

Turks and Caicos Islands

## Practice direction on the assessment of costs

Practice Direction 1 of 2020

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### Introduction

1. This Practice Direction is issued by the Chief Justice pursuant to Section 16 of the Supreme Court Ordinance [*Cap 2.02*] for regulating matters relating to the costs, and the taxation thereof, of proceedings in the court including the costs of legal practitioners. This Practice Direction is made after consultation with the Judges of the Supreme Court and the Court of Appeal to guide Judges, other costs assessment officers, the legal profession and the public as to the approach to the assessment of *inter partes* costs, the basis of assessment, the grades of fee-earners and the guideline figures for Attorneys' hourly rates.
2. This Practice Direction has been formulated after consultation with the Registrar of the Supreme Court and the Court of Appeal and the Bar Council of the Turks and Caicos Islands.

### Approach to the assessment of costs

3. The general approach to the summary assessment or taxation of costs should be the same. The assessment of costs should, as far as practicable, be in keeping with the Rules of the Supreme Court 2000 promulgated by Chief Justice Richard Ground QC in February 2000 ("the Rules") with reference to the 1999 edition of the Supreme Court Practice. This Practice Direction revokes and replaces any previous guidance, other than the Rules, as to the approach to the assessment of costs and the use of foreign counsel.
4. For the assessment or taxation to be fair and reasonable, the court must be informed of all previous assessments or taxations that have been carried out in the case. This is particularly important where the court is assessing costs at the conclusion of a case.
5. The court should not be seen to be endorsing unreasonable costs. Therefore:
  - (a) when the amount of costs to be paid has been agreed the court should make this clear by recording that the order is by consent; and
  - (b) if the court is to make an order which is not by consent, it should, so far as possible, ensure that the final figure is not unreasonable notwithstanding the absence of challenge to the individual items comprised in the costs sought.
6. The fact that the paying party is not disputing the amount of costs may be taken as an indication that the amount is reasonable. The court should intervene only if satisfied that the costs are unreasonable.

### The basis of assessment

7. All costs should be assessed on an hourly basis, save that in relation to the instruction of foreign counsel, where permitted, costs of the use of foreign counsel may include (in whole or in part) brief fees.

## General principles of assessment of costs

8. The following general principles in respect of assessment of costs will be applied in the absence of special circumstances. Any departure from them must be justified by the claiming party.
- (a) Except for visiting overseas counsel, brief fees are not allowed. Practitioners will be allowed an hourly rate without a separate mark-up for care and control.
  - (b) The hourly rate may vary according to the considerations set out in Order 62 Appendix 2 Part I paragraph 1(2) of the Rules.
  - (c) Fees will not necessarily be allowed at the rate for the practitioner who actually did the work. Payment will be allowed at the rate appropriate to the grade of fee-earner justified by the nature of the work.
  - (d) The hourly rate is determined not by the description of the fee-earner involved (e.g. senior associate, partner, etc) but by his/her experience in the relevant field.
  - (e) The costs claimed must be both reasonably incurred and reasonable in amount in accordance with Order 62 Rule 12 of the Rules.
  - (f) No payment will be allowed for work that could have been done by a non fee-earner (for example, copying of documents, issuing of proceedings, delivery of documents, and the like).
  - (g) On a change of carriage, whether a change of firm or the individual within the firm, no payment may be recovered *inter partes* for the new fee-earner reading the file.
  - (h) Attorneys are presumed to know the law. Time spent on legal research will not be allowed unless the point is unusual;
  - (i) While travelling (particularly by air between Providenciales and Grand Turk), time cannot usually be spent in preparation of the current or another case. Such time will be allowed *inter partes* at one half of the hourly rate.
  - (j) As a final check, it is necessary to consider the total sum reached by multiplying the hours allowed by the appropriate hourly rate, to see whether it is disproportionate. If so, it will be unreasonable and must be reduced.

## The standard basis

9. Where the court assesses costs on the standard basis, for example, on a party and party basis, it will not allow costs which have been unreasonably incurred or are unreasonable in amount and will only allow costs which are reasonable having regard to the matters in issue.
10. Where costs are to be assessed on a standard basis, the receiving party has the burden of establishing that the costs claimed are reasonably incurred or were reasonable in amount. Any doubt should be resolved having regard to both the paying and receiving party.

## The indemnity basis

11. Where the court assesses costs on the indemnity basis, for example, on an Attorney and client basis, it will not allow costs which have been unreasonably incurred or are unreasonable in amount.
12. Where costs are to be assessed on the indemnity basis, the paying party has the burden of establishing that the costs claimed were unreasonably incurred or were unreasonable in amount. Any doubt should be resolved having regard to both the paying and the receiving party.

### Relevant circumstances

13. Attention is drawn to Order 62 Appendix 2 Part 1 paragraph 1(2) of the Rules which shall apply to all assessments and taxations of costs and which sets out the factors the court must take into account when assessing costs. Additionally, the court shall have regard to the conduct of all the parties before as well as during the proceedings, and the efforts made, if any, before and during the proceedings to try and resolve the dispute.

### Guidelines on fees and hourly rates

14. It is hereby established that for the purposes of assessing costs there shall be bands for Attorneys in the following categories, being in relation to the Attorney's first call or admission in any jurisdiction:

<b>Band 1</b>	Queen's Counsel
<b>Band 2</b>	Attorneys 20 years' call and over
<b>Band 3</b>	Attorneys 10 years' call and under 20 years' call
<b>Band 4</b>	Attorneys 5 years' call and under 10 years' call
<b>Band 5</b>	Attorneys under 5 years' call

15. When considering what fee should be allowed for work done by Attorneys, the court should calculate the fee on the basis of an hourly rate in accordance with the guideline figures set out in the table below:

<b>Band 1</b>	Queen's Counsel	\$600 to \$650
<b>Band 2</b>	Attorneys 20 years' call and over	\$550 to \$600
<b>Band 3</b>	Attorneys 10 years' call and under 20 years' call	\$450 to \$550
<b>Band 4</b>	Attorneys 5 years' call and under 10 years' call	\$400 to \$450
<b>Band 5</b>	Attorneys under 5 years' call	\$250 to \$400

16. The hourly rates suggested in paragraph 15 herein are guidelines and intended as a starting point only to assist Judges and other costs assessment officers who are assessing costs. They are not intended to replace the court's discretion to allow appropriate fees to Attorneys in particular cases.

17. The court may, therefore, allow a higher or lower fee, where appropriate, having regard to all the relevant circumstances of the case. However, the court should only in exceptional circumstances award a fee below the minimum suggested for each band.
18. It is important to attain and maintain a significant measure of consistency and predictability in the award of costs.

### **Other grades of fee-earners**

19. Those training to become attorneys and those employed as paralegals are not attorneys but may be fee-earners, as is common in other jurisdictions. An hourly rate for those who are employed in such roles is \$150 to \$200.

### **Fees of overseas counsel**

20. There may be occasions when the use of overseas counsel in a case is justified, having regard to all the relevant considerations, in particular the availability of relevant professional expertise locally. Where on taxation of costs the use of overseas counsel is approved, the amount recovered may be in relation to a brief fee or hourly rate, or a combination.

### **Date of commencement**

21. This Practice Direction shall apply to the summary assessment or taxation of any costs undertaken on or after the date of issuance of this Practice Direction, irrespective of when the costs were incurred or ordered.