

## DIRECTIONS RELATING TO PART 47

# PROCEDURE FOR DETAILED ASSESSMENT OF COSTS AND DEFAULT PROVISIONS

## SECTION 28 TIME WHEN ASSESSMENT MAY BE CARRIED

### OUT: RULE 47.1

#### 28.1

- (1) For the purposes of rule 47.1, proceedings are concluded when the court has finally determined the matters in issue in the claim, whether or not there is an appeal.
- (2) For the purposes of this rule, the making of an award of provisional damages under Part 41 will be treated as a final determination of the matters in issue.
- (3) The court may order or the parties may agree in writing that, although the proceedings are continuing, they will nevertheless be treated as concluded.
- (4)
  - (a) A party who is served with a notice of commencement (see paragraph 32.3 below) may apply to a costs judge or a district judge to determine whether the party who served it is entitled to commence detailed assessment proceedings.
  - (b) On hearing such an application the orders which the court may make include: an order allowing the detailed assessment proceedings to continue, or an order setting aside the notice of commencement.
- (5) A costs judge or a district judge may make an order allowing detailed assessment proceedings to be commenced where there is no realistic prospect of the claim continuing.

## SECTION 29 NO STAY OF DETAILED ASSESSMENT WHERE

### THERE IS AN APPEAL: RULE 47.2

#### 29.1

- (1) Rule 47.2 provides that detailed assessment is not stayed pending an appeal unless the court so orders.
- (2) An application to stay the detailed assessment of costs pending an appeal may be made to the court whose order is being appealed or to the court who will hear the appeal.

## SECTION 30 POWERS OF AN AUTHORISED COURT OFFICER:

### RULE 47.3

#### 30.1

- (1) The court officers authorised by the Lord Chancellor to assess costs in the Costs Office and the Principal Registry of the Family Division are authorised to deal with claims for costs not exceeding £30,000 (excluding VAT) in the case of senior executive officers, or their equivalent, and £75,000 (excluding VAT) in the case of principal officers.
- (2) In calculating whether or not a bill of costs is within the authorised amounts, the figure to be taken into account is the total claim for costs including any additional liability.

- (3) Where the receiving party, paying party and any other party to the detailed assessment proceedings who has served points of dispute are agreed that the assessment should not be made by an authorised court officer, the receiving party should so inform the court when requesting a hearing date. The court will then list the hearing before a costs judge or a district judge.
- (4) In any other case a party who objects to the assessment being made by an authorised court officer must make an application to the costs judge or district judge under Part 23 (General Rules about Applications for Court Orders) setting out the reasons for the objection and if sufficient reason is shown the court will direct that the bill be assessed by a costs judge or district judge.

## **SECTION 31 VENUE FOR DETAILED ASSESSMENT**

### **PROCEEDINGS: RULE 47.4**

**31.1** For the purposes of rule 47.4(1) the ‘appropriate office’ means

- (1) the district registry or county court in which the case was being dealt with when the judgment or order was made or the event occurred which gave rise to the right to assessment, or to which it has subsequently been transferred;
- (1A) where a tribunal, person or other body makes an order for the detailed assessment of costs, a county court (subject to paragraph 31.1A(1)); or
- (2) in all other cases, including Court of Appeal cases, the Costs Office.

#### **31.1A**

- (1) This paragraph applies where the appropriate office is any of the following county courts: Barnet, Bow, Brentford, Bromley, Central London, Clerkenwell and Shoreditch, Croydon, Edmonton, Ilford, Kingston, Lambeth, Mayors and City of London, Romford, Uxbridge, Wandsworth, West London, Willesden and Woolwich.
- (2) Where this paragraph applies:–
  - (i) the receiving party must file any request for a detailed assessment hearing in the Costs Office and, for all purposes relating to that detailed assessment (other than the issue of default costs certificates and applications to set aside default costs certificates), the Costs Office will be treated as the appropriate office in that case;
  - (ii) default costs certificates should be issued and applications to set aside default costs certificates should be issued and heard in the relevant county court; and
  - (iii) unless an order is made under rule 47.4(2) directing that the Costs Office as part of the High Court shall be the appropriate office, an appeal from any decision made by a costs judge shall lie to the Designated Civil Judge for the London Group of County Courts or such judge as he shall nominate. The appeal notice and any other relevant papers should be lodged at the Central London Civil Justice Centre.

#### **31.2**

- (1) A direction under rule 47.4(2) or (3) specifying a particular court, registry or office as the appropriate office may be given on application or on the court’s own initiative.
- (2) Before making such a direction on its own initiative the court will give the parties the opportunity to make representations.
- (3) Unless the Costs Office is the appropriate office for the purposes of Rule 47.4(1) an order directing that an assessment is to take place at the Costs Office will be made only if it is appropriate to do so having regard to the size of the bill of costs, the difficulty of the issues involved, the likely length of the hearing, the cost to the parties and any other relevant matter.

