GUIDE TO THE SUMMARY ASSESSMENT OF COSTS

Foreword

2021 Edition

Judges have used previous editions of this Guide to assist in summarily assessing costs under the Civil Procedure Rules. This task became progressively harder the longer it had been since the Guide had been updated.

A number of my predecessors considered such updates. But it is now many years since one was published. This edition of the Guide follows from the work of the Civil Justice Council begun by Lord Etherton. I am grateful to him, and pleased that it has now come to fruition.

I am acutely conscious that questions have again been raised about the Guide itself and the methods and analysis that go into its production. In response, I would emphasise that the Guide is, as it has always been, no more than a guide and a starting point for judges carrying out summary assessment. This Guide is no different to its predecessors in that it continues to offer assistance to Judges. In every case, a proper exercise of judicial discretion has still to be made, after argument on the issues has been heard.

I hope that it will not be so long before the Guide is reviewed again.

Sir Geoffrey Vos MR

SUMMARY ASSESSMENT

1. Paragraph 9 of Practice Direction 44 sets out the general provisions relating to summary assessment. Rule 44.1 defines "costs" and r.44.6 contains the court's power to carry out a summary assessment. (Appendix 1 to this guidance contains extracts from the relevant Rules and Practice Direction.)

WHEN A SUMMARY ASSESSMENT SHOULD BE MADE

2. The court should consider making a summary assessment whenever it makes an order for costs which does not provide only for fixed costs. The general rule is that the court should carry out a summary assessment of the costs:

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

Where the receiving party is legally aided

3. The court should not make a summary assessment of the costs of a receiving party who is legally aided. However, the court may make a summary assessment of costs payable by an assisted person. Such an assessment is not in itself a determination of that person's liability to pay those costs under s.26(1) Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Where the receiving party is represented under a conditional fee agreement

4. Where an order for costs is made before the conclusion of the proceedings and a legal representative for the receiving party has been retained under a conditional fee agreement the court may summarily assess the costs. Although most conditional fee agreements provide that the client is liable to pay the legal representative only if the client succeeds in the proceedings, such agreements commonly provide that the client is also liable to pay the base costs of an interim hearing (but not the success fee) if the client wins at that hearing, whether or not the client ultimately succeeds in the claim. An order for the payment of the summarily assessed costs should not be made unless the court is satisfied that the receiving party is at that time liable under the agreement to pay to the legal representative at least the amount of those costs. If the court is not so satisfied, it may direct that the assessed costs be paid into court to await the outcome of the case or shall not be enforceable until further order.

Where the receiving or paying party is a child or protected person

5. The general rule is that costs payable by or to a child or protected party should be the subject of detailed assessment. The court may carry out a summary assessment of the costs of a receiving party who is a child or protected party if the solicitor acting for the child or protected party has waived the right to further costs. If the costs payable consist only of a success fee or a payment due under a damages-based agreement to the child's or protected party's solicitor, the court may direct that the costs be assessed summarily: r.46.4(5). Such

costs, if incurred in respect of a child in a claim for damages for personal injury, should be assessed summarily only where the damages do not exceed £25,000: r.21.12(1A). The court may carry out a summary assessment of the costs payable by a child or protected party if an insurer or other person is liable to and financially able to discharge those costs.

Summary assessment by a costs officer

6. The court awarding costs cannot make an order for the summary assessment to be carried out by a costs officer (i.e. a costs judge or district judge). If summary assessment of costs is appropriate but the court awarding costs is unable to carry out the assessment on the day it may give directions for a further hearing before the same judge or order detailed assessment. Rule 44.1 defines "summary assessment" as the procedure whereby costs are assessed by the judge who has heard the case or application. However, it has been held that there is no absolute bar on assessment by a different judge[1].

STATEMENTS OF COSTS

7. Statements of costs should follow as closely as possible form N260 and must be signed by the party or the party's representative: Practice Direction 44 para 9.5(3). Forms N260A and N260B may be used in paper, pdf and electronic spreadsheet versions for the costs of interim applications and trials respectively. Where a party files an electronic spreadsheet version it must also file and serve a paper/pdf form.

