

JCPC PD 8 PROPOSED AMENDMENTS

Costs

Note: enquiries about costs should be made to ~~the Costs Manager:~~

~~Email: costs@supremecourt.uk-costs@jcpc.uk~~

~~Drafts and cheques for fees, including assessment fees, should be made payable to 'Judicial Committee Fees Account'.~~

~~Drafts and cheques for security money only should be made payable to 'Judicial Committee Security Fund Account'.~~

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Section 1

1. Introduction

1.1 This Practice Direction relates to the costs incurred in proceedings before the Judicial Committee. Detailed assessments of costs in the Judicial Committee may be conducted by the ~~Registrar or a Senior Costs Judge~~ of the Senior Courts Costs Office or any costs judge nominated by him. Under section 15 of the Judicial Committee Act 1833 the Judicial Committee may appoint a

person or persons other than the Registrar to tax or assess costs and the Costs Judges have been appointed under this provision. A Costs Judge sits alone when assessing costs.

~~1.2 The Costs Clerk is an officer in the Registry of the Judicial Committee who acts under the direction and supervision of the Registrar.~~

1.3 Detailed assessments are conducted in public.

1.4 The assessment of costs is governed by the relevant provisions of the ~~Judicial Committee (Appellate Jurisdiction)~~ JCPC Rules supplemented by this and the other Practice Directions issued by the Judicial Committee. To the extent that ~~the Judicial Committee (Appellate Jurisdiction)~~ Rules and Practice Directions do not cover the situation, the rules and Practice Directions relating to Parts 44 to 47 of the Civil Procedure Rules are applied by analogy at the discretion of the Costs ~~Judge~~ Officer, with appropriate modifications for appeals from foreign jurisdictions. The legal principles applied are those also applicable to assessments between parties in the High Court and Court of Appeal in England and Wales.

1.5 In this Practice Direction references to

- "the JCPC Rules" or "Rules" mean the Judicial Committee (Appellate Jurisdiction) Rules 2009 (as amended)
- "the Costs Officer" means ~~the Registrar or the Senior a~~ Costs Judge ~~or any costs judge nominated by him to conduct the detailed assessment on behalf of the Registrar and appointed to carry out the assessment of costs on behalf of the Judicial Committee~~
- "bill of costs" ² means a claim for costs in Form 5 filed in accordance with Rule 45 of the Judicial Committee (Appellate Jurisdiction) Rules 2009.
- "legal representative" mean a person authorised to conduct litigation

2. Entitlement to costs

2.1 Costs are in the discretion of the Board and it "may make such orders as it considers just in respect of the costs of any appeal, application for permission to appeal, or other application to or proceeding before the Judicial Committee" (rule 43(1)).

2.2 A bill of costs in Form 5 (see Section 2 of this Practice Direction) may be filed in the Registry for assessment where costs are payable by appellants, respondents or other persons under an order for costs made by an Appeal Panel or by the Board.

3. Basis of assessment

3.1 Costs in the Judicial Committee are ordered to be assessed on the standard basis or on the indemnity basis in accordance with rules 47 and 48 of the ~~Judicial Committee (Appellate Jurisdiction)~~ JCPC Rules. The Board will not allow costs which have been unreasonably incurred or which are unreasonable in amount.

3.2 The assessment of costs in the Judicial Committee shall be limited to costs incurred in the United Kingdom except that fees for work done outside the United Kingdom in advising on an appeal to the Privy Council, preparing an application for permission to appeal to the Privy Council, preparing a case on an appeal and preparing for a hearing are treated as having been incurred in the United Kingdom.

4. Costs of preparing applications for permission to appeal or notices of objection

General

4.1 Where a party applies for costs in accordance with paragraph 3.5.3 of Practice Direction 3 (that is, in circumstances where an application for permission to appeal is refused) the application is made by filing and serving Form 5.

4.2 As a general rule the Registrar does not grant the application where:

the application for permission was not served on the respondent making the application for costs; or

the respondent making the application did not file a notice of objection to the application for permission; or

the application is made by one of two or more parties and the Registrar is not satisfied that the applicant had an interest in the application for permission to appeal that required separate representation.