## SECTION 32 COMMENCEMENT OF DETAILED ASSESSMENT

### PROCEEDINGS: RULE 47.6

- 32.1** \* Precedents A, B, C and D in the Schedule of Costs Precedents annexed to this Practice Direction are model forms of bills of costs for detailed assessment. Further information about bills of costs is set out in Section 4.
- 32.2** A detailed assessment may be in respect of:
- (1) base costs, where a claim for additional liability has not been made or has been agreed;
  - (2) a claim for additional liability only, base costs having been summarily assessed or agreed; or
  - (3) both base costs and additional liability.
- 32.3** If the detailed assessment is in respect of costs without any additional liability, the receiving party must serve on the paying party and all the other relevant persons the following documents:
- (a) a notice of commencement;
  - (b) a copy of the bill of costs;
  - (c) copies of the fee notes of counsel and of any expert in respect of fees claimed in the bill;
  - (d) written evidence as to any other disbursement which is claimed and which exceeds £500;
  - (e) a statement giving the name and address for service of any person upon whom the receiving party intends to serve the notice of commencement.
- 32.4** If the detailed assessment is in respect of an additional liability only, the receiving party must serve on the paying party and all other relevant persons the following documents:
- (a) a notice of commencement;
  - (b) a copy of the bill of costs;
  - (c) the relevant details of the additional liability;
  - (d) a statement giving the name and address of any person upon whom the receiving party intends to serve the notice of commencement.
- 32.5** The relevant details of an additional liability are as follows:
- (1) In the case of a conditional fee agreement with a success fee:
    - (a) 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;
    - (b) where the conditional fee agreement was entered into before 1<sup>st</sup> November 2005, a statement of the reasons for the percentage increase given in accordance with regulation 3(1)(a) of the Conditional Fee Agreements Regulations 2000 or regulation 5(1)(c) of the Collective Conditional Fee Agreements Regulations 2000 [Both sets of regulations were revoked by the Conditional Fee Agreements (Revocation) Regulations 2005 but continue to have effect in relation to conditional fee agreements and collective conditional fee agreements entered into before 1<sup>st</sup> November 2005.];
    - (c) where the conditional fee agreement was entered into on or after 1st November 2005 (except in cases where the percentage increase is fixed by CPR Part 45, sections II to V), either a statement of the reasons for the percentage increase or a copy of the risk assessment prepared at the time that the conditional fee agreement was entered into;
    - (d) if the conditional fee agreement is not disclosed (and the Court of Appeal has indicated that it should be the usual practice for a conditional fee agreement, redacted where appropriate, to be disclosed for the purpose of costs proceedings in which a success fee is claimed), a statement setting out the following information contained in the conditional fee agreement so as to

enable the paying party and the court to determine the level of risk undertaken by the solicitor –

- (i) the definition of ‘win’ and, if applicable, ‘lose’;
  - (ii) details of the receiving party’s liability to pay costs if that party wins or loses; and
  - (iii) details of the receiving party’s liability to pay costs if that party fails to obtain a judgment more advantageous than a Part 36 offer.
- (2) If the additional liability is an insurance premium, a copy of the insurance certificate showing –
- (a) whether the policy covers –
    - (i) the receiving party’s own costs;
    - (ii) the receiving party’s opponent’s costs;
    - (iii) the receiving party’s own costs and opponent’s costs; and
  - (b) the maximum extent of that cover; and
  - (c) the amount of the premium paid or payable.
- (3) If the receiving party claims an additional amount under section 30 of the Access to Justice Act 1999, a statement setting out the basis upon which the receiving party’s liability for the additional amount is calculated.

**32.6** Attention is drawn to the fact that the additional amount recoverable pursuant to section 30 of the Access to Justice Act 1999 in respect of a 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 as provided by the Access to Justice (Membership Organisation) Regulations 2000 Regulation 4 (for the purposes of arrangements entered into before 1<sup>st</sup> November 2005) and The Access to Justice (Membership Organisation) Regulations 2005 Regulation 5 (for the purposes of arrangements entered into on or after 1<sup>st</sup> November 2005)..

**32.7** If a detailed assessment is in respect of both base costs and an additional liability, the receiving party must serve on the paying party and all other relevant persons the documents listed in paragraph 32.3 and the documents giving relevant details of an additional liability listed in paragraph 32.5.

**32.8**

- (1) The Notice of Commencement should be in Form N252.
- (2) Before it is served, it must be completed to show as separate items;
  - (a) the total amount of the costs claimed in the bill;
  - (b) the extra sum which will be payable by way of fixed costs and court fees if a default costs certificate is obtained.

**32.9**

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

**32.10**

- (1) For the purposes of rule 47.6(2) a ‘relevant person’ means:
  - (a) any person who has taken part in the proceedings which gave rise to the assessment and who is directly liable under an order for costs made against him;
  - (b) 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;

- (c) any other person whom the court orders to be treated as such.
- (2) Where a party is unsure whether a person is or is not a relevant person, that party may apply to the appropriate office for directions.
- (3) The court will generally not make an order that the person in respect of whom the application is made will be treated as a relevant person, unless within a specified time he applies to the court to be joined as a party to the assessment proceedings in accordance with Part 19 (Parties and Group Litigation).

#### **32.11**

- (1) This paragraph applies in cases in which the bill of costs is capable of being copied onto a computer disk.
- (2) If, before the detailed assessment hearing, a paying party requests a disk copy of a bill to which this paragraph applies, the receiving party must supply him with a copy free of charge not more than 7 days after the date on which he received the request.

