

# Guidelines on Functional Performance

THE HIGH COURT  
OFFICE OF THE LEGAL COSTS ADJUDICATORS



**Supporting Access to Independent, Impartial  
and Objective Resolution of Legal Costs Disputes**  
*in a modern digital Ireland*

# Guidelines on Functional Performance

**Guidelines on Functional Performance**  
**Published by the Chief Legal Costs Adjudicator**  
**with the support of the Courts Service**

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# THE HIGH COURT OFFICE OF THE LEGAL COSTS ADJUDICATORS



### Our Mission

The Office of the Legal Costs Adjudicators Mission is to enable access to independent, impartial and objective resolution of legal costs disputes. Through the provision of a courteous and professional service in the performance of its statutory function. To maintain and provide transparency throughout the process from inception to completion, with reasoned outcomes being published, in so far as is permitted by the law, and accessible via the register of determinations, so as to inform both legal practitioners and the public. It is our mission to provide this service in a timely manner, providing and supporting access to justice.

### In support of this mission, the Office pursues two strategic goals:

- ***Supporting the Legal Costs Adjudicators***

Supporting the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators is a statutory obligation of the Courts Service and by extension the Office and is central to our mission. As well as being a key strategic priority in its own right, it is also key to the achievement of all our strategic priorities.

- ***Providing High Quality Service to Court Users***

A core part of our mission is the provision of a consistent, impartial, timely and excellent service to court users, consistent with the limitation of the Office's statutory remit.

### Our Vision

Over time, as the number of adjudications are completed and the register of determinations is updated, a body of information will be publicly available to inform the public and practitioners of the range of legal costs, the manner in which they are determined and the reasons underlying the determination.

### Our Values

We are committed in performing our functions and fulfilling our responsibilities, to independence, fairness, integrity, professionalism, innovation and accountability. Our strengths derive from the expertise of the staff within the office. With a commitment to improving services, adapting innovative processes and adherence to best practices and developing strategies for improvement.

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## **INTRODUCTION**



### **Introduction by the Chief Legal Costs Adjudicator**

Section 142 of the Legal Services Regulation Act, 2015 (the 2015 Act) provides for the publication of guidelines indicating the manner in which the functions of the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators are to be performed. <sup>i</sup>

These guidelines are not legal advice nor do they purport to override the provisions of the 2015 Act or the Rules of the Superior Courts (Costs) 2019 (the 2019 Rules). Any party who seeks to engage with the office should ensure that they have taken the appropriate legal and other professional advice as may be necessary. In the case of any conflict between these guidelines and the 2015 Act or the Rules of Court, the 2015 Act and the Rules will prevail.

A handwritten signature in blue ink, which appears to read 'Paul M. Behan'.

**Paul M. Behan**  
Chief Legal Costs Adjudicator

**September 2021**

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### CHAPTER 1 - About the Office of the Legal Costs Adjudicators

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The Office of the Legal Costs Adjudicator was established on the 7<sup>th</sup> of October 2019 when Part 10 and Schedule 1 of the 2015 Act, were commenced. <sup>ii</sup> The main function of the Office is to provide an independent adjudication service where there is a dispute in relation to certain legal costs. The Office consists of administrative staff, a Chief Legal Costs Adjudicator and two Legal Costs Adjudicators. In these Guidelines a reference to a Legal Costs Adjudicator will also include a reference to the Chief Legal Costs Adjudicator. Any reference to the Chief Legal Costs Adjudicator is only intended to refer to that person.

The Office was established to replace the Office of the Taxing Masters of the High Court. The role and functions of every Legal Costs Adjudicator is the same jurisdiction formerly exercised by the Taxing Masters Office. The Adjudicators do not have any jurisdiction in relation to the Circuit or District Courts or to the jurisdiction of County Registrars. <sup>iii</sup>

The statutory powers, functions and duties of the Office are largely to be found in three places:

1. Part 10 and Schedule 1 of the 2015 Act.
2. The Rules of the Superior Courts (Costs) 2019, S.I. 584 of 2019.
3. Broadly, older legislative provisions that relate to the Office of the Taxing Master.

In practice it is now rare to have to refer to the various provisions under item 3 above.

The Office mainly deals with two types of disputes relating to legal costs.

1. Party and Party costs. These are costs usually awarded by a Court to one party at the end of, or during Superior Court litigation, i.e. High Court, Court of Appeal or Supreme Court.
2. Costs between a legal practitioner and their client in relation to any matter. A legal practitioner can be either a solicitor or a barrister.

The Office also deals with other types of costs where provided for by statute. In the 2015 Act, s.138 defines legal costs, which are within the remit of the Office. <sup>iv</sup>

#### **Party and Party**

Party and Party costs usually derive from an Order of the Court. This is where a Court or an authorised body, directs one party to a cause to pay the costs of another. The Office only deals with Party and Party Costs arising from proceedings in the Superior Courts, i.e. the High Court, Court of Appeal and the Supreme Court.

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Circuit Court costs arising in proceedings are determined by County Registrars, as is provided in s.141 of the 2015 Act and the Circuit Court Rules. District Court costs are dealt with by the District Court Judge who heard the case.

The Office of the Legal Costs Adjudicators, does not have any jurisdiction or power to deal with District Court or Circuit Court Party and Party costs, but does have jurisdiction to deal with some aspects of those Costs where they arise as part of a wider dispute as between a Legal Practitioner and Client.

### *Legal Practitioner and Client Costs*

Disputes as between legal practitioners and their clients fall within the remit of the Office of the Legal Costs Adjudicators. Legal Practitioners – solicitors and barristers - have prescribed duties relating to costs contained within the 2015 Act. The Legal Costs Adjudicators have a duty to hear and determine disputes relating to the amount of the costs and whether such costs are reasonable in amount or have been reasonably incurred.