4.3 Where an unsuccessful application for permission to appeal is determined without an oral hearing, costs may include the reasonable costs of preparing and filing respondent's objections and attending the client, counsel or other parties.

4.4 If an application for permission to appeal is dismissed after an oral hearing, the costs of the hearing are allowable in addition to the costs at 4.3 above.

4.5 The costs of a successful application for permission to appeal become costs in the appeal unless the Board orders otherwise.

Counsel's fees

4.6 The general rule is that a fee for one junior counsel is allowed for preparing an application for permission to appeal or a notice of objection. A fee will be allowed for King's Counsel instead of or in addition to junior counsel if this is held to be necessary because of the difficulty or complexity of the case or other good reason.

4.7 For guideline figures for fees on application for permission to appeal, see paragraph 13.

Filing

5.1 A claim for costs in Form 5 must be filed within three months of the date ~~on which of~~ the relevant costs order ~~is made~~ and must ~~at the same time~~ be served on the other parties.

5.2 ~~The following documents only must be filed with the Costs Clerk~~All documents must be filed electronically as follows:

- a. ~~two copies of~~ the bill of costs ([Form 5](#));
- b. counsel's fee notes (which must be receipted) and, where counsel's fees exceed the guideline rates in paragraph 13, a detailed note explaining why; and
- c. receipts or other evidence of disbursements of £500 or more

5.3 The certificate of service (in Part 7 of Form 5) must include the details of all parties entitled to be represented at the detailed assessment.

5.4 The certificates in part 3 7 of Form 5 must be completed where appropriate. The completed certificate of discharge is accepted as evidence of payment of disbursements under £500, but may, subject to any direction by the Costs Officer, be challenged by the paying party.

~~5.5 All papers may be filed by email with the Costs Clerk.~~

5.6 Other papers on which the parties intend to rely ~~may be brought to the hearing or filed with the Costs Clerk as he thinks appropriate~~ must be filed before the hearing and in consultation with the costs section of the Registry. Where a bill is complex or large any papers the Costs Officer need to pre-read must be filed electronically at least 7 days before the hearing.

Points of dispute to bill of costs

5.7 Points of dispute under rule 45 may, and if the bill is above £5,000 must, be filed at the Registry and served on the receiving party within 21 days of service of the bill of costs. The receiving party may within 14 days from service of the points of dispute respond to the points if they think it appropriate to do so. Any request for an extension of time to file points of dispute or replies must be made ~~to the Costs Clerk~~ within the relevant time period or, after expiry of that limit, by application made in Form 2. (For applications see Practice Direction 7.)

5.8 Where the paying party does not file points of dispute a provisional assessment will be conducted (see paragraph 7 below).

Fees

5.9 The fee payable on filing a bill of costs is 2.5% of the amount claimed (including VAT).

5.10 The fee payable on assessment of a bill of costs is 2.5% of the amount allowed (including the costs of assessment and VAT).

5.11 The filing fee and the assessment fee are costs of the detailed assessment. Parties must not include the filing fee when calculating the assessment fee.

5.12 Where a bill of costs is agreed less than 21 days prior to assessment the assessment fee is payable on the amount agreed between the parties. . Agreement must be notified to the court by email as soon as possible ~~In these circumstances all parties must confirm the position in writing or by email to the Costs Clerk.~~

5.13 Drafts and cheques for fees are payable to the 'Judicial Committee Fees Account'.

5.14 The fees payable under the Rules are set out in Annex 2 to Practice Direction 7.

Completing Form 5

5.15 Form 5 (including ~~the agreed costs figures and the summary Part 6B~~) must be completed and returned to the Costs Clerk costs section along with the assessment fee within one month of the assessment.

5.16 If a paying party refuses to sign Form 5, the signature of the receiving party will be sufficient, provided the Registrar is satisfied that the paying party has refused to sign without good reason.