### **SECTION 33 PERIOD FOR COMMENCING DETAILED ASSESSMENT PROCEEDINGS: RULE 47.7**

- 33.1** The parties may agree under rule 2.11 (Time limits may be varied by parties) to extend or shorten the time specified by rule 47.7 for commencing the detailed assessment proceedings.
- 33.2** A party may apply to the appropriate office for an order under rule 3.1(2)(a) to extend or shorten that time.
- 33.3** Attention is drawn to rule 47.6(1). The detailed assessment proceedings are commenced by service of the documents referred to.
- 33.4** Permission to commence assessment proceedings out of time is not required.

### **SECTION 34 SANCTION FOR DELAY IN COMMENCING DETAILED ASSESSMENT PROCEEDINGS: RULE 47.8**

#### **34.1**

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

### **SECTION 35 POINTS OF DISPUTE AND CONSEQUENCES OF NOT SERVING: RULE 47.9**

- 35.1** The parties may agree under rule 2.11 (Time limits may be varied by parties) to extend or shorten the time specified by rule 47.9 for service of points of dispute. A party may apply to the appropriate office for an order under rule 3.1(2)(a) to extend or shorten that time.
- 35.2** Points of dispute should be short and to the point and should follow as closely as possible Precedent G of the Schedule of Costs Precedents annexed to this Practice Direction.
- 35.3** Points of dispute must –
  - (1) identify each item in the bill of costs which is disputed,

- (2) in each case, state concisely the nature and grounds of dispute,
- (3) where practicable suggest a figure to be allowed for each item in respect of which a reduction is sought, and
- (4) be signed by the party serving them or his solicitor.

#### **35.4**

- (1) The normal period for serving points of dispute is 21 days after the date of service of the notice of commencement.
- (2) 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 Section IV of Part 6 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.

**35.5** A party who serves points of dispute on the receiving party must at the same time serve a copy on every other party to the detailed assessment proceedings, whose name and address for service appears on the statement served by the receiving party in accordance with paragraph 32.3 or 32.4 above.

#### **35.6**

- (1) This paragraph applies in cases in which Points of Dispute are capable of being copied onto a computer disk.
- (2) If, within 14 days of the receipt of the Points of Dispute, the receiving party requests a disk copy of them, the paying party must supply him with a copy free of charge not more than 7 days after the date on which he received the request.

#### **35.7**

- (1) Where the receiving party claims an additional liability, a party who serves points of dispute on the receiving party may include a request for information about other methods of financing costs which were available to the receiving party.
- (2) Part 18 (further information) and Practice Direction 18 apply to such a request.

## **SECTION 36 PROCEDURE WHERE COSTS ARE AGREED: RULE**

### **47.10**

- 36.1** Where the parties have agreed terms as to the issue of a costs certificate (either interim or final) they should apply under rule 40.6 (Consent judgments and orders) for an order that a certificate be issued in terms set out in the application. Such an application may be dealt with by a court officer, who may issue the certificate.
- 36.2** Where in the course of proceedings the receiving party claims that the paying party has agreed to pay costs but that he will neither pay those costs nor join in a consent application under paragraph 36.1, the receiving party may apply under Part 23 (General Rules about Applications for Court Orders) for a certificate either interim or final to be issued.
- 36.3** An application under paragraph 36.2 must be supported by evidence and will be heard by a costs judge or a district judge. The respondent to the application must file and serve any evidence he relies on at least two days before the hearing date.
- 36.4** Nothing in rule 47.10 prevents parties who seek a judgment or order by consent from including in the draft a term that a party shall pay to another party a specified sum in respect of costs.

### **36.5**

- (1) The receiving party may discontinue the detailed assessment proceedings in accordance with Part 38 (Discontinuance).
- (2) Where the receiving party discontinues the detailed assessment proceedings before a detailed assessment hearing has been requested, the paying party may apply to the appropriate office for an order about the costs of the detailed assessment proceedings.
- (3) Where a detailed assessment hearing has been requested the receiving party may not discontinue unless the court gives permission.
- (4) A bill of costs may be withdrawn by consent whether or not a detailed assessment hearing has been requested.

## **SECTION 37 DEFAULT COSTS CERTIFICATE: RULE 47.11**

### **37.1**

- (1) A request for the issue of a default costs certificate must be made in Form N254 and must be signed by the receiving party or his solicitor.
- (2) The request must be accompanied by a copy of the document giving the right to detailed assessment. (Section 40.4 of the Costs Practice Direction identifies the appropriate documents).

**37.2** The request must be filed at the appropriate office.

**37.3** A default costs certificate will be in Form N255.

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

**37.5** The issue of a default costs certificate does not prohibit, govern or affect any detailed assessment of the same costs which are payable out of the Community Legal Service Fund.

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

- (1) to a costs judge or district judge of the court office which issued the certificate; or
- (2) to the court (if different) which has general jurisdiction to enforce the certificate.

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

**37.8** \* The fixed costs payable in respect of solicitor's charges on the issue of the default costs certificate are £80.

## **SECTION 38 SETTING ASIDE DEFAULT COSTS CERTIFICATE: RULE 47.12**

### **38.1**

- (1) A court officer may set aside a default costs certificate at the request of the receiving party under rule 47.12(3).
- (2) A costs judge or a district judge will make any other order or give any directions under this rule.