It is important to note that the Office does not have the power to deal with allegations of poor or inadequate professional services, or complaints relating to misconduct. These matters are currently dealt with by the Legal Services Regulatory Authority and the Office of the Legal Costs Adjudicator have no function in that regard.

## CHAPTER 2 – Application Procedures

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The Procedures for applying for an Adjudication of costs have different requirements, depending on whether the application is being made for Adjudication of a Party and Party bill of costs or a Legal Practitioner and Client bill of costs. The Office of the Legal Costs Adjudicators has developed a suite of common forms for use in connection with most common matters, also the Rules provide at Appendix W( part V) guidance on the structure and content of forms to be used. These are discussed later in this guide.

### *Application for Adjudication of legal costs – Party and Party Costs* <sup>v</sup>

Both the person who has an order for costs in their favour, or the person ordered to pay the costs (the paying party), may apply to the Office for those costs to be adjudicated.

Before any application for an Adjudication of Legal Costs is made certain steps have to be taken.

The person who has an order for costs in their favour must send a bill of costs to the paying party. This bill of costs should be in the format as specified in the 2019 Rules. Attempts should then be made to try and

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agree the costs. If no agreement can be reached, or agreement can only be reached on some items in the bill, either party can then apply for the costs, or those parts that are not agreed, to be adjudicated.

### **Application for Adjudication of legal costs – Legal Practitioner and Client** <sup>vi</sup>

The provisions of the 2015 Act are slightly different when it comes to proceeding for an Adjudication of costs, where the dispute is between a legal practitioner and client. The following broad approach applies.

Where a client receives a bill of costs and believes that any item or matter is not properly chargeable, having regard to the 2015 Act or the Rules of Court, they may apply to have the costs adjudicated. This includes any barrister fees or other amounts included in the disputed bill of costs, for example charges for expert or other reports. The client must apply within 6 months of receiving the bill, or within 3 months from the date of payment of the bill, whichever occurs first. The bill furnished must be in a form consistent with the 2015 Act and the 2019 Rules.

A legal practitioner, who has submitted a bill of costs to a client and it remains unpaid for 30 days, may apply to have the costs adjudicated. Where the legal practitioner is a barrister and they have provided a bill of costs to the solicitor which remains unpaid for 30 days, the solicitor in question may apply if the barrister consents to adjudication. In general terms, no application for Adjudication may be made by a client or legal practitioner for adjudication, if more than 12 months have expired from the date the bill of costs was provided by the legal practitioner to the client, save in particular specified circumstances. These are set out in the 2015 Act and are subject to the facts pertaining to each particular case.

In cases where a bill of costs has been given by a legal practitioner to a client and a lesser sum has been agreed in settlement of the bill of costs, neither the legal practitioner nor the client may make an application to the Chief Legal Costs Adjudicator for an adjudication.

In certain cases, a legal practitioner can apply to have the 30-day limit mentioned above to be abridged or shortened, by applying *ex-parte* (one side only) to the Chief Legal Costs Adjudicator or the High Court for adjudication of the bill of costs.

### **Rules of the Superior Courts (Costs) Rule, 2019** <sup>vii</sup>

There are also Rules of Court applicable for seeking adjudication. These procedural Rules are to be located in Order 99. These prescribe the process to be followed, the documents to accompany and application and the forms to be used. An application should be by notice in the Form No. 1 (in the case of a party and party adjudication) or Form No. 2 (in the case of a legal practitioner and client adjudication). The Forms are set out in Appendix W to the 2019 Rules.

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In applying for adjudication, in addition to the notice of adjudication, the application should be accompanied by:

1. The bill of costs, in the form prescribed by the Rules of Court,
2. Vouchers, invoices, receipts in respect of payments and disbursements. Where any records are to be relied upon, these should be identified, separately indexed and paginated. If time sheets or time records are to be relied upon, these must be separately indexed, paginated and must show each legal practitioner or other person concerned, the dates upon which the relevant work was undertaken and the actual hours or portions of hours expended thereon, a total of the hours or portions of hours expended thereon, and
3. Where time is estimated, a statement that time has been estimated.

For a party and party adjudication the application should also be accompanied by:

1. a true copy of the order of the Court, award of the arbitrator or other order or instrument by which the costs have been awarded or allowed, and
2. In the case of a party and party adjudication applied for by the person the subject of the order to pay the costs, a certificate that the person has complied with section 154(2) of the 2015 Act.

In applying for an Adjudication as between legal practitioner and client, in addition to the items set out above, the application should also be accompanied by:

1. A true copy of each notice provided by the legal practitioner concerned to the client in accordance with s.150 or an agreement under s.151(1) of the 2015 Act.
2. A true copy of any statement in writing issued pursuant to s.153(1) of the 2015 Act.
3. A true copy of any opinion in writing sent under s.153(3) of the 2015 Act and, a true copy of any demand for payment.

See end note vi.

Once the application is accepted by the Office, Form 1, or 2 as the case may be, will be returned with a 'return date' inserted. This is the date on which the case will first appear before one of the Legal Costs Adjudicators assigned to hear the case. This is usually the date upon which the matter will be dealt with by the Adjudicator concerned.

The applicant should then serve copies of the issued notice of application, Form 1, including the return date and the documents lodged therewith, on the relevant party. For party and party adjudications, this would be the solicitor representing the other party, or the person ordered to pay the costs if there is no solicitor acting for them. For legal practitioner and client adjudications this would be the client or the legal practitioner as the case may be.

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Order 121 of the Superior Court Rules have specific provisions as to how documents are to be validly served on the other side.

The 2019 Rules, and in particular, Order 99 Rule (27) makes provision for information to be provided to the Adjudicator more broadly and also in regard to any witness expenses. <sup>viii</sup>

### *Superior Courts (Costs) Rules 2019 – Some General Provisions* <sup>ix</sup>

The Rules of the Superior Courts (Costs) Rules 2019, make the following general provisions in respect of all applications for Adjudication, whether as between legal practitioner and client or as between party and party. This is to facilitate the orderly conduct of Adjudications and also to ensure that the procedures are operated so as to ensure fair procedures, the production of relevant documents and allow parties to present their case fairly and fully.

