO will endeavour to list it for a date for hearing not less than 14 days after nor more than 42 days after the date of issue. The party making the application should specify his preferred dates for hearing in that period. Ideally, he should specify at least one day in each week of that period.

32.4 Assessment of Costs Following A Recovery Order

(a) The Regulations set out the procedure for determining the amount payable in respect of legal expenses once the High Court has made a recovery order which vests property in the trustee for civil recovery and provides for the payment of those expenses out of that property. The Regulations also specify the hourly rates of remuneration which may be allowed in respect of work done by legal representatives.

(b) The amount of costs provided for by a recovery order may be agreed with the Director of the Assets Recovery Agency. In such a case the Director will give notice of the agreed sum to the person seeking costs and to the trustee for civil recovery.

(c) If the legal expenses are not agreed with the Director, the person seeking them must commence detailed assessment proceedings in accordance with CPR Part 47. Generally speaking the procedure is as set out in Sections 3 to 17 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).

(d) The notice of commencement plus other documents must be served not later than two months after the date of the recovery order.

(e) Unless the costs are subsequently agreed or unless a default costs certificate is obtained, a request for a detailed assessment hearing must be filed in the Supreme Court Costs Office not later than two months after the expiration of the period for commencing the detailed assessment proceedings.

(f) Further details of the procedure to be followed are set out in Section 49A of the Costs Practice Direction. Notice in particular:

(i) the paying party is the trustee for civil recovery;

(ii) the notice of commencement must also be served on the Director of the Assets Recovery Agency;

(iii) in addition to the documents usually served with a notice of commencement (as to which, see para 4.4(b) of this Guide) the receiving party must also serve a statement giving the date, amount and source of all interim payments which have been released in respect of the costs in question;

(iv) in addition to the documents usually filed with a request for a detailed assessment hearing (as to which, see para 8.2(a) of this Guide) the receiving party must also file copies of all exclusions from property freezing orders or interim receiving orders which relate to the costs to be assessed and copies of every estimate of costs filed by the receiving party in support of an application for such an exclusion; and

(v) the costs will be assessed on the standard basis, subject to the Regulations specifying the hourly rates which may be allowed.

(g) If the sum payable in respect of a person's legal expenses exceeds the total amount which has been released in respect of those expenses, the trustee for civil recovery must pay the balance out of the assets recovered.

(h) The trustee for civil recovery may only make a payment in respect of a person's legal expenses to the solicitor who is instructed to act for that person or, where appropriate, to the solicitor who was so instructed when the legal expenses to which the sum relates were incurred.

(i) If the sum payable in respect of a person's legal expenses is less than the total amount which has been released in respect of those expenses, the person to whose expenses the sum relates must repay the balance to the trustee.

SECTION 33 – COSTS ORDERS MADE BY THE ADJUDICATOR TO HM LAND REGISTRY

33.1 Introductory

(a) The Adjudicator to HM Land Registry (Practice and Procedure Rules 2003) SI No.2003/2171 contains provisions about the making of orders for costs and the basis of assessment (standard or indemnity) and provides that the order may specify the amount of costs or, alternatively, may award "costs to be assessed".

(b) All Costs Judges have been appointed Deputy Adjudicators to HM Land Registry.

33.2 Assessments referred to the SCCO

(a) The remaining paragraphs of this section set out the procedure to be followed where a party is awarded costs by an order of the Adjudicator to HM Land Registry and the order directs that that party may apply to the Supreme Court Costs Office for assessment.

(b) In order to obtain points of dispute, or to obtain an order penalising the defendant for failing to serve points of dispute, the receiving party should make an *application for directions* to the Costs Office. If points of dispute have already been served (whether by order or voluntarily) the receiving party may file a *request for a detailed assessment hearing*. Such applications or requests are not governed by the CPR and, at present, no court fees are payable.

33.3 Applications for Directions

(a) The form of application should be similar to the form used in applications governed by the CPR, ie, Form N244, and should be accompanied by:

(i) a copy of the order for costs made by the Adjudicator,

(ii) a copy of the bill served pursuant to that order, and

(iii) a statement of parties.

(b) The application will normally be dealt with without a hearing.

(c) Two standards forms of order are illustrated in the appendix below, para A-12:-

(i) an order giving the defendant notice to show cause why the bill of costs should not be assessed as drawn because of his failure to comply with a direction by the Adjudicator to serve points of dispute;

(ii) directions for the service of points of dispute and (if the claimant so wishes) for the service of a reply. This form will also state the provisional date for a hearing if points of dispute are served and, if they are not, states that the claimant will be entitled to obtain an assessment of his bill as drawn.