### **38.2**

- (1) An application for an order under rule 47.12(2) to set aside or vary a default costs certificate must be supported by evidence.
- (2) In deciding whether to set aside or vary a certificate under rule 47.12(2) the matters to which the court must have regard include whether the party seeking the order made the application promptly.
- (3) As a general rule a default costs certificate will be set aside under rule 47.12(2) only if the applicant shows a good reason for the court to do so and if he files with his application a copy of the bill and a copy of the default costs certificate, and a draft of the points of dispute he proposes to serve if his application is granted.

### **38.3**

- (1) Attention is drawn to rule 3.1(3) (which enables the court when making an order to make it subject to conditions) and to rule 44.3(8) (which enables the court to order a party whom it has ordered to pay costs to pay an amount on account before the costs are assessed).
- (2) A costs judge or a district judge may exercise the power of the court to make an order under rule 44.3(8) although he did not make the order about costs which led to the issue of the default costs certificate.

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

## **SECTION 39 OPTIONAL REPLY: RULE 47.13**

### **39.1**

- (1) A receiving party wishing to serve a reply to some or all of the points of dispute must also serve a copy on every other party to the detailed assessment proceedings. The time for doing so is within 21 days after service of the points of dispute.
- (2) A reply means:
  - (a) a separate document prepared by the receiving party; or
  - (b) the receiving party's written comments added to the points of dispute.
- (3) A reply must be signed by the party serving it or that party's solicitor.

**39.2** Where there is a dispute about the insurance premium in a staged policy (which has the same meaning as in paragraph 19.4(3A)) it will normally be sufficient for the receiving party to set out in any reply the reasons for choosing the particular insurance policy and the basis on which the insurance premium is rated whether block rated or individually rated.

## **SECTION 40 DETAILED ASSESSMENT HEARING: RULE 47.14**

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

**40.2** The request for a detailed assessment hearing must be in Form N258. The request must be accompanied by:

- (a) a copy of the notice of commencement of detailed assessment proceedings;
- (b) a copy of the bill of costs,
- (c) the document giving the right to detailed assessment (see paragraph 40.4 below);
- (d) a copy of the points of dispute, annotated as necessary in order to show which items have been agreed and their value and to show which items remain in dispute and their value;

- (e) as many copies of the points of dispute so annotated as there are persons who have served points of dispute;
- (f) a copy of any replies served;
- (g) a copy of all orders made by the court relating to the costs which are to be assessed;
- (h) copies of the fee notes and other written evidence as served on the paying party in accordance with paragraph 32.3 above;
- (i) where there is a dispute as to the receiving party's liability to pay costs to the solicitors who acted for the receiving party, any agreement, letter or other written information provided by the solicitor to his client explaining how the solicitor's charges are to be calculated;
- (j) 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 –
  - (i) the receiving party;
  - (ii) the paying party;
- (iii) any other person who has served points of dispute or who has given notice to the receiving party under paragraph 32.10 (1) (b) above; and giving an estimate of the length of time the detailed assessment hearing will take;
- (k) where the application for a detailed assessment hearing is made by a party other than the receiving party, such of the documents set out in this paragraph as are in the possession of that party;
  - (l) where the court is to assess the costs of an assisted person or LSC funded client –
    - (i) the legal aid certificate, LSC certificate and relevant amendment certificates, any authorities and any certificates of discharge or revocation;
    - (ii) a certificate, in Precedent F(3) of the Schedule of Costs Precedents;
    - (iii) if the assisted person has a financial interest in the detailed assessment hearing and wishes to attend, the postal address of that person to which the court will send notice of any hearing;
    - (iv) if the rates payable out of the LSC fund are prescribed rates, a schedule to the bill of costs setting out all the items in the bill which are claimed against other parties calculated at the legal aid prescribed rates with or without any claim for enhancement: (further information as to this schedule is set out in Section 48 of this Practice Direction);
    - (v) a copy of any default costs certificate in respect of costs claimed in the bill of costs.

#### **40.3**

- (1) This paragraph applies to any document described in paragraph 40.2(i) above which the receiving party has filed in the appropriate office. The document must be the latest relevant version and in any event have been filed not more than 2 years before filing the request for a detailed assessment hearing.
- (2) In respect of any documents to which this paragraph applies, the receiving party may, instead of filing a copy of it, specify in the request for a detailed assessment hearing the case number under which a copy of the document was previously filed.

#### **40.4** 'The document giving the right to detailed assessment' means such one or more of the following documents as are appropriate to the detailed assessment proceedings:

- (a) a copy of the judgment or order of the court giving the right to detailed assessment;
- (b) a copy of the notice served under rule 3.7 (sanctions for non-payment of certain fees) where a claim is struck out under that rule;
- (c) a copy of the notice of acceptance where an offer to settle is accepted under Part 36 (Offers to settle);
- (d) a copy of the notice of discontinuance in a case which is discontinued under Part 38 (Discontinuance);
- (e) a copy of the award made on an arbitration under any Act or pursuant to an agreement, where no court has made an order for the enforcement of the award;

- (f) a copy of the order, award or determination of a statutorily constituted tribunal or body;
- (g) in a case under the Sheriffs Act 1887, the sheriff's bill of fees and charges, unless a court order giving the right to detailed assessment has been made;
- (h) a notice of revocation or discharge under Regulation 82 of the Civil Legal Aid (General) Regulations 1989.
- (j) In the county courts certain Acts and Regulations provide for costs incurred in proceedings under those Acts and Regulations to be assessed in the county court if so ordered on application. Where such an application is made, a copy of the order.

