

**PRACTICE NOTE BY THE SENIOR COSTS JUDGE MASTER
ANDREW GORDON-SAKER - APPROVAL OF COSTS
SETTLEMENTS, ASSESSMENTS UNDER CPR 46.4(2) AND
DEDUCTIONS FROM DAMAGES CHILDREN AND PROTECTED
PARTIES**

1. This note sets out the procedure to be followed in the Senior Courts Costs Office where the court has awarded costs to a child or a protected party and the parties have subsequently reached agreement as to the amount to be paid by the paying party (normally, the Defendant).
2. CPR 21.10 provides that, where a claim is made on behalf of a child or protected party, **no settlement, compromise or payment in respect of that claim shall be valid without the approval of the court.**
3. CPR 46.4(2)(a) provides that where money is ordered or agreed to be paid to, or for the benefit of, a child or protected party, **the court must order a detailed assessment of the costs payable by, or out of money belonging to, the child or protected party** (in other words, the costs and disbursements payable to the child or protected party's legal representatives). **The amount payable to the legal representatives by the child or protected party will, by virtue of CPR 46.4(4), be limited to that amount.**
4. CPR 46.4(2)(b) provides that on assessing those costs **the court must also assess the costs payable by the paying party** (unless a Default Costs Certificate has been issued or fixed costs apply).

5. CPR 46.4(5) provides that where the costs payable by the child or protected party comprise only a CFA success fee or the balance payable under a DBA, the court may direct a summary assessment. (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: CPR 21.12(1A).)

6. CPR 46.4(3) and Practice Direction 46 at paragraph 2.1 create a number of further exceptions to CPR 46.4(2), notably where the child or protected party's legal representatives have waived any claim to costs or disbursements not recovered from the paying party or where there is no need to order detailed assessment to protect the interests of the child or protected party or their estate.

7. CPR 21.12 makes parallel provision for a litigation friend, on application, to recover costs and expenses incurred on behalf of the child or protected party. Such costs and expenses must have been reasonably incurred and be reasonable in amount and will in any event be limited to the amount recovered by reference to CPR 46.4.

8. Ordinarily the Court approving settlement of the claim (or awarding damages) will have incorporated in its costs order either provision for the detailed assessment of any costs claimed by the child or protected party's representatives, or will have dispensed with detailed assessment on one or more of the grounds provided for at Practice Direction 46, paragraph 2.1.

9. If the costs order does not dispense with detailed assessment as between the child or protected party and their legal representatives, then it may provide for detailed assessment

subsequently to be dispensed with if the criteria set by Practice Direction 46 at paragraph 2.1 are met.

10. Where the court has ordered detailed assessment, the costs payable by the paying party have subsequently been agreed and the child or protected party's legal representatives have waived any further claim to costs, the costs settlement with the paying party can be approved under CPR 21.10. **Application to the SCCO for approval should be made under CPR 23.** Appendix 1 to this practice note is a model form of approval order based on waiver.

11. Where the criteria set by Practice Direction 46 at paragraph 2.1 are not met but the child or protected party's representatives seek payment only of a CFA success fee or the balance payable under a DBA (and summary assessment is not precluded by CPR 21.12(1A)), application to the SCCO may be made under CPR 23 for a summary assessment under CPR 46.4(5). Appendix 2 to this practice note is a model form of summary assessment order.

12. Applications for orders that the court "approves" or "certifies" the payment of costs by a child or protected party to their legal representatives are unlikely to be appropriate. **If the legal representatives wish to dispense with detailed assessment on one or more of the grounds set out in paragraph 2.1 of Practice Direction 47 (other than waiver of any further claim to costs) they should make an application specifying the grounds relied on. The application must be supported by evidence.**

13. Otherwise a request for a detailed assessment hearing must be filed in form N258 and a hearing fee paid by reference to Schedule 1, paragraph 5.2 of the Civil Proceedings Fees Order 2008.

14. It will not normally be necessary for the paying party to attend the detailed assessment hearing, because the receiving party's costs will usually be assessed at the agreed amount. **The court's concern will be to assess the additional costs and disbursements claimed against the child or protected party.**

15. Accordingly, on filing form N258, the legal representative should notify the court that costs have been agreed with the paying party and that the purpose of the hearing will be to assess the costs and/or disbursements sought by the child or protected party's legal representatives, and should provide a time estimate suitable for such a hearing. Appendix 3 to this practice note is a model form of directions for the hearing.

16. The assessing judge is likely to take as a starting point that the hearing has been arranged for the benefit of the legal representatives and that it is not incumbent upon the child or protected party to bear the attendant costs.

17. For that reason, unless the child or protected party's litigation friend or Court of Protection deputy takes issue with the costs sought by the legal representatives and participates in the detailed assessment of those costs, the court is likely to make no order as to the costs of the detailed assessment process beyond any figure agreed with the paying party.