### *Directions*

Order 99 Rule 24 (1) provides that on the initial return date of the application for adjudication, or on any date to which that application is adjourned, the Legal Costs Adjudicator may, if he or she does not proceed to adjudicate the matters or items concerned in the bill of costs, give any of the following directions:

1. give directions as to the service of notice of the adjudication on any other person;
2. give further directions, if any, as he considers necessary as to the furnishing of further documents, records and vouchers to the Chief Legal Costs Adjudicator or to other parties to the adjudication;
3. give directions as to the delivery and filing of written submissions for the purposes of the adjudication;
4. give such further directions in exercise of the powers available under the 2015 Act and this Order as he considers convenient for the determination of the adjudication in a manner which is just, expeditious and likely to minimise the costs of the adjudication.

The general powers of the Legal Costs Adjudicator are to be located within s.156 of the 2015 Act. <sup>x</sup>

### *Notice of the Hearing and some general requirements* <sup>xi</sup>

It stands to reason that a party must give notice of an intended adjudication. The 2019 Rules provide for a period of 14 days between the date of issue and the return date, with a discretion to a legal costs adjudicator to shorten the time on a case by case basis, if there is a genuine urgency.

The requirement is to serve the Notice, with any documents to be relied upon, on the other side giving them at least 14 days to prepare. However, if a person is already in possession of a document, there is no requirement to provide an additional copy. In the event that only one matter contained in a bill of costs is in

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dispute or several items out of a larger number, it is possible to restrict the Notice to only those items in dispute. These however are required to be clearly stated and identified.<sup>xii</sup> The Legal Costs Adjudicator shall, if satisfied that such notice has been issued and served and that not all of the matters or items in the bill of costs require to be adjudicated, adjudicate that part of the bill and the matters and items thereon in respect of which the notice has issued.

The registration number for any person claiming VAT must be shown, where it is claimed

Every bill of costs lodged for adjudication shall be indorsed with the name and registered place of business of any legal practitioner by, or for whom, it is so lodged. Where value added tax is claimed in a bill of costs the registered number allocated by the Revenue Commissioners to the person registered for value added tax must appear in a prominent place on every bill of costs, account or voucher, as appropriate, on which value added tax is claimed or chargeable.

Bills of costs and notices, the service of which is required, shall have the service as effected indorsed upon them in a manner sufficiently, though briefly, specifying the person served, the time, place and mode of service, and the person serving, and the documents so indorsed shall be produced on proving service.

No addition or alteration shall be made in a bill of costs after it is lodged for adjudication except by permission or direction of a Legal Costs Adjudicator and no entry, initialling or marking in a bill of costs lodged shall be made, save by a Legal Costs Adjudicator, nor shall any erasures be allowed. Where this provision is infringed the Legal Costs Adjudicator may, subject to an appeal to the High Court, disallow any matter or item in respect of which the infringement has taken place, or may report the matter to the High Court.

A bill of costs lodged for adjudication shall be in the Form No. 3 in Part V of Appendix W of the 2019 Rules.

Where an agreement has been made under section 151 of the 2015 Act by a legal practitioner and the legal practitioner's client, special requirements for the format of the bill of costs are set out in sections 152(5) to (7) of the 2015 Act.

### **Agreements Regarding Legal Costs - Order 99 Rule 26 (6)** <sup>xiii</sup>

Order 99 Rule 26(6), is pertinent in circumstances where an agreement has been made under s.151 of the 2015 Act, which provides that a client may make an agreement with a legal practitioner and if such an agreement is made in accordance with s.151, of the 2015 Act, this provides a basis for a legal practitioner and a client to make an agreement regulating the terms of business between them.

A legal practitioner and his or her client may make an agreement in writing concerning the amount, and the manner of payment, of all or part of the legal costs that are or may be payable by the client to the legal

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practitioner for legal services provided in relation to a matter. The agreement may be reached so as to satisfy the requirements of s.150 and can constitute the entire agreement between them. If such a valid agreement is reached, no other amounts shall be chargeable in relation to the matter, save to the extent of the agreement between the parties. An agreement made between a legal practitioner and client is amenable to Adjudication. An invoice or a summary, together with the agreement, shall constitute the bill of costs for the purpose of Adjudication.

In the event that the agreement reached between the legal practitioner and the client represents part of the legal costs that are due, the summary shall satisfy the obligations contained within s.150(2)(a)(b)(c).

The agreement must be attached to the bill of costs if referred for Adjudication.

### *Form of Bill of Costs*

In cases where a bill of costs has not been prepared in accordance with the 2019 Rules, it is provided at s.151(7) of the 2015 Act, that where a Legal Costs Adjudicator so directs, a bill of costs may be accepted for adjudication notwithstanding lack of conformity with the prescribed form, provided that the Legal Costs Adjudicator is satisfied:

1. that the bill of costs, contains the particulars specified in section 152(2) of the 2015 Act;
2. that the bill of costs is, in the Legal Costs Adjudicator's opinion, sufficient, when read together with the documents served and filed together with that bill, to enable the paying party to assess and dispute or oppose the work undertaken and disbursements incurred in respect of which charges are claimed, and
3. is in the Legal Costs Adjudicator's opinion sufficient, when read together with the documents served and filed together with that bill, to enable the Legal Costs Adjudicator to adjudicate the matters and items in dispute in accordance with the 2015 Act.

In cases where a bill of costs does not conform to the prescribed form and is not sufficient to satisfy the requirements of s.152(7) it is provided at s.152(8) that the Legal Costs Adjudicator may:

1. adjourn the adjudication and direct the service and lodgment of a new bill of costs, or of an amended bill of costs;
2. adjourn the adjudication and direct the service and lodgment of further information or documents in respect of matters or items in the bill of costs;
3. strike out the application for adjudication without prejudice to the right of the moving party to make a further application.

