

CJRS 15/2008

**Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform**

**Summary Assessment of Costs of
Interlocutory Applications**

Purpose

On behalf of the Judiciary, the Judiciary Administration presents this paper, which sets out the procedure for summary assessment of costs of interlocutory applications under Order 62 in the latest draft Rules of the High Court (Amendment) Rules 2008 (“Draft RHC”). It must be emphasised that where views on the law are expressed herein, such views are not to be taken as statements of law by the courts. Judicial determinations or statements of law may only be made in actual cases that come before the courts after hearing argument.

Present Position

2. Currently, pursuant to O.62, r.9(4)(b), the Court has power to make a gross sum assessment of costs in lieu of taxation. Under O.62, r.9A, the Court has the power to order interim payment of costs forthwith where the application or resistance to the application is frivolous or vexatious or for some other reason makes the order just. Notwithstanding these provisions, a costs order most commonly made at present is for the party losing the interlocutory application to pay the costs of that application “in any event”, i.e. at the end of the proceedings, whoever wins the case.

Summary Assessment of Costs

3. The proposed summary assessment of costs procedure in Order 62 seeks to modify the existing system of gross sum assessment under and interim payment of costs and put in place a more systematic process of summary assessment. Reference is made to the procedure in Part 43 of the Civil Procedure Rules (“CPR”) of England and Wales.

4. Amendments are proposed to O.62 to provide for summary assessment of costs, whereby the Court is empowered, when disposing of an interlocutory application, to (i) make an assessment of costs payable in a summary and broad-brush way, rather than through a process of taxation whereby every item of costs in the receiving party's bill of costs is potentially subject to challenge, and (ii) order that the payment be made promptly, such as 14 days after the order, unless otherwise directed by the Court. The first feature aims to dispense with the present elaborate and lengthy taxation procedures, thereby saving time and costs. The second feature is aimed at discouraging unwarranted interlocutory applications.

Proposed Amendments for Summary Assessment of Costs

5. Specifically, the proposed O.62, r.9A empowers the Court, when disposing of an interlocutory application, to (i) make a summary assessment of costs in lieu of taxation; (ii) make a provisional summary assessment of costs subject to the right of either party to have the costs taxed; or (iii) order a taxation at the end of the action.

6. Where the Court has made a provisional summary assessment of the costs, either party is entitled to insist on a taxation of the costs – O.62, r.9A(2). Upon taxation, if the taxed costs equals the amount summarily assessed, no further amount is payable in respect of the taxed costs – O.62, r.9A(3)(a). If the party seeking the taxation succeeds in having the sum assessed adjusted in his favour (either, by having to pay less if he is the paying party, or being awarded a higher amount, if the receiving party), he should be entitled to have the payment consequential to the summary assessment adjusted accordingly – O.62, r.9A(3)(b)-(c). However, if he fails to achieve a favourable adjustment or if the adjustment is not significant so that the costs of the full taxation are disproportionate to the benefits gained, he may be ordered to bear the costs of the taxation – O.62, r.9A(4).

Time for Payment of Costs Summarily Assessed

7. The costs summarily assessed shall usually be paid within 14 days of the date of the order, unless the Court orders otherwise. See O.62, r.9B.

Application / Non-application of Summary Assessment

8. O.62, r.9C provides that no order for summary assessment of costs and provisional summary assessment should be made where (i) the paying party shows substantial grounds for disputing the sum of costs claimed; (ii) the receiving party is an aided person or a person under disability and his legal representative has not waived the right to any further sum of money in respect of the costs of the interlocutory application.

9. The existing O.62, r. 28A, which deals with costs of a litigant in person, is amended so that the procedure for summary assessment of costs is also applicable to the taxation of the costs of a litigant in person.

Judiciary Administration
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