8. Statements of costs must be filed and served not less than 2 days before a fast track trial and, for other hearings, not less than 24 hours before the start of the hearing: Practice Direction 44 para 9.5(4). Failure to comply with those time limits will be taken into account in deciding what costs order to make and about the costs of any further hearing that may be necessary as a result of that failure: para 9.6. Any sanction should be proportionate. The court should consider what, if any, prejudice had been caused to the paying party and how that should be taken into account. Possible courses to take include a short adjournment to enable the paying party to consider the statement of costs, adjourning the summary assessment to another date, ordering a detailed assessment, disallowing some of the costs which might otherwise have been allowed, or making no costs order at all.

THE APPROACH TO COSTS

9. The general principles applying to summary and detailed assessment are the same. For the summary assessment to be accurate the judge must be informed about any previous summary assessments carried out in the case. This is particularly important where the judge is assessing all of the costs at the conclusion of a case.

10. The court should not be seen to be endorsing disproportionate or unreasonable costs. Accordingly:

(a) When the amount of the costs to be paid has been agreed the court should make this clear by saying that the order is by consent.
(b) If the court is to make an order which is not by consent, it will, so far as possible, ensure that the final figure is not disproportionate and/or unreasonable having regard to the overriding objective (r.1.1(2)). The court will retain this responsibility

[1] *Transformers and Rectifiers Ltd v Needs Ltd* [2015] EWHC 1687 (TCC)

notwithstanding the absence of challenge to individual items comprised in the figure sought.

11. The costs which the paying party has incurred for its own representation may be relevant when considering the reasonableness and proportionality of the receiving party's costs. However, they are only a factor and are not decisive. Both parties may have incurred costs which are unreasonable and disproportionate, but only reasonable (and, on the standard basis, proportionate) costs may be allowed.

THE BASIS OF ASSESSMENT

THE STANDARD BASIS

12. Rules 44.3(1) and (2) provide that where the court assesses the amount of costs on the standard basis it will not allow costs which have been unreasonably incurred or are unreasonable in amount and will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred. The court will resolve in favour of the paying party any doubt which it may have as to whether the costs were reasonably incurred or were reasonable and proportionate in amount.

THE INDEMNITY BASIS

13. Rules 44.3(1) and (3) provide that where the court assesses the amount of costs on the indemnity basis it will not allow costs which have been unreasonably incurred or are unreasonable in amount and it will resolve in favour of the receiving party any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount. The test of proportionality does not apply on the indemnity basis.

PROPORTIONALITY

14. Costs will be proportionate if they bear a reasonable relationship to (a) the sums in issue in the proceedings (b) the value of any non-monetary relief in issue in the proceedings (c) the complexity of the litigation (d) any additional work generated by the conduct of the paying party and (e) any wider factors involved in the proceedings, such as reputation or public importance: rule 44.3(5).

15. The Court of Appeal gave guidance on the application of the test of proportionality in *West v Stockport NHS Foundation Trust* [2019] EWCA Civ 1220. Having considered the reasonableness of the costs claimed, the court should consider the proportionality of the total figure considered to be reasonable having regard to the factors in r.44.3(5) and, if relevant, any wider circumstances under r.44.4. In doing so it should ignore unavoidable items such as court fees. If the court considers the total to be disproportionate it should consider each category of costs claimed (such as time spent drafting witness statements) and consider whether those costs were disproportionate. If they are, then the court should reduce the costs in that category to a figure that is proportionate. In that way, reductions for proportionality will be clear and transparent. However, the court may also consider the proportionality of a particular item when it considers the reasonableness of that item.

THE AMOUNT OF COSTS

16. Rule 44.4(3) sets out the factors to be taken into account in deciding the amount of costs. Those factors include: the conduct of the parties, including conduct before as well as during the proceedings; the efforts made, if any, before and during the proceedings in order to try to resolve the dispute; the value involved in the proceedings; the importance of the matter to the parties; the complexity of the proceedings; the skill and specialised knowledge of the lawyers; the place where the work was done; and the receiving party's last approved or agreed budget.