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### *Proof of Work Undertaken*

Apart from the bill of costs and the notices mentioned above, it is also the case that proof of the actual work undertaken is required to support the charge being made, whether by solicitor, barrister or expert or other witnesses. This will usually require documentary proof and, on occasion, there may be a requirement for oral evidence as to how the charges are computed. Where professional charges are based on time, proof of the time spent is required, including, where appropriate time sheets, files, notes or memoranda by way of proof may be required.

### *Burden and Standard of Proof*

The process is an adversarial one, where the burden of proof is on the claiming party to justify that the work undertaken and the charges made in respect thereof are reasonable. The standard of proof in relation to matters in dispute is the civil standard, that is, on the balance of probabilities.

### *Time Limits*

There are time limits which may arise in a number of instances.

Every application for Adjudication must give the opposing party 14 clear days to elapse between the day of service and the initial return date, save where there are urgent circumstances, to be decided by the Adjudicator (see Order 99 rule 25 (1) of the Superior Court Rules). <sup>xiv</sup>

On an Adjudication as between legal practitioner and client, there are statutory time limits, which may impact on the entitlement of a party to apply for adjudication. The respective obligations on both the legal practitioner and the client are contained within s.152, but important considerations arise from s.155 of the 2015 Act. In accordance with those provisions a client who is in receipt of a bill of costs and is in dispute, shall engage with the legal practitioner in accordance with s.152 <sup>xv</sup> and s.153. <sup>xvi</sup>

If, however, this is not done, a legal practitioner can, after the expiry of 30 days from the date that the bill was provided, apply to have same adjudicated (s.155(5)(a)), s.155(5)(b) applies in the case where a barrister has in accordance with s.152(8) provided a bill of costs to a solicitor and it remains unpaid for 30 days, can apply for adjudication. <sup>xvii</sup>

No application for Adjudication can be made under this section if more than 12 months have expired, after the date upon which the bill of costs was provided to the client.

It is also important to note that other aspects of Adjudication contain time limits and parties contemplating applying for Adjudication need to fully satisfy themselves that they are within these limits.

The period between the date of the service of the dispute notice, in accordance with s.153(1) shall serve to stand still the time limits contained within s.154, for the legal practitioner to apply for Adjudication, beginning

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on the date that the notice is served by the Client and shall end on the date that the requirements contained within sub-sections (2) have failed and an opinion has been issued in accordance with sub-section (3) that the attempt has failed, then the time limits commence to run again from the date of that notice. <sup>xviii</sup>

### Costs of Adjudication & Lodgements <sup>xix</sup>

Costs arise in two ways in respect of any application for Adjudication. First, there are Court fees payable in the Office of the Legal Costs Adjudicators. These are set down in statute from time to time. The current applicable rate for Court fees is contained within the S.I. No. 530/2019 - Supreme Court, Court of Appeal and High Court (Fees) (Amendment) Order 2019.

There are Court fees arising on the issue of a Notice of Adjudication (currently €275) and there are also Court fees arising on the sum ultimately adjudicated. This sum calculated on the net sum determined, is currently calculated at 8% of the net sum determined.

In general terms, the costs of an Adjudication follow the event (Order 99 r.13(2)). This usually means that the person awarded the costs is also entitled to recover the costs of the adjudication. There are exceptions to this general rule. This can arise in two ways.

The 2015 Act was amended by the Courts Act 2019 at s.154(10)(e)-(f). <sup>xx</sup>

There is provision in the Superior Court Rules for a party who is obliged to pay the costs of another party and who cannot reach an agreement in respect thereof, to make a lodgement in satisfaction of the costs being claimed. This is discussed in more detail below.

There are also costs consequences in a legal practitioner and client Adjudication. Where a bill of costs has been presented for Adjudication, either by a client or by a legal practitioner, if the amount in issue is reduced by more than 15%, s.158(2) of the 2015 Act comes into effect. This means that the legal practitioner may be responsible for the costs of the Adjudication, being the Court fees and the costs of representation at the Adjudication and these may be set off against the overall sum determined on Adjudication. <sup>xxi</sup>

The costs of an Adjudication follow the event Order 99 Rule 13 (2), meaning they normally fall to be paid by the paying party. However, the provisions contained in Order 99 Rule 36 (9) of the Rules of the Superior Courts (Costs) 2019 are to be noted;

(9) Where, in proceedings before the Legal Costs Adjudicator, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the Legal Costs Adjudicator may, without limitation of any other power available to him, direct such party or his legal practitioner to pay the reasonable costs occasioned by such neglect or delay. Such costs

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may be deducted from or, as the case may be, added to and included in the amount of the costs determined to be due on adjudication.

### Online Applications and Resources

In keeping with the Courts Service objectives of moving to online platforms, the Office of the Legal Costs Adjudicators has an online process in place for parties seeking to make an application for adjudication, where the parties have an active Courts Service Online or CSOL account. As matters presently stand parties who do not have a CSOL account will need to present their documentation manually to the office for processing. Any queries regarding CSOL accounts are dealt with by the Central Applications Support Unit or CASU, who can be contacted for assistance at [www.courts.ie](http://www.courts.ie). Please note, that this is not something that the Office of the Legal Costs Adjudicators can assist with, it is managed externally by the Courts Service.

A suite of forms covering most of the common applications for adjudication can be found on the Office of the Legal Costs Adjudicators website. This is accessible at [www.courts.ie](http://www.courts.ie).

There are different forms required depending on the nature of the application if it is for adjudication of party and party costs or as between legal practitioner and client. This is because different statutory provisions apply to both.

In the case of a party and party adjudication the respective obligations on both the party applying for adjudication and the opposing paying party have been addressed previously.

In the case of a legal practitioner and client adjudication this also has been addressed previously.

### Procedures for Adjudication <sup>xxii</sup>

It is a requirement of s.142 for these guidelines to describe the procedures that are to be followed in the Office of the Legal Costs Adjudicators in relation to the adjudication of legal costs.