Extension of time and filing out of time

6.1 Any request for an extension of the three-month period for filing a bill must be ~~made in writing or by email to the Costs Clerk and~~ copied to the other parties. If such an extension is agreed by the parties ~~they should inform the Costs Clerk that should be made clear.~~

6.2 An application to file a bill of costs out of time made after the expiry of the three month period must be made in Form 2. In deciding whether to grant an application the Registrar takes into account all the circumstances, including:

- a. the interests of the administration of justice;
- b. whether the failure to file in time was intentional;
- c. whether there is a good explanation for the failure to file in time;
- d. the effect which the delay has had on each party; and
- e. the effect which the granting of an extension of time would have on each party.

6.3 See Practice Direction 7 for applications.

7. Provisional assessment

7.1 A provisional assessment (carried out without a hearing on the papers provided by the parties) is conducted ~~without a hearing~~:

- a. where one of the parties requests such an assessment (see rule 46(3));
- b. where the costs claimed are £75,000 or less; and
- c. where the paying party fails to file points of dispute (for points of dispute see paragraph 5.7 above)

7.2 ~~The parties are informed in writing of the outcome of the provisional assessment.~~ If a party is dissatisfied with the result representations should be filed ~~with the Costs Clerk~~ within 14 days of receipt of the assessed bill. If points of disagreement cannot be resolved in correspondence, a detailed assessment will be carried out ~~at an oral hearing.~~

7.3 A detailed assessment in these circumstances proceeds on the basis of the original claim for costs and any points of dispute and replies, any of which may be amended in light of the provisional assessment.

8. Attendance and detailed assessment

8.1 The Registrar gives ~~at least 21-14~~ days notice of the ~~day date~~ and time ~~appointed for of the~~ assessment ~~to all those entitled to be heard at the assessment. Only the parties or their agents who were responsible for the case in the Judicial Committee or their deputies have a right to be heard. For the purpose of this paragraph, a deputy may be another member of the agent's firm, or the Privy Council/London agent, or the costs draftsman; but those attending must be fully conversant with the matters to be considered. The bill must be endorsed before filing with a certificate of service on the parties entitled to be represented at the assessment or their agents. Information about the date and time of the assessment is sent to all such parties or their agents.~~

8.2 Parties may be represented by their legal representative (including but not limited to a solicitor, costs lawyer or costs draftsman, or counsel).

8.2 The receiving party or their ~~agent~~ legal representative must attend the assessment.

~~8.3 If additional papers are brought to the detailed assessment (see paragraph 5.6 above) three copies must be provided and one copy for each other party.~~

Counsel

8.4 For counsel's fees of attending the detailed assessment see paragraph 13.

Detailed assessment ~~of~~ on the papers

8.5 The Registrar may, at the request of a party or if the circumstances justify it, direct that a detailed assessment be carried out on the papers (footnote 1).

9 Costs Officer's discretion

9.1 The Costs Officers ~~has~~ have discretion as to the amount to allow. In exercising this discretion ~~he~~ they bears in mind the terms "reasonably incurred" and "reasonable in amount" in rule 48 of the ~~Judicial Committee (Appellate Jurisdiction)~~ JCPC Rules.

The factors considered include:

- a. to what extent an item assisted the Board in determining the appeal;
- b. the length of a hearing;
- c. the complexity of the issues as indicated by the judgments delivered by the Board, and
- d. the general level of fees sought and allowed in the lower courts.

9.2 In the case of applications for permission to appeal, a major consideration is whether the application gave rise to a point of public importance.

9.3 The Costs Officer will reduce or disallow claims in respect of documents (including electronic documents) provided by a party where those documents were excessive, inadequate or proved unhelpful to the Board or the Appeal Panel.

9.4 For guideline figures for agents and counsel see paragraph 13 below.

10. Review of Costs Officers' decision

Application for a review

10.1 Any party to an assessment who is dissatisfied with all or part of a decision of the Costs Officer may apply in accordance with rule 51 for that decision to be revised by the Judicial Committee. The application must be made in Form 2 and served on the other parties. For applications see Practice Direction 7.

10.2 An application may be made only on a question of principle and not in respect of the amount allowed on any item.

10.3 Any application must be made within 14 days of the end of the detailed assessment or such longer period as may be fixed by the Costs Officer or by the Registrar.