GENERAL PRINCIPLES TO BE APPLIED IN SUMMARY ASSESSMENT

THE INDEMNITY PRINCIPLE

17. 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, 385; *Gundry v Sainsbury* [1910] 1 KB 645 CA. There are exceptions to the principle, notably costs funded by the Legal Aid Agency and fees payable under certain types of conditional fee agreement.

18. The statement of costs (N260, N260A and N260B)) filed for summary assessment must be signed by the party or its legal representative. That form contains the statement: *The costs stated above do not exceed the costs which the [claimant/defendant] is liable to pay in respect of the work which this statement covers. Counsel's fees and other expenses have been incurred in the amounts stated and will be paid to the persons stated*.

19. The signature of a statement of costs by a solicitor is, in normal circumstances, sufficient to enable the court to be satisfied that the indemnity principle has not been breached: *Bailey v IBC Vehicles Ltd* [1998] 3 All ER 570 CA. A solicitor is an officer of the court and as Henry L.J. stated:
In so signing he certifies that the contents of the bill are correct. That signature is no empty formality.… The signature of the bill of costs … is effectively the certificate of an officer of the court that the receiving party's solicitors are not seeking to recover in relation to any item more than they have agreed to charge their client…

TIME FOR PAYMENT OF THE SUMMARILY ASSESSED COSTS

20. As a general rule, a paying party should be ordered to pay the amount of any summarily assessed costs within 14 days. Before making such an order the court should consider whether an order for payment of the costs might bring the action to an end and whether this would be just in all the circumstances.

LITIGANTS IN PERSON

21. Where the receiving party is a litigant in person r.46.5 governs the way in which the question of costs should be dealt with. A litigant in person may be allowed:

(a) where the litigant can prove financial loss (e.g. loss of earnings), the amount proved to have been lost for time spent reasonably doing the work; or
(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate of £19 per hour (the rate is fixed by Practice Direction

46 para 3.4).

22. A litigant in person who wishes to prove financial loss should produce written evidence and serve it on the other party at least 24 hours before the hearing: Practice Direction 46 para 3.2.

23. Generally, litigants in person may be expected to spend more time than would reasonably be spent by a legal representative. The time allowed to a litigant in person should therefore be measured against the time that would reasonably be spent by a person without legal training or specialist knowledge.

24. However, there is an absolute cap on the amount recoverable by a litigant in person, namely the reasonable costs of disbursements plus two thirds of the amount which would have been allowed if the litigant in person had been legally represented: r.46.5(2). The correct approach is therefore to assess the reasonable costs for the litigant to do the work at the appropriate rate, consider what a legal representative would have been allowed for doing that work, calculate two thirds of that figure, and allow the lower of the two figures.

25. Litigants in person are entitled to recover disbursements of the types which would have been made by a legal representative. They may also recover payments reasonably made for legal services relating to the conduct of the proceedings as well as the costs of obtaining expert assistance in connection with assessing the claim for costs. This does mean that a litigant in person may be able to claim both the cost of obtaining legal advice and services as well as the cost of doing the same work in person. Those qualified to give expert assistance in connection with assessing the claim for costs are listed in Practice Direction 46 para 3.1.

26. Although the definition of a litigant in person includes a lawyer, a lawyer who is represented in the proceedings by a firm in which that person is a partner, is not a litigant in person: rule 46.5(6)(b).

GUIDELINE FIGURES FOR SOLICITORS' HOURLY RATES

27. Guideline figures for solicitors' charges are published in Appendix 2 to this Guide, which also contains some explanatory notes. The guideline rates are not scale figures: they are broad approximations only.

28. The guideline figures are intended to provide a starting point for those faced with summary assessment.

29. In substantial and complex litigation an hourly rate in excess of the guideline figures may be appropriate for grade A, B and C fee earners where other factors, for example the value of the litigation, the level of the complexity, the urgency or importance of the matter, as well as any international element, would justify a significantly higher rate. It is important to note (a) that these are only examples and (b) they are not restricted to high level commercial work, but may apply, for example, to large and complex personal injury work. Further, London 1 is defined in Appendix 2 as 'very heavy commercial and corporate work by centrally based London firms'. Within that pool of work there will be degrees of complexity and this paragraph will still be relevant.