Once an Application for Adjudication has been accepted it is listed for hearing before an assigned Legal Costs Adjudicator. It is important to note that in most instances, the date and time appointed is the date upon which the Adjudication will be dealt with, save for good reason.

The party applying for an Adjudication, generally has the responsibility to ensure that the opposing party has sufficient notice of the date and time fixed for the hearing. Proper notice of the date and time fixed for a hearing, enables the opposing side to prepare for the hearing and to take such professional advice as they may feel is necessary in all of the circumstances.

Any documentation which the claiming party intends to rely upon in a party and party Adjudication is mandated by Order 99 Rule 23 (3) <sup>xxiii</sup> and Order 99 Rule 24 (1) <sup>xxiv</sup> of the 2019 Rules.

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Any documentation which the claiming party intends to rely upon in a legal practitioner and client Adjudication is mandated by Order 99 Rule 23 (4) of the 2019 Rules. <sup>xxv</sup>

As a matter of fair procedures any document being relied on must be made available to the other side and to the Adjudicator, in advance of any hearing.

The object of these steps is to enable the parties to be prepared to deal with the scheduled hearing of the adjudication on an equal footing. It is the case that on occasion matters arise at a scheduled date where one party is unable to proceed or requires additional documentation or information fairly required to enable them to prepare for and conduct a hearing.

The Adjudication process is conducted in an adversarial manner, with each party entitled to speak, in support of and in opposition to the case being made by the opposing party. An Adjudicator is not a Judge and the Adjudication hearing room is not a Court. It is nonetheless a formal quasi-judicial tribunal and deals with the matters before it in a formal way. It is therefore conducted in a respectful and courteous way and parties are expected to behave in a similar manner.

### *Warning regarding inappropriate contact*

It can be tempting, when parties are engaged in the Adjudicative process to send an email or a letter, make a telephone call to the office or engage in some other form of communication. This is to be discouraged at all costs, as firstly, it is grossly unfair to the opposing side, secondly, it could have the potential effect of undermining the independence of the process, so that it may have to be abandoned or aborted or sent forward for Adjudication by another Adjudicator, with the delay and expense arising for both parties.

Each party will have plenty of time to articulate their case at the hearing, in an open forum when all parties are present. This is the fairest way of dealing with any dispute. It goes without saying that an Adjudication hearing should be conducted in a respectful and courteous way, with fair procedures and respectful of the rights of all parties to have an opportunity to articulate their case.

It is because of this need for fairness, that it is essential, that no party would engage in correspondence with the Office, other than as matters of procedure require. It is certainly the case that no correspondence should be addressed in any way to the Legal Costs Adjudicator assigned to the matter, any contact should be initiated through the Office staff. In the interests of fairness any one-sided communication with the office should be avoided.

If you feel that you must communicate with the Office, you must copy any correspondence to the other party involved in the Adjudication.

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It is a fundamental requirement of fairness of procedures that any notices, documents required to be served are sent to the Office and to the Opposing side to the Adjudication simultaneously. The consequences of breaching fair procedures, may be far reaching and may result in prejudice, delay and a potential increase of the costs associated with the process.

### CHAPTER 3 – Adjudication Hearings

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On the appointed date and time, the parties will usually attend before the Adjudicator at the time stipulated. Parties should note that the general law applies regarding Adjudications being held in public, save for cases that are prescribed to be held otherwise than in public. Examples of this would be cases which would ordinarily be held *in camera*.

The 2015 Act, provides at s.156(4)

(4) An oral hearing held for the purposes of an adjudication shall be held in public unless, in the opinion of the Legal Costs Adjudicator, the hearing or part thereof ought, in the interests of justice, be held otherwise than in public.

(5) The Legal Costs Adjudicator may, with the consent of the parties, conduct an adjudication without an oral hearing where he or she is of the opinion that it is expedient and in the interests of justice to do so.

It should also be noted that the proceedings before the Legal Costs Adjudicator are recorded on the Courts Service Digital recording system commonly called DAR. Parties are forbidden to record or film any part of the hearing, see Order 123 Rule 8 of the Superior Court Rules. A stenographer may be permitted to take a note of the proceedings, the party seeking to have a stenographer present having obtained permission of the Legal Costs Adjudicator. A DAR record is a Court Record, within the meaning of that term and a copy may only be provided to a party seeking the same, by obtaining a High Court Order and payment of the appropriate costs and charges of the Courts Service associated therewith. The first step is to apply to the Legal Costs Adjudicator for consent to the release of the DAR and thereafter to follow the procedure set down in Order 123 Rule 9, by way of application to the High Court. Normally, the applying party will be responsible for the costs of obtaining the DAR.

#### **Who may appear at an Adjudication?**

Legal Costs Adjudicators are not Judges and Legal Costs Adjudicators' hearing rooms are not Courts. Therefore the rules that apply to appearances in Court do not necessarily apply. A party does not have to be represented by a legal practitioner, whether solicitor or barrister. However, it is a formal quasi-judicial hearing,

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subject to the rule of law, and must be conducted fairly and impartially applying fair procedures and the applicable law, as is contained in legislation and any applicable case law. The burden of proof is a civil standard, meaning on the balance of probabilities.

In most instances, the party who initiated the Adjudication, will be entitled to speak first, with each party having a right of reply.

In keeping with the requirement to conduct a hearing in a fair way, it is usually the case that documents to be relied upon by either party should be disclosed, subject to any legal impediment or claim to privilege that may be lawfully asserted.

### *Matters to be ascertained in course of Adjudication of Costs* <sup>xxvi</sup>

The 2015 Act of 2015 places an obligation on a Legal Costs Adjudicator, to have regard to the matters set out in s.155 of the 2015 Act.

