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STATUTORY INSTRUMENTS

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**2017 No. 1035**

The Court of Protection Rules 2017

PART 19

COSTS

**Contents of this Part**

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Interpretation	Rule 19.1
Property and affairs – the general rule	Rule 19.2
Personal welfare – the general rule	Rule 19.3
Apportioning costs – the general rule	Rule 19.4
Departing from the general rule	Rule 19.5
Rules about costs in the Civil Procedure Rules to apply	Rule 19.6
Detailed assessment of costs	Rule 19.7
Employment of a solicitor by two or more persons	Rule 19.8
Costs of the Official Solicitor	Rule 19.9
Procedure for assessing costs	Rule 19.10
Costs following P’s death	Rule 19.11
Costs orders in favour of or against non-parties	Rule 19.12
Remuneration of a deputy, donee or attorney	Rule 19.13
Practice direction as to costs	Rule 19.14

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**Interpretation**

**19.1.—**(1) In this Part—

“authorised court officer” means any officer of the Senior Courts Costs Office whom the Lord Chancellor has authorised to assess costs;

“costs” include fees, charges, disbursements, expenses, remuneration and any reimbursement allowed to a litigant in person;

“costs judge” means a taxing Master of the Senior Courts;

“costs officer” means a costs judge or an authorised court officer;

“detailed assessment” means the procedure by which the amount of costs or remuneration is decided by a costs officer in accordance with Part 47 of the Civil Procedure Rules 1998 (which are applied to proceedings under these Rules, with modifications, by rule 19.6);

“fixed costs” are to be construed in accordance with the relevant practice direction;

“fund” includes any estate or property held for the benefit of any person or class of persons, and any fund to which a trustee or personal representative is entitled in that capacity;

“paying party” means a party liable to pay costs;

“pro bono representation” means representation provided free of charge;

“receiving party” means a party entitled to be paid costs;

“summary assessment” means the procedure by which the court, when making an order about costs, orders payment of a sum of money instead of fixed costs or detailed assessment.

(2) The costs to which rules in this Part apply include—

- (a) where the costs may be assessed by the court, costs payable by a client to his or her legal representative; and
- (b) costs which are payable by one party to another party under the terms of a contract, where the court makes an order for an assessment of those costs.

(3) Where advocacy or litigation services are provided to a client under a conditional fee agreement, costs are recoverable under this Part notwithstanding that the client is liable to pay his or her legal representative’s fees and expenses only to the extent that sums are recovered in respect of the proceedings, whether by way of costs or otherwise.

(4) In paragraph (3), the reference to a conditional fee agreement means an agreement enforceable under section 58 of the Courts and Legal Services Act 1990(1).

### **Property and affairs – the general rule**

**19.2.** Where the proceedings concern P’s property and affairs the general rule is that the costs of the proceedings, or of that part of the proceedings that concerns P’s property and affairs, shall be paid by P or charged to P’s estate.

### **Personal welfare – the general rule**

**19.3.** Where the proceedings concern P’s personal welfare the general rule is that there will be no order as to the costs of the proceedings, or of that part of the proceedings that concerns P’s personal welfare.

### **Apportioning costs – the general rule**

**19.4.** Where the proceedings concern both property and affairs and personal welfare the court, in so far as practicable, shall apportion the costs as between the respective issues.

### **Departing from the general rule**

**19.5.—(1)** The court may depart from rules 19.2 to 19.4 if the circumstances so justify, and in deciding whether departure is justified the court will have regard to all the circumstances including—

- (a) the conduct of the parties;
- (b) whether a party has succeeded on part of that party’s case, even if not wholly successful; and

(1) 1990 c. 41. Section 58 was substituted by section 27(1) of the Access to Justice Act 1999 (c. 22).

- (c) the role of any public body involved in the proceedings.
- (2) The conduct of the parties includes—
  - (a) conduct before, as well as during, the proceedings;
  - (b) whether it was reasonable for a party to raise, pursue or contest a particular matter;
  - (c) the manner in which a party has made or responded to an application or a particular issue;
  - (d) whether a party who has succeeded in that party’s application or response to an application, in whole or in part, exaggerated any matter contained in the application or response; and
  - (e) any failure by a party to comply with a rule, practice direction or court order.
- (3) Without prejudice to rules 19.2 to 19.4 and the foregoing provisions of this rule, the court may permit a party to recover their fixed costs in accordance with the relevant practice direction.

### **Rules about costs in the Civil Procedure Rules to apply**

**19.6.**—(1) Subject to the provisions of these Rules, Parts 44, 46 and 47 of the Civil Procedure Rules 1998(2) (“the 1998 Rules”) apply with the modifications in this rule and such other modifications as may be appropriate, to costs incurred in relation to proceedings under these Rules as they apply to costs incurred in relation to proceedings in the High Court.