INSTRUCTING LONDON SOLICITORS

30. In a case which has no obvious connection with London and which does not require expertise only to be found there, a litigant who unreasonably instructs London solicitors should be allowed only the costs that would have been recoverable for work done in the location where the work should have been done: *Wraith v Sheffield Forgemasters Ltd* [1998] 1 WLR 132 (CA). It follows that a party who instructs London solicitors to pursue in London a claim which concerns a dispute arising outside London and which was suitable to be heard in the appropriate regional specialist court should also be allowed only the costs that would have been recoverable for pursuing the claim in that regional court (and see Practice Direction 29 para 2.6A).

31. Where all or part of the work on a case is done in a different location from that of the solicitor's office on the court record, the appropriate hourly rate for that part should reflect the rates allowed for work in that location, whether that rate is lower or higher (provided that, if a higher rate is claimed, a decision to instruct solicitors in that location would have been reasonable).

IN HOUSE LAWYERS

32. The costs of in-house legal staff should be assessed as if they were in private practice, attributing to them a notional hourly rate based on the guideline rates for the relevant location. Unless it was reasonably plain that the indemnity principle would be infringed by this approach, it would not be practical to require a breakdown of the expenses of obtaining the services in-house: Re Eastwood [1975] Ch 112.

SOLICITOR ADVOCATES

33. Remuneration of solicitor advocates is based on the normal principles for remuneration of solicitors. It is not therefore appropriate to seek a brief fee and refreshers as if the advocate were a member of the Bar. If the cost of using a solicitor advocate is more than the cost of instructing counsel, the higher cost is unlikely to be recovered. The figures properly recoverable by solicitor advocates should reflect the amount of preparation undertaken, the time spent in court and the weight and gravity of the case.

34. Where the solicitor advocate is also the solicitor who does the preparation work, the solicitor is entitled to charge normal solicitors' rates for that preparation, but once the solicitor advocate starts preparation for the hearing itself the fees recoverable should not exceed those which would be recoverable in respect of counsel.

35. The fees of a solicitor acting as a junior counsel should not exceed the fee that would have been appropriate for junior counsel, as to which see below.

COUNSEL'S BRIEF FEES

36. Counsel's fees for advisory work and drafting are properly chargeable at hourly rates. However work done preparing for and attending a court hearing should be charged as a lump sum brief fee and not at an hourly rate. A proper measure for counsel's brief fee is to estimate what fee a hypothetical counsel, capable of conducting the case effectively, but unable or unwilling to insist on the higher fees sometimes demanded by counsel of pre-eminent

reputation, would be content to take on the brief; but there is no precise standard of measurement and the judge must, using his or her knowledge and experience, determine the proper figure: *Simpsons Motor Sales (London) Ltd v Hendon BC* [1965] 1 WLR 112 per Pennycuick J.

37. As a rule of thumb, junior counsel's reasonable fee will be one half of the reasonable fee of leading counsel, unless the junior or the leader has done substantially more or less work than would normally be expected.

THE TIME SPENT BY SOLICITORS AND COUNSEL

38. There can be no guidance as to whether the time claimed has been reasonably spent, and it is for the judge in each case to consider the work properly undertaken by solicitors and counsel and to arrive at a figure which is in all the circumstances reasonable (and, on the standard basis, proportionate).

EXPENSES WHICH ARE NOT GENERALLY RECOVERABLE

39. Although the court may exceptionally allow the following in unusual circumstances, generally the costs of postage, couriers, telephone calls, stationery and photocopying are not recoverable as they should be included in the hourly rate agreed between the solicitors and their client. No allowance should be made for reading incoming routine correspondence as the time spent is included in the routine charge for replying to it. Similarly, counsel's travelling time and expenses will generally be included in the brief fee agreed.