10.4 An application for a review must include written submissions stating concisely the grounds of the objections and must be served on the other parties.

10.5 A party who objects to the application may, within 14 days of service or such longer period as may be fixed by the Costs Officer or by the Registrar, file a notice of objection in Form 3, which must be served on the other parties.

Reference to a Single Justice

10.6 The matter is then referred to a member of the Board nominated by the senior member of the Board who heard the appeal or application for permission to appeal.

10.7 The nominated member of the Board will decide whether the matter should be referred to the Judicial Committee and, before he makes a decision, he may consult the other members of the Board who heard the appeal or application. If the nominated member of the Board is of the opinion that the matter should not be referred the decision of the Costs Officer is affirmed.

Referral to the Judicial Committee

10.8 The Judicial Committee decides the matter with or without an oral hearing.

~~10.9 If the application is referred for hearing the parties must liaise with the Costs Clerk over papers and listing.~~

11. Assessment certificates

11.1 When the assessment fee has been paid, an assessment certificate for the costs allowed will be sent to the receiving party, except in the case of respondents whose costs can be wholly satisfied from money deposited as security for costs (see rules 37, 50 and 52).

Default costs certificate

11.2 Where a party fails to file or serve points of dispute within 14 days, or such other period as may be fixed by the Registrar, the receiving party may apply for a default costs certificate. Such a certificate will normally certify all the costs claimed in the bill of costs but the Registrar may reduce costs which appear to be unreasonably incurred, unreasonable in amount or disproportionate (2).

12. Interest

12.1 Interest is payable on costs assessed between the parties. The rate of interest is in accordance with the provisions of the Judgments Act 1838, as amended, and interest accrues from the day on which the costs order is made or such other date as the Judicial Committee may specify unless the Costs Officer exercises his discretion to vary the period for which interest is allowed.

13. Guidelines on fees allowed

13.1 The Costs Officers will have regard to the hourly rates generally allowed in the relevant jurisdiction for the costs of attorneys/solicitors based outside the United Kingdom.

13.2 The Judicial Committee adopts the guideline rates issued by the Senior Courts Costs Office for summary assessment and the rates are the starting point for all assessments for the costs of solicitors based in England and Wales. These are consolidated figures that include a mark-up for care and attention. Form 5 must be completed using a consolidated figure for the hourly rate. If a rate is charged that exceeds the guideline rate an explanation must be given under the heading 'Fee earners and hourly rates' in part 1 of Form 5.

13.3 Consolidated rates based on those permitted in the respective jurisdictions are allowed for solicitors practising in Scotland or Northern Ireland.

13.42 The following table sets out the current hourly rates and localities:

Grade of fee earner	A	B	C	D
London 1	£512	£348	£270	£186
London 2	£373	£289	£244	£139
London 3	£282	£232	£185	£129
National 1	£261	£218	£178	£126
National 2/3	£255	£218	£177	£126

An explanation of the grades and details of localities is set out in section 3 below. If the rates set by the Civil Justice Council Costs Committee have been amended the Costs Officer will allow the amended rates in lieu of those in this table. Fees for work done overseas for the purpose of proceedings before the Judicial Committee are treated as having been incurred in England (see paragraph 3.2).

13.53 Where agents have charge of producing large documents such as the authorities, it will not usually be appropriate for a higher grade rate to be applied. Time spent photocopying is not recoverable (although the cost of the photocopying is). See also paragraph 9.3 above for documents.

13.46 The Costs Officer may under this head allow reasonable costs of travelling from overseas, particularly the reasonably incurred travel costs of counsel engaged in the courts below who are instructed to present the case before the Judicial Committee.

13.75 Letters and telephone calls are allowed at one tenth (1/10) of the hourly rate.

Counsel

13.86 The following guideline figures are used in assessing payments to counsel at the application for permission to appeal stage:

Applications for permission to appeal	Junior	KC
Settling application	£1250	£1750
Advice for legal aid provider	£500	£800
Preparing respondents' objections	£800	£1100
One conference	£250	£500
Attending oral hearing by Appeal Panel	£1600	£2100

13.97 A claim for an increase on any of the above items or claim for any other item must be explained in a detailed note from counsel.

