

Detailed Assessment of Costs

When judgment is given following a trial of a case, the Judge will normally also make an order for costs, so that one party will be required to pay the legal costs of the other party.

In many cases, the Judge will make an order assessing the amount of those costs at the hearing – a procedure known as “summary assessment”. However, in larger cases, the Judge is likely to order that the costs be the subject of a “detailed assessment” to take place at a later stage.

It is also possible when the parties settle a case before trial for them to agree that one of the parties will pay the costs of the other party subject to detailed assessment.

The Detailed Assessment Process

The detailed assessment process begins with the party entitled to their costs (“the receiving party”) submitting a “bill of costs” to the party who must pay the costs (“the paying party”). The word “bill” is misleading in the sense that it is not an invoice, but rather an itemised schedule in a prescribed format setting out all of the costs the receiving party has incurred. A specialist costs draftsman is usually instructed to draft the bill of costs and he is sent the files of the receiving party’s solicitor in order to do so.

The bill of costs lists all the steps taken in the proceedings and summarises the work done. It will also set out the time spent and list correspondence, work on documents and all attendances on the client, the other party, witnesses, the Court and so on.

The receiving party’s solicitor signs the bill of costs to verify that the costs claimed are no more than the costs incurred (this is called the indemnity principle) and that payments to third parties (called disbursements) have been paid.

The paying party will have 21 days from receipt of the bill of costs to make submissions in response, which are known as “points of dispute”. If the paying party fails to serve points of dispute, then the receiving party is entitled to ask the Court to issue a default costs certificate for the full amount of the costs claimed in the bill of costs. Such a certificate will be enforceable in the same way as a judgment.

If points of dispute are served, the receiving party will have a further 14 days to serve a “reply” to the points of dispute if they wish to do so, although this is optional. The dispute regarding the amount to be paid can be resolved in one of two ways, depending on the amount claimed in the bill of costs:

I. Provisional Assessment

If the value of the claim for costs is £75,000 (ex VAT) or less, the court will usually make a provisional assessment of the claim. This is conducted by a costs judge on the basis of the documents submitted alone, without a hearing (the parties are not present). The costs judge will make a decision in relation to each separate item of costs which is in dispute and hands down a “provisional” assessment of the costs due. If, within 21 days, a party is dissatisfied with any aspect of this provisional assessment they may ask for a detailed assessment hearing to be scheduled. However, unless that party achieves an adjustment of the bill in their favour of 20% or more, that party will have to pay the costs of the detailed assessment hearing.

II. Detailed Assessment Hearing

If the value of the claim for costs is more than £75,000, or the court orders it, then the amount of costs to be paid by the paying party will be decided by the costs judge at a hearing, at which each item in dispute is considered by the costs judge, after submissions are made by the parties’ representatives (usually a cost draftsman, rather than a solicitor).

The Principles of Assessment

In either a provisional assessment or a detailed assessment hearing, the main factors which a costs judge will take into account when assessing the individual elements of the claim are:

- Proportionality: since April 2013 the court is specifically required to consider the relationship between the value of the claim and the costs involved;
- The complexity and importance of the matter to the parties;
- The time spent, skill involved and location of the work;
- The hourly rates of the solicitors involved and the amount of disbursements (e.g. counsel or expert fees);
- Any previous estimates of costs produced by the parties during the various stages of litigation;
- Any misconduct of the parties;
- Funding by a conditional fee agreement with a success fee or legal expenses insurance.

The costs judge will assess costs on either the “standard” or “indemnity” basis. The basis of assessment will have been ordered by the trial judge.

If costs are awarded on the standard basis, then on assessment the costs judge will only allow costs to be recovered that are proportionate and either reasonably incurred or reasonable in amount. This is the basis on which most costs orders are made.

If costs are awarded on the indemnity basis, then on assessment the costs judge will allow costs to be recovered that are either reasonably incurred or reasonable in amount.

Normally the paying party will also be required to pay the receiving party’s costs of the detailed assessment proceedings, although this is in the discretion of the costs judge. It is also subject to any offers to settle the costs which have been made, which will be dealt with below.

Settlement Offers

The parties are encouraged to agree the amount of the costs rather than allow the matter to proceed to a hearing, which can be a drawn out process. The paying party is encouraged to make an offer to settle when they serve points of dispute, as, in most cases, there will be some liability to pay costs to the receiving party.

When making an offer to settle, the offer should be realistic and worthwhile for the paying party. A good starting level for an offer is to work out how much would have to be paid if every point in dispute were successful. Unless an offer makes it clear interest is not included, it will be deemed to include interest.

If settlement is not reached, any offer to settle will be taken into account by the costs judge when deciding who should pay the costs of the detailed assessment proceedings. Particular regard will be made to whether or not the paying party has previously offered to pay more than the amount of the costs actually awarded to the receiving party. If that is the case, then the paying party will have a strong argument that the receiving party should pay their costs of the assessment process after that offer was made.

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