18. Appendix 4 to this practice note is a model form of order following detailed assessment and authorising a further payment to the child or protected party's legal representatives.

Andrew Gordon-Saker,

Senior Costs Judge

Appendix 1

On [X-X] before Costs Judge [X-X] sitting in Court [X-X] at The Royal Courts of

Justice, Strand, London

UPON the settlement of the costs between the parties

AND UPON the Claimant's solicitors waiving any claim against the Claimant

or any other person for costs and disbursements not recovered from the Defendant

IT IS ORDERED THAT:-

1. The settlement of costs between the parties at £ [X-X] inclusive of interest

and costs of assessment, is approved under CPR 21.10.

2. The Claimant's costs payable by the Defendant are assessed at the agreed

figure and assessment between solicitor and client is dispensed with under

Practice Direction 46 paragraph 2.1(b).

Appendix 2

On [X-X] before Costs Judge [X-X] sitting in Court [X-X] at The Royal Courts of Justice, Strand, London

UPON the application of the solicitors for the Claimant under CPR 46.4(5)

IT IS ORDERED THAT:-

1. The success fee/balance payable to the Claimant's solicitors under the

Conditional Fee Agreement/Damages Based Agreement dated [X-X] is

assessed at [£].

2. The Claimant's costs payable by the Defendant are assessed at [the agreed figure] [(inclusive of interest and the costs of detailed assessment proceedings)].

3. The costs and disbursements payable by the Claimant to the Claimant's solicitors are limited to the sums assessed under paragraphs 1 and 2 above.

Appendix 3

On [X-X] before Costs Judge [X-X] sitting in Court [X-X] at The Royal Courts of Justice, Strand, London

UPON the court being notified that the costs payable by the Defendant to the

Claimant have been agreed

AND UPON the court's own initiative

IT IS ORDERED that:

1. The assessment of the costs payable to the Claimant by the Defendant and payable by, or out of money belonging to, the Claimant pursuant to CPR

46.4(2) is listed for [X-X] with a time estimate of [X-X] (attendance by the

Defendant is not required).

2. [The hearing is to be held by Microsoft Teams, and the Claimant's solicitors

are to provide the court, at least 7 days before the hearing, with email

addresses so that invitations may be sent to all persons attending].

3. The Claimant's solicitors shall by 4 pm on [X-X] (a) provide a copy of this order to any appointed Deputy and Litigation friend by way of confirmation that they may attend the hearing if they wish, and (b) confirm to the court that that has been done.

4. The Claimant's solicitors shall file copies of the first General Order of the Court of Protection (if made) together with any subsequent Orders or Authorities relating to the claim.

5. The Claimant's solicitors shall at least 7 days before the hearing (i) file in either paper or electronic form the relevant underlying papers at the SCCO for Costs Judge [X-X] to whom the case is allocated; (ii) file a skeleton argument as to the reasonableness of the costs and disbursements sought by the Claimant's solicitors in excess of those recovered from the Defendant.

6. Where the payment of a success fee is in issue those papers will include: the conditional fee agreement/s, the risk assessment/s and any attendance notes relevant to the issue of the risk undertaken by the solicitors at the time the CFA was entered into.

7. Where the cost of an ATE premium is in issue the papers should include the insurance certificate, a copy of the policy, any risk assessment, any relevant

attendance notes and the advice given to the litigation friend about the policy and the need to take it out.

8. The papers should also include (unless already filed) the Bill of Costs or any breakdown of costs which formed the basis of the negotiations between the parties.

9. This Order has been made on the court's own initiative and without a hearing.

Any party affected by this Order may, within 7 days of its receipt, apply to the Court to set aside, vary or stay its terms.

Appendix 4

On [X-X] before Costs Judge [X-X] sitting in Court [X-X] at The Royal Courts of

Justice, Strand, London

UPON hearing [Counsel/Costs Lawyer] for the Claimant's Solicitors AND UPON the Court noting that the Claimant and Defendant have agreed

the costs payable pursuant to the Order of [X-X] dated [X-X] in the sum of [X-X] [(inclusive of interest and the costs of detailed assessment proceedings)]

AND UPON the Court carrying out a solicitor and own client assessment

pursuant to CPR 46.4(2)(a)

AND UPON the Claimant's Litigation Friend [and Deputy] confirming that

[they] do not wish to attend the hearing on [X-X]

IT IS ORDERED THAT:-

(1) The costs payable to the Claimant by the Defendant are assessed in the agreed sum.

(2) Pursuant to CPR 46.4(4), the Court certifies the further sum of [X-X] as payable by the Claimant (protected party) to his/her Solicitors.

(3) The Claimant's Deputy [X-X] has permission to release, within 28 days, the sum of [X-X] for such payment from funds currently held on client account to [X-X].