13.10.8 The general rule is that only one counsel's fees is allowed on assessment for work any stage of an at the application for permission to appeal stage (but see paragraphs 4.6 and 4.7).

13.11.9 The following guideline figures are used in assessing payments to counsel at the appeal stage:

Appeals	Junior	KC
Notice of appeal (where Board has granted permission)	£150	£150
Notice of appeal (where permission is not required)	£1250	£1750
Statement of facts and issues	£2250	£4500
Authorities	£900	£1800
Conferences (each, up to a maximum of six)	£600	£1200
Advice	£1000	£2000
Brief (based on a 1 day hearing)	£7500	£15000
Brief (based on a 2 day or longer hearing)	£10000	£20000
Refresher (from day two of the hearing)	£1625	£3250

Notes

13.10.12 Counsel's fees are assessed in respect of each item of work counsel has undertaken. It is essential that this approach is reflected by those completing Form 5. It should be borne in mind that the number of hours spent by counsel in preparation is rarely of assistance to the Costs Officer when assessing the amount of counsel's fees at any stage of the proceedings.

13.11.3 Counsel for an appellant generally commands a higher fee than counsel for a respondent.

13.11.4 The brief fee includes all work on the brief, the written case, counsel-only conferences and the first day of attendance.

13.15.3 The Costs Officer exercises discretion in instances where junior counsel has undertaken most of the work on a particular item.

13.14 For settling a notice of appeal where the Board has granted permission, only one counsel's fee is permitted.

13.15 These fees are intended as a guide. If counsel seek higher fees, they must provide an explanation in a detailed note.

14. Conditional fee agreements

14.1 Privy Council costs practice does not allow for the recovery of after-the-event premiums or success fees under conditional fee agreements: *Seaga v Harper*, No 90 of 2006 [2009] UKPC 26.

15. Costs of litigants in person

15.1 The amount allowed to a litigant in person may not exceed the loss actually sustained or, where no loss has been sustained, £198 for each hour reasonably spent, subject in either case to a maximum for any particular item of two thirds of the sum which in the opinion of the Costs Officer would have been allowed for that item if the litigant had been represented by an agent. The two thirds limit does not apply to out-of-pocket expenses which would be disbursements if incurred by an agent. (For further information see CPR 46.5 and paragraph 3 of Practice Direction 46 which supplements it.)

16. Costs of assessment

16.1 By way of guidance for smaller claims, the following sums are usually justified for completing Form 5:

Amount of bill	Amount allowed
Bills assessed at up to £2000 (excluding VAT)	£300
Bills assessed at £2001 to £5000 (excluding VAT)	£500
Bills assessed at £5001 to £10000 (excluding VAT)	£700

16.2 For a larger bill the amount allowed for time reasonably spent in drafting the bill is calculated as a multiple of the relevant hourly rate for a Grade D fee-earner (unless a claim for a higher grade is justified).

16.3 The parties must prepare costs schedules for the consideration of the Costs Officer after detailed assessment.

16.4 Counsel may not claim a brief fee for attending detailed assessment on their own behalf but may do so if briefed in respect of the entire bill.

Section 2

Form 5 - Bill of Costs

- [Form 5 - Bill of Costs \(DOC\)](#)

Section 3

Guideline Hourly Rates for agents

Solicitors' hourly rates: England and Wales

1. The guideline rates set out in paragraph 13 for agents are broad approximations. Rates include care and attention.
2. The grades of fee earner are those that have been agreed between representatives of the Senior Courts Costs Office, the Association of District Judges and the Law Society.

The categories are as follows:

- a. Solicitors with over eight years' post qualification experience including at least eight years litigation experience.

- b. Solicitors, employed barristers and legal executives with over four years' post qualification experience including at least four years litigation experience.
- c. Other solicitors, legal executives and fee earners of equivalent experience.
- d. Trainee solicitors, para legal and fee earners of equivalent experience.