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

**40.6**

- (1) The court will give at least 14 days' notice of the time and place of the detailed assessment hearing to every person named in the statement referred to in paragraph 40.2(j) above.
- (2) The court will when giving notice, give each person who has served points of dispute a copy of the points of dispute annotated by the receiving party in compliance with paragraph 40.2(d) above.
- (3) Attention is drawn to rule 47.14(6)&(7): apart from the receiving party, only those who have served points of dispute may be heard on the detailed assessment unless the court gives permission, and only items specified in the points of dispute may be raised unless the court gives permission.

**40.7**

- (1) If the receiving party does not file a request for a detailed assessment hearing within the prescribed time, the paying party may apply to the court to fix a time within which the receiving party must do so. The sanction, for failure to commence detailed assessment proceedings within the time specified by the court, is that all or part of the costs may be disallowed (see rule 47.8(2)).
- (2) Where the receiving party commences detailed assessment proceedings after the time specified in the rules but before the paying party has made an application to the court to specify a time, the only sanction which the court may impose is to disallow all or part of the interest which would otherwise be payable for the period of delay, unless the court exercises its powers under rule 44.14 (court's powers in relation to misconduct).

**40.8** If either party wishes to make an application in the detailed assessment proceedings the provisions of Part 23 (General Rules about Applications for Court Orders) apply.

**40.9**

- (1) This paragraph deals with the procedure to be adopted where a date has been given by the court for a detailed assessment hearing and
  - (a) the detailed assessment proceedings are settled; or
  - (b) a party to the detailed assessment proceedings wishes to apply to vary the date which the court has fixed; or
  - (c) the parties to the detailed assessment proceedings agree about changes they wish to make to any direction given for the management of the detailed assessment proceedings.
- (2) If detailed assessment proceedings are settled, the receiving party must give notice of that fact to the court immediately, preferably by fax.
- (3) A party who wishes to apply to vary a direction must do so in accordance with Part 23 (General Rules about Applications for Court Orders).

- (4) If the parties agree about changes they wish to make to any direction given for the management of the detailed assessment proceedings –
- (a) they must apply to the court for an order by consent; and
  - (b) they must file a draft of the directions sought and an agreed statement of the reasons why the variation is sought; and
  - (c) the court may make an order in the agreed terms or in other terms without a hearing, but it may direct that a hearing is to be listed.

**40.10**

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

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

**40.12** The following provisions apply in respect of the papers to be filed in support of the bill;

- (a) If the claim is for costs only without any additional liability the papers to be filed, and the order in which they are to be arranged are as follows:
  - (i) instructions and briefs to counsel arranged in chronological order together with all advices, opinions and drafts received and response to such instructions;
  - (ii) reports and opinions of medical and other experts;
  - (iii) any other relevant papers;
  - (iv) a full set of any relevant pleadings to the extent that they have not already been filed in court.
  - (v) correspondence, files and attendance notes;
- (b) where the claim is in respect of an additional liability only, such of the papers listed at (a) above, as are relevant to the issues raised by the claim for additional liability;
- (c) where the claim is for both base costs and an additional liability, the papers listed at (a) above, together with any papers relevant to the issues raised by the claim for additional liability.

**40.13** The provisions set out in Section 20 of this Practice Direction apply where the court disallows any amount of a legal representative's percentage increase, and the legal representative applies for an order that the disallowed amount should continue to be payable by the client in accordance with Rule 44.16.

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

**40.15** Costs assessed at a detailed assessment at the conclusion of proceedings may include an assessment of any additional liability in respect of the costs of a previous application or hearing.

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

## **SECTION 41 POWER TO ISSUE AN INTERIM CERTIFICATE:**

### **RULE 47.15**

#### **41.1**

- (1) A party wishing to apply for an interim certificate may do so by making an application in accordance with Part 23 (General Rules about Applications for Court Orders).
- (2) Attention is drawn to the fact that the court's power to issue an interim certificate arises only after the receiving party has filed a request for a detailed assessment hearing.

## **SECTION 42 FINAL COSTS CERTIFICATE: RULE 47.16**

- 42.1** At the detailed assessment hearing the court will indicate any disallowance or reduction in the sums claimed in the bill of costs by making an appropriate note on the bill.
- 42.2** The receiving party must, in order to complete the bill after the detailed assessment hearing make clear the correct figures agreed or allowed in respect of each item and must re-calculate the summary of the bill appropriately.
- 42.3** The completed bill of costs must be filed with the court no later than 14 days after the detailed assessment hearing.
- 42.4** At the same time as filing the completed bill of costs, the party whose bill it is must also produce receipted fee notes and receipted accounts in respect of all disbursements except those covered by a certificate in Precedent F(5) in the Schedule of Costs Precedents annexed to this Practice Direction.
- 42.5** No final costs certificate will be issued until all relevant court fees payable on the assessment of costs have been paid.
- 42.6** If the receiving party fails to file a completed bill in accordance with rule 47.16 the paying party may make an application under Part 23 (General Rules about Applications for Court Orders) seeking an appropriate order under rule 3.1 (The court's general powers of management).
- 42.7** A final costs certificate will show:
  - (a) the amount of any costs which have been agreed between the parties or which have been allowed on detailed assessment;
  - (b) where applicable the amount agreed or allowed in respect of VAT on the costs agreed or allowed.This provision is subject to any contrary provision made by the statutory provisions relating to costs payable out of the Community Legal Service Fund.
- 42.8** A final costs certificate will include disbursements in respect of the fees of counsel only if receipted fee notes or accounts in respect of those disbursements have been produced to the court and only to the extent indicated by those receipts.
- 42.9** Where the certificate relates to costs payable between parties a separate certificate will be issued for each party entitled to costs.
- 42.10** Form N257 is a model form of interim costs certificate and Form N256 is a model form of final costs certificate.