The first requirement of the Adjudication process requires the Adjudicator to have regard to the entire case or context in which the costs arise. This is a fact based assessment, so as to enable the claim for costs to be viewed in the context of the overall case or matter. This inquiry can be answered by reference to the oral submissions or oral evidence of the parties to the Adjudication or by reference to oral and written submissions and an assessment of the documentation, which will assist in the process of assessment.

The second requirement relates to the obligation to undertake an exercise of verification that the work described was actually done. This is another fact inquiry. This will require an examination of the surrounding facts and the documentation or other evidence.

The third requirement is a subjective determination, based on a result of the inquiries indicated above, taken together with the surrounding facts and the submissions of the parties and the documentary evidence as to whether a charge should be allowed. A charge can only be allowed, where the Legal Costs Adjudicator has looked at the case and the context within which the cost arises.

Fourthly and separately, to determine what a fair and a reasonable charge would be in the circumstances and if the costs relating to the matter were reasonably incurred.

As part of the inquiries mandated above, the Legal Costs Adjudicator, shall, so far as is reasonably practicable, ascertain (a) the nature and extent of the work undertaken, and (b) who undertook the actual work, and (c) the time taken to carry out the work.

As part of an Adjudication as between legal practitioner and client, in addition to the above factors, the Legal Costs Adjudicator is obliged to have regard to any agreement made between the legal practitioner and the client, made in accordance with s.151 of the 2015 Act.

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In conducting an Adjudication on Legal Costs, and undertaking the inquires set out above, the Powers conferred on the Legal Costs Adjudicator pursuant to s.156, such as the power to inspect the documents, summon and examine witnesses and administer oaths, conduct a public hearing and invite parties to an adjudication to submit a dispute to mediation. It is generally the case that subject to certain exceptions, arising by law, Adjudication hearings are held in public.

### *Schedule 1 of the 2015 Act* <sup>xxvii</sup>

When a Legal Costs Adjudicator is conducting an Adjudication, Schedule 1 to the 2015 Act is relevant for consideration. These describe the principles to be applied when undertaking an Adjudication.

Part 1, places an obligation on the Adjudicator to have regard to the entire case or matter in which the Adjudication relates and the context in which the costs arise and to be satisfied that the costs have been reasonably incurred and that the costs are reasonable in amount.

Part 2 provides the criteria which the Legal Costs Adjudicator must consider in reaching a determination. In reaching any determination, the Adjudicator must have regard to each of the matters listed, where applicable. These include:

1. the complexity and novelty of the issues involved in the legal work;
2. the skill or specialised knowledge relevant to the matter which the legal practitioner has applied to the matter.
3. The time and labour that the legal practitioner has reasonably expended on the matter.
4. The urgency, attached to the matter by the client and whether the legal practitioner gave priority to that matter over other matters.
5. The place and the circumstances in which the matter was transacted.
6. The number, importance and complexity of the documents that the legal practitioner was required to draft, prepare or examine.
7. Where money, property or an interest in the property is concerned.
8. Whether or not there is an agreement to limit the liability of the legal practitioner concerned pursuant to s.48 of the 2015 Act.
9. Whether or not the legal practitioner necessarily undertook research or investigative work and, if so, the timescale within which such work was required to be completed.
10. The use and the costs of expert witnesses or other expertise engaged by the legal practitioner and whether such costs were necessary and reasonable.

Arising from the Adjudication process and assuming that the parties have completed their submissions, tendered such evidence as they relied upon, then applying the criteria identified, the Legal Costs Adjudicator

## Guidelines on Functional Performance

then proceeds to issue a Determination. This is their decision as to what is a reasonable amount, if any, to allow for the costs claimed. The figure is arrived at by reference to the factors set out above.

### *Determination of applications* <sup>xxviii</sup>

A Determination can be written or verbal but must contain the reasons of the Adjudicator. The Legal Costs Adjudicator has a number of decisions to make, based on the particular matter at issue. He or she can confirm a charge having concluded that the charge is fair and reasonable in the circumstances, and the amount charged is also fair and reasonable, a Legal Costs Adjudicator is entitled to conclude that a different amount should be charged and can substitute his own determination in respect of a matter.

Where matters concern outlays the item concerned must be vouched, unless it is not required to be vouched or the parties are in agreement with the item.

On an Adjudication as between legal practitioner and client, a charge in respect of an item shall not be confirmed, if it is not included in the notice (as provided for in s.150) or, is not the subject of an agreement (as provided for in s.151). There is an exception to this rule which allows the item to be confirmed whereby not confirming the item, an injustice would be created between the parties.

If a Legal Costs Adjudicator is of the opinion that a party to the Adjudication has neglected or refused to provide documents, and that the refusal or neglect is likely to be prejudicial to the interest of one or more of the parties, the Legal Costs Adjudicator shall, in order to minimise the prejudice to those interests, (a) determine the application to the extent possible in the circumstances, and (b) determine that only a nominal amount is to be payable to the party who has neglected or refused to provide the required documentation.

### *Reports of Determinations*

The 2015 Act requires that when a Legal Costs Adjudicator has made a determination, a report shall be prepared, where (a) it is considered to be in the public interest. (b) upon request by any party to the Adjudication, made within 14 days after the making of the determination.

A report of a determination by a Legal Costs Adjudicator, should set out the matters or items, the subject matter of the Adjudication, a brief outline of the background to the provision of the legal services concerned and the principal issues relating to the context of the provision of those services. It is required that the report shall:

1. specify the work involved which was considered in reaching the determination,
2. specify the various stages of the legal services and the stage of the legal process at which such work was carried out by reference to distinct aspects of the course of the work,
3. set out a summary of the written or oral submissions made by or on behalf of the parties to the adjudication, and

## Guidelines on Functional Performance

4. give reasons for his or her determination.

A copy of the determination report shall be furnished to any requesting party to the adjudication, as soon as practicable after it has been prepared.