FAST TRACK TRIAL COSTS

40. The amount of fast track trial costs which the court may award (that is, the costs of the advocate preparing for and attending the trial) is set out in the table to r.45.38. Rule 45.37(2) provides definitions of "advocate", "fast track trial costs" and "trial". The court may not award more or less than the amount shown in the table except where it decides not to award any fast track trial costs or where r.45.39 applies. Rule 45.39 sets out the court's powers to award more than the amount of fast track trial costs where it was necessary for a legal representative to attend to assist the advocate, where a separate trial of an issue is ordered, or where the paying party has behaved improperly during the trial. It also sets out the court's powers to award less, where the receiving party is a litigant in person, where both a claim and a counterclaim succeed, or where the receiving party has behaved unreasonably or improperly during the trial.

THE COSTS OF APPEALS

41. On appeals where both counsel and solicitors have been instructed, the reasonable fees of counsel are likely to exceed the reasonable fees of the solicitor. In many cases the largest element in the solicitors' reasonable fees for work on an appeal concerns instructing counsel and preparing the appeal bundles. Time spent by the solicitor in the development of legal submissions should only be allowed where it does not duplicate work done by counsel and is claimed at a rate the same or lower than the rate counsel would have claimed.

42. The fact that the same counsel appeared in the lower court does not greatly reduce the reasonable fee unless, for example, the lower court dealt with a great many more issues than

are raised on the appeal. It is reasonable for counsel to spend as much time preparing issues for the appeal hearing as were spent preparing those issues for the lower court hearing.

43. Although the solicitor may have spent many hours attending on the client, the client should have been warned that little of this time is recoverable against a losing party. Reasonable time spent receiving instructions and reporting events should not greatly exceed the time spent on attending the opponents.

44. There is usually no reason for more than one solicitor to spend any significant time perusing papers. A large claim for such perusal probably indicates that a new fee earner was reading in. Reading in fees are not normally recoverable from an opponent.

45. Although it is usually reasonable to have a senior fee earner sitting with counsel on the appeal hearing, it is not usually reasonable to have two fee earners. The second fee earner may be there for training purposes only.

46. In most appeals it will be appropriate to make an allowance for copy documents. The allowance for copying which is included in the solicitor's hourly rates will already have been used up or exceeded in the lower court. An hourly rate charge is appropriate for selecting and collating documents and dictating the indices. If the paperwork is voluminous much of this should be delegated to a trainee. Operating the photocopying machine is secretarial work for which no allowance should be made. Note that for the copying itself, a fair allowance is 20p per page. This includes an allowance for checking the accuracy of the copying.

SUMMARY ASSESSMENT WHERE THE COSTS CLAIMED INCLUDE AN ADDITIONAL LIABILITY (SUCCESS FEES OR ATE PREMIUM)

47. Following the Legal Aid, Sentencing and Punishment of Offenders Act 2012, success fees payable under conditional fee agreements made after 1st April 2013 are not recoverable between the parties except in limited classes of cases for which the commencement of the Act was temporarily deferred. The transitional rules are set out in Part 48.

48. After the event insurance premiums are not recoverable unless either:

(a) the policy was taken out before 1st April 2013; or
(b) the policy covers liability for the costs of expert reports on liability or causation in clinical negligence claims.

49. Where an additional liability (a success fee under a conditional fee agreement or an after the event insurance premium) continues to be recoverable from the opponent:

(a) If a summary assessment is made before the conclusion of the proceedings, the court may assess the base costs, but not the additional liability (success fee or after the event insurance premium): r.44.3A(1) as it was in force before 1st April 2013.
(b) If a summary assessment is made at the conclusion of the proceedings, or the part of the proceedings to which the funding arrangement relates, the court may summarily assess all of the costs including the additional liabilities, may order detailed assessment of the additional liabilities and summarily assess the other costs or may order detailed assessment of all of the costs.

50. Where the court carries out a summary assessment of the base costs before the conclusion of proceedings it is helpful if the order identifies separately the amount allowed in respect of: solicitors charges; counsel's fees; other disbursements; and any value added tax. If this is not done, the court which later makes an assessment of an additional liability, will have to apportion the base costs previously assessed.

51. In assessing an additional liability, the court will have regard to the facts and circumstances as they reasonably appeared to the solicitor or counsel when the funding arrangement was entered into and at the time of any variation of the arrangement.