- 42.11** An application for an order staying enforcement of an interim costs certificate or final costs certificate may be made either:
- (1) to a costs judge or district judge of the court office which issued the certificate; or
  - (2) to the court (if different) which has general jurisdiction to enforce the certificate.
- 42.12** Proceedings for enforcement of interim costs certificates or final costs certificates may not be issued in the Costs Office.

## **SECTION 43 DETAILED ASSESSMENT PROCEDURE WHERE COSTS ARE PAYABLE OUT OF THE COMMUNITY LEGAL SERVICE FUND: RULE 47.17**

- 43.1** The provisions of this section apply where the court is to assess costs which are payable only out of the community legal service fund. Paragraphs 39.1 to 40.16 and 49.1 to 49.8 apply in cases involving costs payable by another person as well as costs payable only out of the community legal service fund.
- 43.2** The time for requesting a detailed assessment under rule 47.17 is within 3 months after the date when the right to detailed assessment arose.
- 43.3**
- (1) The request for a detailed assessment of costs must be in Form N258A. The request must be accompanied by:
    - (a) a copy of the bill of costs;
    - (b) the document giving the right to detailed assessment (for further information as to this document, see paragraph 40.4 above);
    - (c) a copy of all orders made by the court relating to the costs which are to be assessed;
    - (d) copies of any fee notes of counsel and any expert in respect of fees claimed in the bill;
    - (e) written evidence as to any other disbursement which is claimed and which exceeds £500;
    - (f) the legal aid certificates, LSC certificates, any relevant amendment certificates, any authorities and any certificates of discharge or revocation and;
    - (g) a statement signed by the solicitor giving the solicitor's name, address for service, reference, telephone number, fax number, e-mail address where available and, if the assisted person has a financial interest in the detailed assessment and wishes to attend, giving the postal address of that person, to which the court will send notice of any hearing.
  - (2) The relevant papers in support of the bill as described in paragraph 40.12 must only be lodged if requested by the costs officer.
- 43.4** Rule 47.17 provides that the court will hold a detailed assessment hearing if the assisted person has a financial interest in the detailed assessment and wishes to attend. The court may also hold a detailed assessment hearing in any other case, instead of provisionally assessing a bill of costs, where it considers that a hearing is necessary. Before deciding whether a hearing is necessary under this rule, the court may require the solicitor whose bill it is, to provide further information relating to the bill.
- 43.5** Where the court has provisionally assessed a bill of costs it will send to the solicitor a notice, in Form N253 annexed to this practice direction, of the amount of costs which the court proposes to allow together with the bill itself. The legal representative should, if the provisional assessment is to be accepted, then complete the bill.

- 43.6** The court will fix a date for a detailed assessment hearing if the solicitor informs the court within 14 days after he receives the notice of the amount allowed on the provisional assessment that he wants the court to hold such a hearing.
- 43.7** The court will give at least 14 days notice of the time and place of the detailed assessment hearing to the solicitor and, if the assisted person has a financial interest in the detailed assessment and wishes to attend, to the assisted person.
- 43.8** If the solicitor whose bill it is, or any other party wishes to make an application in the detailed assessment proceedings, the provisions of Part 23 (General Rules about Applications for Court Orders) applies.
- 43.9** It is the responsibility of the legal representative to complete the bill by entering in the bill the correct figures allowed in respect of each item, recalculating the summary of the bill appropriately and completing the Community Legal Service assessment certificate (Form EX80A).

## **SECTION 44 COSTS OF DETAILED ASSESSMENT**

### **PROCEEDINGS WHERE COSTS ARE PAYABLE OUT OF A FUND OTHER THAN THE COMMUNITY LEGAL SERVICE FUND: RULE 47.17A**

- 44.1** Rule 47.17A provides that the court will make a provisional assessment of a bill of costs payable out of a fund (other than the Community Legal Service Fund) unless it considers that a hearing is necessary. It also enables the court to direct under rule 47.17A(3) that the receiving party must serve a copy of the request for assessment and copies of the documents which accompany it, on any person who has a financial interest in the outcome of the assessment.
- 44.2**
- (a) A person has a financial interest in the outcome of the assessment if the assessment will or may affect the amount of money or property to which he is or may become entitled out of the fund.
  - (b) Where an interest in the fund is itself held by a trustee for the benefit of some other person, that trustee will be treated as the person having such a financial interest.
  - (c) 'Trustee' includes a personal representative, receiver or any other person acting in a fiduciary capacity.
- 44.3** The request for a detailed assessment of costs out of the fund should be in Form N258B, be accompanied by the documents set out at paragraph 43.3(a) to (e) and (g) above and the following:
- (a) a statement signed by the receiving party giving his name, address for service, reference, telephone number, fax number and,
  - (b) a statement of the postal address of any person who has a financial interest in the outcome of the assessment, to which the court may send notice of any hearing; and
  - (c) in respect of each person stated to have such an interest if such person is a child or protected party, a statement to that effect.
- 44.4** The court will decide, having regard to the amount of the bill, the size of the fund and the number of persons who have a financial interest, which of those persons should be served. The court may dispense with service on all or some of them.