(2) Rules 3.12 to 3.18 of the 1998 Rules and Practice Direction 3E supporting those Rules do not apply in relation to proceedings under these Rules.

(3) The provisions of Part 47 of the 1998 Rules apply with the modifications in this rule and such other modifications as may be appropriate, to a detailed assessment of the remuneration of a deputy under these Rules as they apply to a detailed assessment of costs in proceedings to which the 1998 Rules apply.

(4) Where the definitions in Part 44 (referred to in Parts 44, 46 and 47) of the 1998 Rules are different from the definitions in rule 19.1 of these Rules, the latter definitions prevail.

(5) Rules 44.2(1) to (5), 44.4(3)(h), 44.5, 44.6, 44.9 and 44.13 to 44.18 of the 1998 Rules do not apply.

(6) For rule 46.1(1) of the 1998 Rules there is substituted—

“(1) This paragraph applies where a person applies for an order for specific disclosure before the commencement of proceedings.”.

(7) Rules 46.2, 46.5 and 46.10 to 46.19 of the 1998 Rules do not apply.

(8) In rule 47.3(1)(c) of the 1998 Rules, the words “unless the costs are being assessed under rule 46.4 (costs where money is payable to a child or protected party)” are omitted.

(9) In rule 47.3(2) of the 1998 Rules, the words “or a District Judge” are omitted.

(10) Rule 47.4(3) and (4) of the 1998 Rules do not apply.

(11) Rules 47.9(4), 47.10 and 47.11 of the 1998 Rules do not apply where the costs are to be paid by P or charged to P’s estate.

### **Detailed assessment of costs**

**19.7.**—(1) Where the court orders costs to be assessed by way of detailed assessment, the detailed assessment proceedings shall take place in the High Court.

(2) A fee is payable in respect of the detailed assessment of costs and on an appeal against a decision made in a detailed assessment of costs.

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(2) [S.I. 1998/3132](#). Parts 43 to 48 were replaced with amended provisions by [S.I. 2013/262](#), rules 15 and 16 and the Schedule.

(3) Where a detailed assessment of costs has taken place, the amount payable by P is the amount which the court certifies as payable.

#### **Employment of a solicitor by two or more persons**

**19.8.** Where two or more persons having the same interest in relation to a matter act in relation to the proceedings by separate legal representatives, they shall not be permitted more than one set of costs of the representation unless and to the extent that the court certifies that the circumstances justify separate representation.

#### **Costs of the Official Solicitor**

**19.9.** Any costs incurred by the Official Solicitor in relation to proceedings under these Rules or in carrying out any directions given by the court and not provided for by remuneration under rule 19.13 shall be paid by such persons or out of such funds as the court may direct.

#### **Procedure for assessing costs**

**19.10.** Where the court orders a party, or P, to pay costs to another party it may either—

- (a) make a summary assessment of the costs; or
- (b) order a detailed assessment of the costs by a costs officer;

unless any rule, practice direction or other enactment provides otherwise.

#### **Costs following P's death**

**19.11.** An order or direction that costs incurred during P's lifetime be paid out of or charged on P's estate may be made within 6 years after P's death.

#### **Costs orders in favour of or against non-parties**

**19.12.—(1)** Where the court is considering whether to make a costs order in favour of or against a person who is not a party to proceedings, that person must be—

- (a) added as a party to the proceedings for the purposes of costs only;
- (b) served with such documents as the court may direct; and
- (c) given a reasonable opportunity to attend any hearing at which the court will consider the matter further.

(2) This rule does not apply where the court is considering whether to make an order against the Lord Chancellor in proceedings in which the Lord Chancellor has provided legal aid to a party to the proceedings.

#### **Remuneration of a deputy, donee or attorney**

**19.13.—(1)** Where the court orders that a deputy, donee or attorney is entitled to remuneration out of P's estate for discharging functions as such, the court may make such order as it thinks fit including an order that—

- (a) the deputy, donee or attorney be paid a fixed amount;
- (b) the deputy, donee or attorney be paid at a specified rate; or
- (c) the amount of the remuneration shall be determined in accordance with the schedule of fees set out in the relevant practice direction.

(2) Any amount permitted by the court under paragraph (1) shall constitute a debt due from P's estate.

(3) The court may order a detailed assessment of the remuneration by a costs officer in accordance with rule 19.10(b).

**Practice direction as to costs**

**19.14.** A practice direction may make further provision in respect of costs in proceedings.