33.4 Request for a Detailed Assessment Hearing

(a) The form of request should be similar to the form used in most cases governed by the CPR, ie, Form N258. This form contains a series of tick boxes which give guidance as to the documents which should accompany the request.

(b) On receipt of the request the court will fix a date for the hearing or, if the Costs Judge so decides, will give directions or fix a date a date for a preliminary appointment.

(c) 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 parties.

SECTION 34– SCCO CONSULTATION GROUPS

34.1 Costs Practitioners Group

(a) This advisory group (formerly known as the Taxation Users Group) is run under the auspices of the Supreme Court Costs Office. 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 Law Costs Draftsmen are all represented.

(b) The group generally meets twice a year in the Supreme Court Costs Office, 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, c/o the SCCO.

34.2 SCCO Users Group

(a) This Group, which is organised by the SCCO Court Manager, is open to any court user who wishes to attend. Meetings are held about three times each year, the dates of meetings being shown on the Customer Services Notice Board in Room 1.02. Persons stating their intention to attend the next meeting will later receive an invitation to contribute agenda items for that meeting.

(b) The main objective of the Group is to enable the SCCO to explain the services it provides and the standards of service it seeks to achieve. Commonly arising issues

include statistics about waiting lists for hearings and turn around times for the issue of certificates.

(c) Meetings are usually attended by the Principal Costs Officer, the Court Manager, the Customer Services Manager and representatives from the Association of Law Costs Draftsmen, the Citizens Advice Bureau, the Law Society and the Legal Services Commission plus several members of the public. Minutes are taken and circulated.

APPENDIX

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A-1 Bill of costs: Schedule of Costs Precedents, Precedent A

http://www.dca.gov.uk/civil/procrules_fin/contents/form_section_images/practice_directions/pd43-48_pdf_eps_scp/scp_a.pdf

A-2 Certificates in bills : Schedule of Costs Precedents, Precedent F

- Appropriate certificates under headings (1) and (2) are required in all cases. The appropriate certificate under (3) is required in all cases in which the receiving party is an assisted person or a LSC funded client. Certificates (4), (5) and (6) are optional. Certificate (6) may be included in the bill, or, if the dispute as to VAT recoverability arises after service of the bill, may be filed and served as a supplementary document amending the bill under paragraph 39.10 of this Practice Direction.

- All certificates must be signed by the receiving party or by his solicitor. Where the bill claims costs in respect of work done by more than one firm of solicitors, certificate (1), appropriately completed, should be signed on behalf of each firm.

(1) CERTIFICATE AS TO ACCURACY

I certify that this bill is both accurate and complete [and]

(where the receiving party was funded by legal aid/LSC)

☐ [in respect of Part(s) ..... of the bill] all the work claimed was done pursuant to a certificate issued by the Legal Aid Board/ Legal Services Commission granted to [the assisted person] [the LSC funded client].

(where costs are claimed for work done by an employed solicitor)

☐ [in respect of Part(s) .... of the bill] the case was conducted by a solicitor who is an employee of the receiving party.

(other cases where costs are claimed for work done by a solicitor)

☐ [in respect of Part(s) ..... of the bill] the costs claimed herein do not exceed the costs which the receiving party is required to pay me/my firm.

(2) CERTIFICATE AS TO INTEREST AND PAYMENTS

I certify that:

☐ No rulings have been made in this case which affects my/the receiving party's entitlement (if any) to interest on costs.

or

☐ The only rulings made in this case as to interest are as follows:
[give brief details as to the date of each ruling, the name of the Judge who made it and the text of the ruling]

and

☐ No payments have been made by any paying party on account of costs included in this bill of costs.

or

☐ The following payments have been made on account of costs included in this bill of costs:
[*give brief details of the amounts, the dates of payment and the name of the person by or on whose behalf they were paid]*

(3) CERTIFICATE AS TO INTEREST OF ASSISTED PERSON/ LSC FUNDED CLIENT PURSUANT TO REGULATION 119 OF THE CIVIL LEGAL AID (GENERAL) REGULATIONS 1989

I certify that the assisted person/ LSC funded client has no financial interest in the detailed assessment.

or

I certify that a copy of this bill has been sent to the assisted person/ LSC funded client pursuant to Regulation 119 of the Civil Legal Aid General Regulations 1989 with an explanation of his/her interest in the detailed assessment and the steps which can be taken to safeguard that interest in the assessment. He/she has/has not requested that the costs officer be informed of his/her interest and has/has not requested that notice of the detailed assessment hearing be sent to him/her.

