

HEARINGS AND DETAILED ASSESSMENTS IN THE SENIOR COURTS COSTS OFFICE

PRACTICE NOTE BY THE SENIOR COSTS JUDGE

Introduction

1. As a result of the hard work and determination of the court staff and the willingness to adapt shown by most practitioners we have managed to hear almost all cases listed since March 2020. Very few hearings have been adjourned.
2. Based on our experience over the last few months we can now say how hearings will need to be conducted for the foreseeable future. This practice note applies only to hearings in the SCCO and applies from 1 August 2020.

Detailed assessment hearings

3. It is for the costs judge or costs officer to decide the format of the hearing. Hearings will fall into one of 3 formats:
 - (1) Remote hearings with the judge and all parties appearing by telephone or video.
 - (2) Partly remote hearings with the judge and one or more parties in court and one or more parties appearing by telephone or video.
 - (3) Hearings with the judge and all parties in court.
4. The notice of hearing sent by the court to the parties will state the format of the hearing. Parties may apply in writing for a different format within 14 days of receipt of the notice of hearing. The court will make the arrangements for video hearings and invitations will be sent to the representatives nominated by the parties. If the hearing is to be held by telephone, the receiving party should arrange the conference call in accordance with paragraph 6.10 of PD 23A, unless the court has directed otherwise.

Filing papers in support of the bill electronically

5. A party who wishes to lodge its papers in support of the bill electronically should discuss how it should do so with the clerk to the relevant costs judge or with the costs officer well in advance of the deadline for lodging the papers. There are 3 ways in which papers may be filed electronically:
 - a) Via CE File. The size limit on CE File is 50MB although parties can in one filing file up to 10 documents with each not exceeding 50MB: PD510 paragraph 5.2(2).
 - b) With the permission of the court, via the HMCTS document upload centre. This enables the court staff to invite professional court users to upload documents required for hearings, which may be too large to be submitted via CE File. Documents uploaded are then accessible by the costs judge or costs officer.

- c) With the permission of the court, via a safe third party online file-sharing platform. (However, please note that Ministry of Justice rules prevent costs officers from accessing third party systems).

6. Documents filed electronically, whether by CE File or by the document upload centre, must comply with paragraph 10 of PD 51O and also with the guidance on PDF bundles published at: <https://www.judiciary.uk/wp-content/uploads/2020/05/GENERAL-GUIDANCE-ON-PDF-BUNDLES-f1-1.pdf> They must be formatted as one PDF document with bookmarks as appropriate for each constituent document and must be the subject of optical character recognition. They must be filed not less than 7 days before the start of the hearing, as required by PD 47 paragraph 13.11.

Filing papers in advance of detailed assessment hearings other than electronically

7. Experience has shown that hearings work much more efficiently where the receiving party has filed its papers electronically. Parties are encouraged therefore to file their papers in support of the bill electronically whether or not they have been working paperlessly. Where the receiving party's solicitors have been working paperlessly, it is unlikely that the cost of printing their files will be recoverable.

8. If the receiving party files its papers in support of the bill other than electronically:

- a) The receiving party will nevertheless be expected to file an electronic bundle of key documents (that is, the documents relevant to the issues raised in the points of dispute, but not including the documents already filed by CE File) rather than "core bundles" or the like on paper. The bundle should comply with paragraph 10 of PD 51O and the guidance referred to at paragraph 6 above.
- b) The papers must be physically received at the SCCO not less than 7 days before the start of the hearing (as required by PD 47 paragraph 13.11). If papers are filed late the hearing may be adjourned.

9. Parties should file electronically any documents to which they will wish to refer at a hearing, because handing up papers or files in hearings may not now be permitted. That will be a matter for the costs judge or costs officer conducting the hearing.

10. Skeleton arguments and the like must be filed electronically (by CE File or email) at least 2 days before the hearing. Statements of costs for summary assessment must be filed using CE File not less than 24 hours before the time fixed for the hearing.

Applications and criminal costs appeals

11. While applications and criminal costs appeals can be heard in court with the parties present, greater use will be made of remote hearings (by video or telephone) in appropriate cases. The application notice or notice of hearing will identify the format of the hearing.

12. PD 51O paragraph 10.1 requires the applicant to file by CE File an electronic bundle at least 3 days before the hearing in the format required by paragraph 10.3.

Provisional assessments and Court of Protection bills

13. Between the parties bills under £75,000 will continue to be provisionally assessed, however the receiving party will not be required to file papers in support of the bill unless expressly requested by the court. The court may request all of the papers in support of the bill or only those relating to a particular issue or issues. Where papers in support of the bill are requested, they should where possible be filed electronically.

14. The provisions relating to detailed assessment hearings (above) will apply to oral hearings of provisional assessments and appeals from costs officers.

15. On the provisional assessment of the bill of a deputy appointed by the Court of Protection, the deputy's solicitor must still file the papers in support of the bill with the bill, but is encouraged to do so electronically via either CE File or the HMCTS document upload centre (see paragraphs 5 and 6 above).

Andrew Gordon-Saker
Senior Costs Judge
July 2020