3. "Legal Executive" means a Fellow of the 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.

4. Unqualified clerks who are fee earners of equivalent experience may be entitled to similar rates and in this regard it should be borne in mind that Fellows of the Institute of Legal Executives generally spend two years in a solicitor's office before passing their Section 1 general examinations, spend a further two years before passing the Section 2 specialist examinations and then complete a further two years in practice before being able to become Fellows. Fellows therefore possess considerable practical experience and academic achievement. Clerks without the equivalent experience of legal executives will be treated as being in the bottom grade of fee earner i.e. trainee solicitors 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.

The National 1 rates apply to:

- Aldershot, Farnham, Bournemouth (including Poole)
- Birmingham Inner
- Bristol
- Cambridge City, Harlow
- Canterbury, Maidstone, Medway & Tunbridge Wells
- Cardiff (Inner)
- Chelmsford South, Essex & East Suffolk
- Chester
- Fareham, Winchester
- Hampshire, Dorset, Wiltshire, Isle of Wight
- Kingston, Guildford, Reigate, Epsom
- Leeds Inner (within 2 kilometres radius of the City Art Gallery)
- Lewes
- Liverpool, Birkenhead
- Manchester Central
- Newcastle - City Centre (within a 2 mile radius of St Nicholas Cathedral)
- Norwich City
- Nottingham City
- Oxford, Thames Valley
- Southampton, Portsmouth

- Swindon, Basingstoke
- Watford

The National 2 rates apply to:

- Bath, Cheltenham and Gloucester, Taunton, Yeovil
- Birmingham Outer
- Bradford (Dewsbury, Halifax, Huddersfield, Keighly & Skipton)
- Bury
- Chelmsford North, Cambridge County, Peterborough, Bury St E, Norfolk, Lowestoft
- Cheshire & North Wales
- Coventry, Rugby, Nuneaton, Stratford and Warwick
- Cumbria
- Devon, Cornwall
- Exeter, Plymouth
- Grimsby, Skegness
- Hull (City)
- Hull (Outer)
- Kidderminster
- Leeds Outer, Wakefield & Pontefract
- Leigh
- Lincoln
- Luton, Bedford, St Albans, Hitchin, Hertford
- Manchester Outer, Oldham, Bolton, Tameside
- Newcastle (other than City Centre)
- Northampton & Leicester
- Nottingham & Derbyshire
- Preston, Lancaster, Blackpool, Chorley, Accrington, Burnley, Blackburn, Rawenstall & Nelson
- Scarborough & Ripon
- Sheffield, Doncaster and South Yorkshire
- Shrewsbury, Telford, Ludlow, Oswestry
- South & West Wales
- Southport
- Stafford, Stoke, Tamworth
- St Helens
- Stockport, Altrincham, Salford

- Swansea, Newport, Cardiff (Outer)
- Teesside
- Wigan
- Wolverhampton, Walsall, Dudley & Stourbridge
- Worcester, Hereford, Evesham and Redditch
- York, Harrogate

<u>Grade of fee earner</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
<u>London 1</u>	<u>£512</u>	<u>£348</u>	<u>£270</u>	<u>£186</u>
<u>London 2</u>	<u>£373</u>	<u>£289</u>	<u>£244</u>	<u>£139</u>
<u>London 3</u>	<u>£282</u>	<u>£232</u>	<u>£185</u>	<u>£129</u>
<u>National 1</u>	<u>£261</u>	<u>£218</u>	<u>£178</u>	<u>£126</u>
<u>National 2/3</u>	<u>£255</u>	<u>£218</u>	<u>£177</u>	<u>£126</u>
-	-	-	-	-
<u>London Bands Grade</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
London 1 – EC1, EC2, EC3, EC4	£409	£296	£226	£138
London 2 – W1, WC1, WC2, SW1	£317	£242	£196	£126
London 3 (All other London post codes: W, NW, N, E, SE, SW and Bromley, Croydon, Dartford, Gravesend and Uxbridge)	£229 to £267	£172 to £229	£165	£121
-	-	-	-	-