(4) CONSENT TO THE SIGNING OF THE CERTIFICATE WITHIN 21 DAYS OF DETAILED ASSESSMENT PURSUANT TO REGULATION 112 AND 121 OF THE CIVIL LEGAL AID (GENERAL) REGULATIONS 1989

I certify that notice of the fees reduced or disallowed on detailed assessment has been given in writing to counsel on [date].

or

I certify that: there having been no reduction or disallowance of counsel's fees it is not necessary to give notice to counsel.

I/we consent to the final costs certificate being issued immediately.

(5) CERTIFICATE IN RESPECT OF DISBURSEMENTS NOT EXCEEDING £500

I hereby certify that all disbursements listed in this bill which individually do not exceed £500 (other than those relating to counsel's fees) have been duly discharged.

(6) CERTIFICATE AS TO RECOVERY OF VAT

With reference to the pending assessment of the [claimant's/defendant's] costs and disbursements herein which are payable by the [claimant/defendant] we the undersigned [solicitors to] [auditors of] the [claimant/defendant] hereby certify that the [claimant/defendant] on the basis of its last completed VAT return [would/would not be entitled to recover would/be entitled to recover only percent of the] Value Added Tax on such costs and disbursements, as input tax pursuant to Section 14 of the Value Added Tax Act 1983.

A-3 Points of dispute : Schedule of Costs Precedents, Precedent G

IN THE HIGH COURT OF JUSTICE
2000 B 9999

QUEEN'S BENCH DIVISION

BRIGHTON DISTRICT REGISTRY

B E T W E E N

AB

Claimant

- and -

CD

Defendant

POINTS OF DISPUTE SERVED BY THE DEFENDANT

Item	**Dispute**	**Claimant's Comments**
General point	Base rates claimed for the assistant solicitor and other fee earners are excessive. Reduce to £100 and £70 respectively plus VAT. Each item in which these rates are claimed should be recalculated at the reduced rates.	
(1)	The premium claimed is excessive. Reduce to £95.	

Item	**Dispute**	**Claimant's Comments**
(14)	The claim for timed attendances on claimant (schedule 1) is excessive. Reduce to 4 hours ie. £400 at reduced rates.	
(32)	The total claim for work done on documents by the assistant solicitor is excessive. A	

reasonable allowance in respect of documents concerning court and counsel is 8 hours, for documents concerning witnesses and the expert witness, 6.5 hours, for other documents, 5.5 hours. Reduce to 20 hours ie. £2,000 at reduced rates (£3,155 in total).

(34) The time claimed is excessive. Reduce solicitors time to 0.5 hours ie. to £50 at reduced rates and reduce the costs draftsman's time to three hours ie. £210 (£260 in total).

(35) The success fee claimed is excessive. Reduce to 25% ie. £100 plus VAT of £17.50.

(36) The total base fees when recalculated on the basis of the above points amount to £7,788, upon which VAT is £1,362.90.

(37) The success fee claimed is excessive. Reduce to 25% of £7,788 ie £1,947.50 plus VAT of £340.73.

(39) The success fee claimed is excessive. Reduce to 50% ie £1,625 plus VAT of £284.38.

Served on ....[date] by .... [name][solicitors for] the Defendant.

A-4 Standard orders made on applications to set aside default costs certificates

(a) Conditional order

O R D E R

To Claimant's Solicitor

To Defendant's Solicitor

In the High Court of Justice **Supreme Court Costs Office**	
SCCO Ref:	
Claimant (include Ref)	
Defendants (include Ref)	
Date	

MASTER [ ] Costs Judge

UPON THE APPLICATION of the [ ]

AND UPON HEARING the

AND UPON READING the documents on the court file.

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 Supreme Court 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 out of the Community Service Fund.

( ) 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 Supreme Court 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 out of the Community Service Fund.

( ) 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 out of the Community Service Fund.

(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 orders made in costs-only proceedings

(a) Order for detailed assessment

[Heading as in A-4(a) above]

UPON THE APPLICATION of the Claimant.

AND UPON READING the documents on the Court file.

IT IS ORDERED:

(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.

(b) Dismissal of application

[Heading and opening words as in A-5(a) above]

IT IS ORDERED:

(1) Application dismissed.

(2) Liberty to both parties to apply to stay, set aside or vary this order.

(3) Liberty to both parties to apply for their costs of this application if such application is made within 28 days of any determination of the Claimant’s entitlement to the costs of the claim relating to [the accident on] which costs are the subject matter of this application.