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

**44.6**

- (1) Where the court has provisionally assessed a bill of costs, it will send to the receiving party, a notice in Form N253 of the amount of costs which the court proposes to allow together with the bill itself. If the receiving party is legally represented the legal representative should, if the provisional assessment is to be accepted, then complete the bill.
- (2) The court will fix a date for a detailed assessment hearing, if the receiving party informs the court within 14 days after he receives the notice in Form N253 of the amount allowed on the provisional assessment, that he wants the court to hold such a hearing.

**44.7** Where the court makes an order that a person who has a financial interest is to be served with a copy of the request for assessment, it may give directions about service and about the hearing.

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

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

**44.10** If the receiving party is legally represented the legal representative must in order to complete the bill after the assessment make clear the correct figures allowed in respect of each item and must recalculate the summary of the bill if appropriate.

## **SECTION 45 LIABILITY FOR COSTS OF DETAILED ASSESSMENT PROCEEDINGS: RULE 47.18**

**45.1** As a general rule the court will assess the receiving party's costs of the detailed assessment proceedings and add them to the bill of costs.

**45.2** If the costs of the detailed assessment proceedings are awarded to the paying party, the court will either assess those costs by summary assessment or make an order for them to be decided by detailed assessment.

**45.3** No party should file or serve a statement of costs of the detailed assessment proceedings unless the court orders him to do so.

**45.4** Attention is drawn to the fact that in deciding what order to make about the costs of detailed assessment proceedings the court must have regard to the conduct of all parties, the amount by which the bill of costs has been reduced and whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

**45.5**

- (1) In respect of interest on the costs of detailed assessment proceedings, the interest shall begin to run from the date of the default, interim or final costs certificate as the case may be.

- (2) This provision applies only to the costs of the detailed assessment proceedings themselves. The costs of the substantive proceedings are governed by rule 40.8(1).

## **SECTION 46 OFFERS TO SETTLE WITHOUT PREJUDICE SAVE AS TO THE COSTS OF THE DETAILED ASSESSMENT**

### **PROCEEDINGS: RULE 47.19**

- 46.1** Rule 47.19 allows the court to take into account offers to settle, without prejudice save as to the costs of detailed assessment proceedings, when deciding who is liable for the costs of those proceedings. The rule does not specify a time within which such an offer should be made. An offer made by the paying party should usually be made within 14 days after service of the notice of commencement on that party. If the offer is made by the receiving party, it should normally be made within 14 days after the service of points of dispute by the paying party. Offers made after these periods are likely to be given less weight by the court in deciding what order as to costs to make unless there is good reason for the offer not being made until the later time.
- 46.2** Where an offer to settle is made it should specify whether or not it is intended to be inclusive of the cost of preparation of the bill, interest and value added tax (VAT). The offer may include or exclude some or all of these items but the position must be made clear on the face of the offer so that the offeree is clear about the terms of the offer when it is being considered. Unless the offer states otherwise, the offer will be treated as being inclusive of all these items.
- 46.3** Where an offer to settle is accepted, an application may be made for a certificate in agreed terms, or the bill of costs may be withdrawn, in accordance with rule 47.10 (Procedure where costs are agreed).
- 46.4** Where the receiving party is an assisted person or an LSC funded client, an offer to settle without prejudice save as to the costs of the detailed assessment proceedings will not have the consequences specified under rule 47.19 unless the court so orders.

## **SECTION 47 APPEALS FROM AUTHORISED COURT OFFICERS IN DETAILED ASSESSMENT PROCEEDINGS – RIGHT TO**

### **APPEAL: RULE 47.20**

- 47.1** This Section and the next Section of this Practice Direction relate only to appeals from authorised court officers in detailed assessment proceedings. All other appeals arising out of detailed assessment proceedings (and arising out of summary assessments) are dealt with in accordance with Part 52 and Practice Direction 52. The destination of appeals is dealt with in accordance with the Access to Justice Act 1999 (Destination of Appeals) Order 2000.
- 47.2** In respect of appeals from authorised court officers, there is no requirement to obtain permission, or to seek written reasons.

## **SECTION 48 PROCEDURE ON APPEAL FROM AUTHORISED COURT OFFICERS: RULE 47.22**

- 48.1** The appellant must file a notice which should be in Form N161 (an appellant's notice).
- 48.2** The appeal will be heard by a costs judge or a district judge of the High Court, and is a re-hearing.
- 48.3** The appellant's notice should, if possible, be accompanied by a suitable record of the judgment appealed against. Where reasons given for the decision have been officially recorded by the court an approved transcript of that record should accompany the notice. Photocopies will not be accepted for this purpose. Where there is no official record the following documents will be acceptable:
- (1)** The officer's comments written on the bill.
  - (2)** Advocates' notes of the reasons agreed by the respondent if possible and approved by the authorised court officer.
- When the appellant was unrepresented before the authorised court officer, it is the duty of any advocate for the respondent to make his own note of the reasons promptly available, free of charge to the appellant where there is no official record or if the court so directs. Where the appellant was represented before the authorised court officer, it is the duty of his/her own former advocate to make his/her notes available. The appellant should submit the note of the reasons to the costs judge or district judge hearing the appeal.
- 48.4** The appellant may not be able to obtain a suitable record of the authorised court officer's decision within the time in which the appellant's notice must be filed. In such cases, the appellant's notice must still be completed to the best of the appellant's ability. It may however be amended subsequently with the permission of the costs judge or district judge hearing the appeal.

