

JURISDICTION OF A TAXING MASTER OF THE SENIOR COURTS OF ENGLAND AND WALES (known as Costs Judges)

The Costs Judges of the Senior Courts have power to assess the costs of, or arising out of, any cause or matter in the Senior Courts. Costs Judges assess all costs arising out of proceedings in the Court of Appeal (Civil Division), the Administrative Court, and the High Court (both Queen's Bench and Chancery Divisions), including those before the Commercial Court, the Companies Court, the Admiralty Registrar, the Technology and Construction Court and the Court of Protection; costs arising out of Bankruptcy proceedings under the Insolvency Rules, and costs arising in the Employment Appeal Tribunal. Costs Judges also assess all costs payable out of the Community Legal Service Fund under Regulation 107 of the Civil Legal Aid (General) Regulations 1989. Costs Judges assess the Costs of Family Proceedings in the Principal Registry of the Family Division (PRFD) as well as family cases sent from other courts for assessments.

The Master of the Administrative Court and the Admiralty Registrar both have powers to assess costs amended in their respective courts, but, for many years, have requested the Costs Judges to indicate the assessments on their behalf.

The Costs Judges also have power to assess costs arising under an arbitration under any Act and any other costs the assessment of which is directed by an Order of the Court. Where under any Act costs are directed to be assessed or settled by a Costs Judge of the Senior Courts, only a Costs Judge has power to assess those costs. In some cases costs are directed to be assessed or settled by a Costs Officer of a particular category and where appropriate these cases come before a Costs Judge if he is the designated Officer for this purpose. Costs Judges also assess costs in any other areas where there is a specific jurisdiction, for example, election petitions and where matters are referred to the Senior Courts' Costs Office (SCCO) for assessment, for example planning inquiries and business in the Court of Protection.

Normally, a Costs Judge assesses bills above £75,000, although, if appropriate, bills for less than that amount may be referred. There is no maximum amount and bills running into many millions of pounds are often assessed. Bills in excess of £250,000 are a very frequent occurrence.

Bills in relation to proceedings in District Registries and County Courts are transferred to the Costs Office for assessment at the request of the District Judge where the District Judge is of the opinion that it would be more convenient and more appropriate, (usually because of the size and complexity of the bill) for the bill to be assessed in the Senior Courts Costs Office (SCCO). All bills for London County Courts are assessed in the SCCO.

Advocates and litigators have a right to appeal to a Costs Judge against the determination of their costs or fees by a Determining Officer in the Crown Court, or the Registrar of the Court of Appeal (Criminal Division). There is also a right of appeal from a party who has been awarded costs out of Central Funds, and in respect of inter partes costs under the Criminal Procedure Rules.

There is no appeal from a Costs Judge in these cases unless the Costs Judge certifies that a point of principle of general importance arises. This jurisdiction is conferred by the CDS (Funding) Order 2007 and the Costs in Criminal Cases (General) Regulations 1986 in relation to costs out of Central Funds. A similar requirement in respect of inter partes costs is imposed by the Criminal Procedure Rules.

The Revenue and Customs Prosecution Office, Crown Prosecution Service and Department of Social Security may also refer Counsel's fees to a Costs Judge under a voluntary agreement. In such a case, the Costs Judge's decision is final. Similar agreements are made in respect of major disaster Tribunals and other Major Tribunals and Inquiries.

Costs Judges exercise the jurisdiction of the High Court under Part III of the Solicitors' Act 1974. This includes hearing Part 8 applications for assessment of bills of costs delivered by solicitors to their clients in both contentious and non-contentious business, and applications in respect of conditional fee agreements. They deal with applications for the delivery by the solicitor of a bill of costs, documents, a cash account, money or securities, or a list of the monies or securities which the solicitor has in his possession on the Claimant's behalf; or for the payment into Court of monies or securities, for a charging order or for security for costs. The Costs Judge conducts not only the assessment of the solicitor's bill of costs to his own client, but also all hearings arising out of the applications made, which frequently involves deciding points of law and principle. Costs Judges also assess bills as between a solicitor and client which are payable by a third party, for example, a mortgagor, a lessee or a legal fees insurance Policy. Assessments of a solicitor's bill of costs to his client are dealt with exclusively by the Costs Judges regardless of the size of the bill.

Costs Judges hear appeals from assessments carried out by Principal and Senior Executive Officer Costs Officers in the SCCO.

Costs Judges, at the request of the Court or on their own motion, may hear and decide applications relating to misconduct, neglect and delay on the part of legal practitioners; and in respect of Wasted Costs Orders. The Costs Judge may be required to report back to the Court, or more frequently to investigate the circumstances, and to deal with the matter appropriately. It is open to a Costs Judge in such circumstances to reopen the proceedings; the investigation is not limited to the assessment proceedings. The application to the Costs Judge is under CPR 48.7 which gives the Court powers in respect of delay, and also to disallow costs, and to order a party or a solicitor to pay costs personally where costs have been incurred by delay or incompetence.

Under Regulation 109 of the Civil Legal Aid (General) Regulations 1989, the Costs Judge has power to disallow, or reduce, costs in Community Legal Service funded assessments where there has been a failure to conduct the proceedings with reasonable competence, after giving the solicitors or Counsel notice to show cause.

Costs Judges may also be required to assess a Community Legal Service funded client's liability to pay costs and to deal with the costs of an unassisted party payable out of the Legal Service Commission Fund in accordance with Section 11 of the Access to Justice Act 1999.

Costs Judges act from time to time on a rota basis as Sitting Master to deal with queries relating to practice and law arising out of assessment. Enquiries may come from any quarter, from a member of the Court of Appeal to a member of the general public, from Courts throughout the country and from both branches of the profession.

Costs Judges sit as Assessors with the High Court Judge, at the request of the Senior Costs Judge, on the hearing of Appeals relating to costs in Civil and Criminal cases; also, where requested, on applications for security for costs. The Costs Judge is required to advise on practice and procedure, and to deal with any technical points raised by the Judge.

Where the Court orders an account to be taken, and the account consists in part of costs, the Costs Judge may be directed to assess those costs, and after assessment the Costs Judge is required to report to the Court.

The Court may refer the fees of Conveyancing Counsel of the Court to the Costs Judge to fix the fees.

Costs Judges also deal with the fees of foreign lawyers and others acting in place of solicitors (for example accountants, Patent Agents, surveyors, claims consultants), and the fees of others including Counsel and experts of various disciplines (for example medical specialists, valuers, engineers, computer experts). These fees are often extremely large and the assessment of their quantum is an important part of the Costs Judge's work, requiring great care and experience.