A-6 Standard orders made against Legal Services Commission funded clients

(a) Award of costs against a Claimant who is a Legal Services Commission funded client

[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 party who was in receipt of services funded by the Legal Services Commission) 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 LSC funded client]

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 out of the Community Legal Service Fund.

(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 THAT:

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 Legal Services Commission 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.

SUPREME COURT 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 the Supreme Court Costs Office, Cliffords Inn, Fetter Lane, London EC4A 1DQ is open between 10.00 am and 4.30 pm, Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim 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 48.9 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

FORM "A"

Form of Notice of Appeal

Appeal Pursuant to the Costs in Criminal Cases (General) Regulations 1986/ The Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989/ The Crown Court Rules, 1982, the Criminal Defence Service (Funding) Order 2001
Crown Court/ Divisional
Court/ Court of Appeal Criminal Division

Regina v ....

Appeal of ....

Case No ....

To: A Costs Judge and to the appropriate authority of the
....

Crown Court/ Divisional Court/ Court of Appeal Criminal Division.

The Appellant .... appeals to a Costs Judge against the redetermination of the costs in the above matter.

The following are the items in respect of which the Applicant appeals:

Item	Description	Amount Claimed	Amount Allowed	Total Amount in Dispute After Redetermination
1.				
2.				
3. etc				£ ....

Grounds of Objection (To Be Set Out in Full)

We confirm that a copy of this notice has been served upon the appropriate authority.

The Appellant should attach to this Notice of Appeal his/her Grounds of Objection and in so doing provide the Costs Judge with a detailed response to the written reasons provided by the Determining Officer.

Do you wish to attend the hearing of your Appeal: Yes/ No

Dated the day of

(Signed ....

....

Appellant

Address ....

....

....

Tel No. ....

Ref: ....

Fax No. ....

DX No. ....

E-Mail ....

Form A-10

IN THE COURT OF PROTECTION

Case No:- ....
SCCO reference ....
(to be completed by the court)

IN THE MATTER OF

.... (A patient)

Short form bill of costs of the Receiver of *(e.g.) General Management for the period………… to be assessed pursuant to the First General Order dated* .... *and General Direction dated 19/11/82*

<u>One paragraph summary of work carried out</u>

Fee earner category .... Rate claimed ....

<u>Work done:-</u>		**<u>Charge:-</u>**
Time spent in personal attendances		
22/9/02 45mins Upon patient		....
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.

....
Partner

Name, address and reference of solicitor filing bill

Short form bill of costs for use in Court of Protection assessments where the total costs claimed, excluding vat, do not exceed £3000.

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 Supreme Court 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.

A-12 Standard orders and directions in respect of costs awarded by the Adjudicator of HM Land Registry

(a) Order for paying party to show cause following a failure to comply with an order to serve Points of Dispute

[Heading as in A-4(a) above]

UPON THE APPLICATION of the Claimant AND UPON READING the documents on the court file IT IS ORDERED as follows:

1. This application now stands listed for hearing on [*date to be fixed*] in Room [ ] in the Supreme Court Costs Office (30 minutes allowed) for the Defendant to show cause why the Claimant's bill of costs served pursuant to the Order of the Adjudicator to HM Land Registry dated [ ] should not be assessed as drawn because of the Defendant's failure to serve Points of Dispute in compliance with that Order.

2. The costs of and incidental to this Order are reserved.

3. Liberty to all parties to apply by letter to the Court requesting the Court to stay, set aside or vary this Order.

(b) Timetable directions for Points of Dispute and detailed assessment hearing

[Heading and opening words as in A-12(a) above]

1. Within 21 days of service of this Order the Defendant must serve Points of Dispute on the Claimant's bill of costs served upon the Defendant pursuant to the Order of the Adjudicator to HM Land Registry dated [ ].

2. If the Defendant fails to serve Points of Dispute in compliance with this Order the Claimant may by letter, and without further notice to the Defendant, request Master [ ] to assess the Claimant's bill of costs as drawn.

3. The Claimant may file a request for a hearing date after Points of Dispute have been served, but no later than [*date to be fixed*].

4. If a request for a hearing date is filed the matter is reserved to Master [ ] who has provisionally appointed it for hearing on [*date to be fixed*].

5. If the Claimant wishes to serve a reply, he must do so before filing a request for a hearing date.

6. The costs of and incidental to this Order are reserved.

7. Liberty to all parties to apply by letter to the Court requesting the Court to stay, set aside or vary this Order.