## **SECTION 49 COSTS PAYABLE BY THE LSC AT PRESCRIBED RATES**

- 49.1** This section applies to a bill of costs of an assisted person or LSC funded client which is payable by another person where the costs which can be claimed against the LSC are restricted to prescribed rates (with or without enhancement).
- 49.2** Where this section applies, the solicitor of the assisted person or LSC funded client must file a legal aid/ LSC schedule in accordance with Paragraph 40.2(1) above. The schedule should follow as closely as possible Precedent E of the Schedule of Costs Precedents annexed to this Practice Direction.
- 49.3** The schedule must set out by reference to the item numbers in the bill of costs, all the costs claimed as payable by another person, but the arithmetic in the schedule should claim those items at prescribed rates only (with or without any claim for enhancement).
- 49.4** Where there has been a change in the prescribed rates during the period covered by the bill of costs, the schedule (as opposed to the bill) should be divided into separate parts, so as to deal separately with each change of rate. The schedule must also be divided so as to correspond with any divisions in the bill of costs.

- 49.5** If the bill of costs contains additional columns setting out costs claimed against the LSC only, the schedule may be set out in a separate document or, alternatively, may be included in the additional columns of the bill.
- 49.6** The detailed assessment of the legal aid/ LSC schedule will take place immediately after the detailed assessment of the bill of costs.
- 49.7** Attention is drawn to the possibility that, on occasions, the court may decide to conduct the detailed assessment of the legal aid/ LSC schedule separately from any detailed assessment of the bill of costs. This will occur, for example, where a default costs certificate is obtained as between the parties but that certificate is not set aside at the time of the detailed assessment pursuant to the Legal Aid Act 1988 or regulations thereunder.
- 49.8** Where costs have been assessed at prescribed rates it is the responsibility of the legal representative to enter the correct figures allowed in respect of each item and to recalculate the summary of the legal aid/ LSC schedule.

## **SECTION 49A COSTS PAYABLE BY THE TRUSTEE FOR CIVIL RECOVERY UNDER A RECOVERY ORDER**

- 49A.1** In this section –  
‘the Act’ means the Proceeds of Crime Act 2002;  
‘the Order in Council’ means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005; and  
‘the Regulations’ means the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005.
- 49A.2** This section applies to the assessment of costs where the court has made a recovery order which provides for the payment by the trustee for civil recovery of a person’s reasonable legal costs in respect of civil recovery proceedings. Such an order may be made under section 266(8A) of the Act or article 177(10) of the Order in Council. The procedure for obtaining a recovery order is set out in the Act and Order in Council, together with the Civil Recovery Proceedings Practice Direction.
- 49A.3** Where this section applies, costs are to be assessed in accordance with the procedure for detailed assessment under Part 47, subject to the modifications set out in Parts 4 and 5 of the Regulations.
- 49A.4** The detailed assessment will normally be made by a costs judge, even if the costs are within the authorised amounts specified in paragraph 30.1(1). The appropriate office for the purpose of rule 47.4(1) is the Costs Office.
- 49A.5** In detailed assessment proceedings to which this section applies –
- (1)** the paying party is the trustee for civil recovery;
  - (2)** the receiving party is the person whose reasonable legal costs are payable pursuant to provision made in the recovery order under section 266(8A) of the Act or article 177(10) of the Order in Council; and
  - (3)** the relevant persons for the purpose of rule 47.6(2) include the enforcement authority or the appropriate officer as defined in paragraph 1.5 of the Practice Direction – Civil Recovery Proceedings in addition to the persons referred to in paragraph 32.10.

- 49A.6** On commencing detailed assessment proceedings, the receiving party must, in addition to serving the documents listed in paragraph 32.3 on the paying party and all other relevant persons, serve a statement giving the date, amount and source of all interim payments which have been released in respect of any of those costs under Part 3 of the Regulations.
- 49A.7** By virtue of regulation 13(2) of the Regulations, detailed assessment proceedings must be commenced not later than 2 months after the date of the recovery order, and a request for a detailed assessment hearing must be filed not later than 2 months after the expiry of the period for commencing the detailed assessment proceedings.
- 49A.8** The documents which must accompany the request for a detailed assessment hearing shall include copies of all exclusions from property freezing orders or interim receiving orders made by the court for the purpose of enabling the receiving party to meet the costs which are to be assessed, and of every estimate of costs filed by the receiving party in support of an application for such an exclusion.
- 49A.9** The receiving party's costs will be assessed on the standard basis, subject to Part 5 of the Regulations (and in particular regulation 17, which specifies the hourly rates which may be allowed). Attention is also drawn to regulation 14, which provides that the amounts of any interim payments released in respect of the receiving party's costs will be deducted from the costs allowed in accordance with Part 5 of the Regulations.