APPENDIX 1

CIVIL PROCEDURE RULES

Basis of assessment

44.3

(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs –

(a) on the standard basis; or
(b) on the indemnity basis,

but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(Rule 44.5 sets out how the court decides the amount of costs payable under a contract.)

(2) Where the amount of costs is to be assessed on the standard basis, the court will –

(a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and
(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

(Factors which the court may take into account are set out in rule 44.4.)

(3) Where the amount of costs is to be assessed on the indemnity basis, the court 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.

(4) Where –

(a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or
(b) the court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis,

the costs will be assessed on the standard basis.

(5) Costs incurred are proportionate if they bear a reasonable relationship to –

(a) the sums in issue in the proceedings;
(b) the value of any non-monetary relief in issue in the proceedings;
(c) the complexity of the litigation;
(d) any additional work generated by the conduct of the paying party; and
(e) any wider factors involved in the proceedings, such as reputation or public importance.

(6) Where the amount of a solicitor's remuneration in respect of non-contentious business is regulated by any general orders made under the Solicitors Act 1974[2], the amount of the costs to be allowed in respect of any such business which falls to be assessed by the court will be decided in accordance with those general orders rather than this rule and rule 44.4.

(7) Paragraphs (2)(a) and (5) do not apply in relation to –

(a) cases commenced before 1st April 2013; or
(b) costs incurred in respect of work done before 1st April 2013,

and in relation to such cases or costs, rule 44.4.(2)(a) as it was in force immediately before 1st April 2013 will apply instead.

Factors to be taken into account in deciding the amount of costs

44.4

(1) The court will have regard to all the circumstances in deciding whether costs were –

(a) if it is assessing costs on the standard basis –
    i. proportionately and reasonably incurred; or
    ii. proportionate and reasonable in amount, or
(b) if it is assessing costs on the indemnity basis –
    i. unreasonably incurred; or
    ii. unreasonable in amount.

(2) In particular, the court will give effect to any orders which have already been made.

(3) The court will also have regard to –

(a) the conduct of all the parties, including in particular –
    i. conduct before, as well as during, the proceedings; and
    ii. the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
(b) the amount or value of any money or property involved;
(c) the importance of the matter to all the parties;
(d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
(e) the skill, effort, specialised knowledge and responsibility involved;
(f) the time spent on the case;

[2] 1974 c.47

(g) the place where and the circumstances in which work or any part of it was done; and
(h) the receiving party's last approved or agreed budget.

(Rule 35.4(4) gives the court power to limit the amount that a party may recover with regard to the fees and expenses of an expert.)

Procedure for assessing costs

44.6

(1) Where the court orders a party to pay costs to another party (other than fixed costs) it may either –

(a) make a summary assessment of the costs; or
(b) order detailed assessment of the costs by a costs officer,

unless any rule, practice direction or other enactment provides otherwise.

(Practice Direction 44 – General rules about costs sets out the factors which will affect the court's decision under paragraph (1).)

(2) A party may recover the fixed costs specified in Part 45 in accordance with that Part.

PART 44 PRACTICE DIRECTION

Summary assessment: general provisions

When the court should consider whether to make a summary assessment

9.1

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

Timing of summary assessment

9.2

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

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

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

summarily.

Summary assessment of mortgagee's costs

9.3

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

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

Consent orders

9.4

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

Duty of parties and legal representatives

9.5

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

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

(a) the number of hours to be claimed;
(b) the hourly rate to be claimed;
(c) the grade of fee earner;
(d) the amount and nature of any disbursement to be claimed, other than counsel's fee for appearing at the hearing;
(e) the amount of legal representative's costs to be claimed for attending or appearing at the hearing;
(f) counsel's fees; and
(g) any VAT to be claimed on these amounts.

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

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

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

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

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

(a) for a fast track trial, not less than 2 days before the trial; and
(b) for all other hearings, not less than 24 hours before the time fixed for the hearing.

9.6

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

No summary assessment by a costs officer

9.7

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

Assisted persons etc

9.8

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

Children or protected parties

9.9

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

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

Disproportionate or unreasonable costs

9.10

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

APPENDIX 2

GUIDELINE FIGURES FOR THE SUMMARY ASSESSMENT OF COSTS EXPLANATORY NOTES

Solicitors' hourly rates

The guideline rates for solicitors provided here are broad approximations only.

