

Litigation Costs

1. Introduction

Costs are an important and integral part of litigation. Before taking any court proceedings serious consideration should be given to the likely costs involved and the risk that you might end up being ordered to pay the other party's legal costs. You should also bear in mind that the costs incurred by the parties frequently exceed the amount that is recovered by the claimant.

There are many different aspects of costs but this fact sheet will deal with the situation where one party is ordered to pay the other side's costs. This does not deal with your own solicitors' costs and how to challenge their bill.

2. General principle – Costs will “follow the event”, i.e. loser pays

The costs payable by one party to another are in the Judge's discretion. However, the general rule in litigation is that the party who loses the case will be ordered to pay the other party's costs of the litigation. (In addition they will also have to pay their own solicitors' costs). There are exceptions to this rule, for example, where a Part 36 offer has been made by the defendant and the claimant's award is lower than the amount offered, then different costs rules apply.

3. Costs depend on the track

- **Small claims track** – costs recoverable from the losing party are limited to court fees, nominal fixed amount for claimant's solicitors' costs, witness expenses and expert's fees.
- **Fast track** – usually the trial judge will make a summary assessment of the winner's costs. Trial costs are fixed and the amount allowed depends on the amount recovered.
- **Multi track** – there may still be summary assessment if the trial lasted not more than a day. Otherwise the costs order will provide for the costs to be assessed.

4. Basis of assessment – standard or indemnity

Usually costs will be assessed on a standard basis and the court will allow only costs which are proportionate to the matters in issue. However, indemnity costs may be awarded as a penalty for misconduct where the losing party has acted unreasonably. In assessing costs on an indemnity basis there is no reference to proportionality.

5. Detailed assessment procedure

Where the costs are to be assessed, detailed assessment proceedings must be commenced within 3 months of the judgment or order. Notice of commencement must be served in **Form N252**, together with a copy of the bill of costs. The other party can dispute the bill by serving points of dispute; these must be served within 21 days. If no points of dispute are served the party claiming costs may file a request for a default costs certificate.

6. Points of Dispute

If points of dispute are served then there will be a detailed assessment hearing at which the costs judge will determine the total amount allowed for costs. Further costs will be added on for the costs of the assessment and these can be quite substantial. At any stage of the proceedings the parties can agree a figure and the costs proceedings will then be discontinued.

7. Sources of Further Information

Civil Procedure Rules 43 to 48 (inclusive) set out the court rules relating to costs and is supplemented by the Practice Directions to those rules. The Civil Procedure Rules are on the Ministry of Justice website at www.justice.gov.uk