### **Effect of Determination** <sup>xxix</sup>

Once a Determination has been delivered by the Adjudicator, whether written or verbal, it becomes effective and final 20 days after it is furnished to the parties to the Adjudication. However, if a party to the Adjudication is unhappy with the decision or a part thereof, it is open to that party to file a request for 'Consideration' to the Adjudicator concerned and if unhappy with the outcome, may seek a Review by the High Court. This is discussed below in more detail.

A Certificate of Determination, once it issues and is final, has the same effect as a Judgment. The holder of such Certificates can levy execution, as if a Judgment of a Court. The Office of the Legal Costs Adjudicators has no role, once a Certificate has issued and signed. The Legal Costs Adjudicator has no further legal power, as he or she is *functus officio* having completed the functions provided for in the 2015 Act of 2015.

### **Lodgement and Tender in respect of Costs** <sup>xxx</sup>

There are other mechanisms involving potential costs risks in Adjudications. Part XII, Order 57 of the Superior Court Rules, provide that a party who is subject to an Order of a Court to pay costs, may make a lodgement, or if a qualifying party, a tender in satisfaction of the claim for costs. This must be done in accordance with the timelines laid down in the Superior Court Rules. A qualified party may make a tender in lieu of a lodgment.

The Lodgement and Tender process is also applicable to an Adjudication involving a legal practitioner and a client.

Any party who is obligated to pay costs, can put the claiming party at risk for the costs of an Adjudication and the Court duty arising on Adjudications. This stems from the overall public policy considerations of encouraging parties to resolve disputes without reverting to the Courts or other dispute resolution forums.

A lodgment requires the physical payment of money into the Accountant of the Courts.

Only a qualified person, within the meaning of Order 22 of the Rules of the Superior Courts may make a tender.

The person making the lodgment or tender must inform the claiming party how the offer is made up. However, the Legal Costs Adjudicator **must not be informed** of the amount nor should it be disclosed until the Adjudication has been completed. The 2015 Act of 2015 makes provision for this by virtue of an amendment to the 2015 Act, by the Courts Act, 2019.

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The mechanics of a lodgment and a tender are set out in the relevant Superior Court Rules, which provide that an entitled party may make a lodgment or a tender, within 21 days of being served with a Notice of Application for Adjudication, whether as between party and party or legal practitioner and client, unless a Legal Costs Adjudicator has given leave to extend the time. It should be noted that in order for a lodgment or a tender to be effective and valid, compliance with the rules of Court should be considered an imperative.

A valid lodgment or tender will mean that the party who accepts the lodgment, shall be entitled to recover the costs of the Adjudication up to the date of the lodgment. In the event of the claiming party not accepting the lodgment or tender, and the amount of the determination is less than the lodgment, they will be responsible for the costs of the Adjudication, including any Court fees, from the date of such lodgment or tender. The Legal Costs Adjudicator does not have any discretion in the matter.

### *Justiciable Issues and References on a Point of Law* <sup>xxxii</sup>

The Office of the Legal Costs Adjudicators is a body created pursuant to statute. It operates within its own rules and powers derived from the relevant statutes, including the Courts (Supplemental Provisions) Act 1961, the Legal Services Regulation Act, 2015 and the Rules of the Superior Courts and various other enactments. Because Legal Costs Adjudicators are not judges, they are not permitted to administer justice. This is a constitutional imperative and arises from Article 34 of the Constitution. Certain functions, such as the enforcement of contracts and agreements and the holding of inherent powers are justiciable issues and are as such expressly reserved to the Court.

It is for that reason, where a question of law arises, it may be referred to the High Court for opinion. Equally, where a legal practitioner and a client have a contract or an agreement, any issue as to the enforceability of that agreement, within the provisions of s.151 of the 2015 Act, is a matter to be referred to the Court. The mechanism to refer any such question to the Court is by way of Order 62 of the Superior Court Rules, as is mandated by Order 99 Rule 39 of the Rules of the Superior Courts (Costs) Rules, 2019. <sup>xxxii</sup>

References to the High Court are mandated by s.159 of the 2015 Act.

This is not the same as a Review from a decision of a Legal Costs Adjudicator, which is addressed separately in this document.

### CHAPTER 4 – Consideration and Review to the High Court

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#### **Right of Request for Consideration** <sup>xxxiii xxxiv</sup>

There is a two-stage process underlying an appeal against a decision of a Legal Costs Adjudicator. Firstly, a party to an Adjudication of costs, who is dissatisfied with a determination, in whole or in part, made by a Legal Costs Adjudicator, can request that the same Legal Costs Adjudicator consider the original determination. This is described in the 2015 Act as a Consideration. This is done by way of a written notice, setting out the grounds and reasons, and if necessary any new evidence or additional material sought to be relied upon. It must be done within 14 days of the Determination.

It is important to note that the Legal Costs Adjudicator can issue an interim determination in respect of the matters, that are not subject to a request for a consideration and/or a specified amount in respect of the item being objected to. An example of this might be where 3 items are in dispute and only one is the subject of a consideration.

By way of simple illustration, if there were three items of €100 each, two were not in dispute and the third was in dispute to the extent of €50, the Legal Costs Adjudicator may issue an interim determination for €250. These are issues, which will be required to be established on a case by case basis, there can be no hard and fast rule.

Once a consideration is requested, the Legal Costs Adjudicator is obliged to reconsider and review the determination, may hear new evidence or submissions and may decide to uphold or make a different determination. Subject to a Review to the Court, which is discussed below, the decision made following the Consideration, is final and shall take effect immediately it is delivered.

It is important to note that the Legal Costs Adjudicator has power to make an award of costs of the Consideration, which is based usually on the follow the event basis, in other words, to the successful party. These are determined by the Legal Costs Adjudicator and are added or deducted from the principal sum held to be due on foot of the determination, as the case may be.