Localities

The guideline figures have been grouped according to locality by way of general guidance only. Although many firms may be comparable with others in the same locality, some of them will not be.

In any particular case the hourly rate which it is reasonable to allow should be determined by reference to the rates charged by comparable firms. For this purpose the statement of costs supplied by the paying party may be of assistance. The rate to allow should not be determined by reference to locality or postcode alone.

Grades of fee earner

The categories of fee earners are as follows:

[A] Solicitors with over eight years post qualification experience including at least eight years litigation experience and Fellows of CILEX with 8 years' post-qualification experience.
[B] Solicitors and legal executives with over four years post qualification experience including at least four years litigation experience.
[C] Other solicitors and legal executives and fee earners of equivalent experience.
[D] Trainee solicitors, paralegals and other fee earners.

Qualified Costs Lawyers will be eligible for payment as grades B or C depending on the complexity of the work done.

"Legal executive" means a Fellow of the Chartered Institute of Legal Executives. Those who are not Fellows of the Institute are not entitled to call themselves legal executives and in principle are therefore not entitled to the same hourly rate as a legal executive.

Clerks without the equivalent experience of legal executives will be treated as being in the bottom grade of fee earner i.e. trainee solicitors, paralegals and fee earners of equivalent

experience. Whether or not a fee earner has equivalent experience is ultimately a matter for the discretion of the court.

Rates to allow for senior fee earners and for substantial and complex work

Many High Court cases justify fee earners at a senior level. However the same may not be true of attendance at pre-trial hearings with counsel. The task of sitting behind counsel should be delegated to a more junior fee earner in all but the most important pre-trial hearings. The fact that the receiving party insisted upon the senior's attendance, or the fact that the fee earner is a sole practitioner who has no juniors to delegate to, should not be the determinative factors. As with hourly rates the statement of costs supplied by the paying party may be of assistance. What grade of fee earner did they use?

As stated in paragraph 29 of the Guide:
In substantial and complex litigation an hourly rate in excess of the guideline figures may be appropriate for grade A, B and C fee earners where other factors, for example the value of the litigation, the level of the complexity, the urgency or importance of the matter, as well as any international element, would justify a significantly higher rate. It is important to note (a) that these are only examples and (b) they are not restricted to high level commercial work, but may apply, for example, to large and complex personal injury work. Further, London 1 is defined in Appendix 2 as 'very heavy commercial and corporate work by centrally based London firms'. Within that pool of work there will be degrees of complexity and this paragraph will still be relevant.

Guideline hourly rates

Grade	Fee earner	London 1	London 2	London 3	National 1	National 2
A	Solicitors and legal executives with over 8 years' experience	£512	£373	£282	£261	£255
B	Solicitors and legal executives with over 4 years' experience	£348	£289	£232	£218	£218
C	Other solicitors or legal executives and fee earners of equivalent experience	£270	£244	£185	£178	£177
D	Trainee solicitors, paralegals and other fee earners	£186	£139	£129	£126	£126

London

Band	Area	Postcodes
London 1	(very heavy commercial and corporate work by centrally based London firms[3])	
London 2	City & Central London – other work	EC1-EC4, W1, WC1, WC2 and SW1
London 3	Outer London	All other London Boroughs, plus Dartford & Gravesend

[3] Not restricted to any particular London postcode

National 1:

i. The counties of Bedfordshire, Berkshire, Buckinghamshire, Dorset, Essex, Hampshire (& Isle of Wight), Kent, Middlesex, Oxfordshire, East Sussex, West Sussex, Suffolk, Surrey and Wiltshire
ii. Birkenhead, Birmingham Inner, Bristol, Cambridge City, Cardiff Inner, Leeds Inner (within 2km of City Art Gallery), Liverpool, Manchester Central, Newcastle City Centre (within 2m of St Nicholas Cathedral), Norwich City, Nottingham City and Watford.

National 2:

All places not included in London 1-3 and National 1.