#### **Right of Review to the High Court The 2015 Act** <sup>xxxv</sup>

Any party who is dissatisfied with a decision made on the Consideration, can apply to the High Court if the review relates to party and party costs, the Court that heard the proceedings to which those costs relate and in any other case, including legal practitioner and client, the High Court, for a review of that consideration. The application for a review must be made within 21 days from the date of the decision on the consideration by Motion on Notice to the other parties, with a copy of the Motion to be sent to the Legal Costs Adjudicator.

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The hearing of the review shall be based on the evidence tendered to the Legal Costs Adjudicator, unless the Court orders that other evidence shall be submitted. The High Court on such a review can confirm the decision of the Legal Costs Adjudicator, allow the review and remit the matter to the Legal Costs Adjudicator to determine the adjudication in accordance with the decision of the Court, or the Court may substitute its own determination for that of the Legal Costs Adjudicator.

The Court shall allow a review only if the Court is satisfied that the Legal Costs Adjudicator has, in his or her determination, erred as to the amount of the allowance or disallowance so that the determination is unjust.

A party cannot apply for a review by the High Court without first seeking a Consideration by the Legal Costs Adjudicator.

### **Rules of the Superior Courts – Review to the Court – Order 99 Rule 38** <sup>xxxvi</sup>

Order 99 Rule 38 of the Rules of the Superior Courts (Costs) Rules 2019 determine the procedures and the Rules of Court for the conduct of such a review.

### **Some Miscellaneous Provisions**

#### **Privilege** <sup>xxxvii</sup>

Proceedings and documents created or furnished to the parties to an Adjudication are privileged, except to the extent required for an appeal from a determination of a Legal Costs Adjudicator, and in relation to a mediation or other procedure for the resolution of disputes as to the legal costs concerned.

#### **Register of Determinations** <sup>xxxviii</sup>

The 2015 Act places an obligation on the Chief Legal Costs Adjudicator to establish and maintain a register of determinations. The Register is to contain information regarding the date of receipt of the application and other documents, where involving proceedings the record number, the date upon which it was assigned to the assigned Legal Costs Adjudicator, the outcome of the hearings and the date on which it was made in accordance with other obligations under the 2015 Act. Likewise if a determination is subject to either a Consideration or a Review, the register is to be updated accordingly with any modified outcome. Where reasons for a determination have issued, in accordance with s.157, they are also to be placed on the Register.

There are exceptions to the requirement to record matters on the Register. These are primarily related to issues of privacy and confidentiality. These, for example, relate to proceedings, which would be heard otherwise than in public, being *in camera* matters, Adjudications as between legal practitioner and client, or where proceedings were settled without being heard by a Court or where there is a public interest concern or the potential concern about information being commercially sensitive.

## **Guidelines on Functional Performance**

There are other examples, where the matter is of a type that is of no legal significance. There is also provision for the preparation of a report on an anonymised basis, subject to the considerations in the 2015 Act.

### END NOTES

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#### *i Guidelines on Performance of Functions*

#### **Guidelines on performance of functions of Chief Legal Costs Adjudicator under this Part**

142. (1) After consulting with the Minister, the Minister for the Environment, Community and Local Government and any person or body that the Chief Legal Costs Adjudicator considers to be an appropriate person or body to be consulted for the purposes of this section, the Chief Legal Costs Adjudicator may from time to time prepare, for the guidance of Legal Costs Adjudicators, legal practitioners and the public, guidelines not inconsistent with this Act (including any regulations made under this Act) or Rules of Court indicating the manner in which the functions of the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators are to be performed.

(2) The Chief Legal Costs Adjudicator shall ensure that guidelines prepared by him or her under this section are published as soon as practicable after the guidelines have been prepared.

(3) Without prejudice to the generality of subsection (1), guidelines under this section may—

(a) describe the procedures for the adjudication of legal costs under this Part,

(b) set out the documents and other information that are required by or under this Part to accompany an application for the adjudication of legal costs,

(c) describe the notices and other information that will be provided by the Legal Costs Adjudicator in relation to any such applications,

(d) identify the provisions of this Part and the Rules of Court relevant to an application, including those relating to the time limits within which the documentation and information referred to in paragraph (b) are to be provided,

(e) describe the procedures that are to be followed in the Office of the Legal Costs Adjudicators in relation to the adjudication of legal costs,

(f) provide guidance as to the circumstances in which a Legal Costs Adjudicator may exercise his or her powers under subsection (4) or (5) of section 156,

(g) set out the fees that are to be charged in the Office of the Legal Costs Adjudicators in respect of the services provided by it, and the manner in which those fees may be paid,

## Guidelines on Functional Performance

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(h) provide such other information as appears to the Chief Legal Costs Adjudicator to be appropriate, having regard to the purposes of the guidelines referred to in subsection (1).

*ii Legal Services Regulation Act, 2015* (Commencement of Certain Provisions) (No.2) Order 2019 (S.I. No. 502 of 2019).

### *iii Office of the Legal Costs Adjudicators*

139. (1) The Office heretofore known as the Taxing-Masters' Office shall be known as the Office of the Legal Costs Adjudicators.

(2) The Minister may, in accordance with the provisions of the Courts (Supplemental Provisions) Act 1961, appoint—

(a) the Chief Legal Costs Adjudicator, and

(b) such number of Legal Costs Adjudicators that the Minister, with the consent of the Minister for Public Expenditure and Reform, determines to be the number necessary to ensure that the work of the Office may be carried out effectively and efficiently.

(3) A function, power or jurisdiction conferred by or under any enactment on a Taxing-Master shall be deemed to be conferred on the Chief Legal Costs Adjudicator and every Legal Costs Adjudicator.

(4) The role and functions of the Chief Legal Costs Adjudicator and every Legal Costs Adjudicator appointed under this Act are limited to the jurisdiction heretofore proper to the Taxing-Masters' Office and shall not extend to the lower courts or to the jurisdiction of County Registrars.

*iv "legal costs"* means fees, charges, disbursements and other costs incurred or charged in relation to contentious or non-contentious business, and includes—

(a) the costs of or arising out of any cause or matter in any court,

(b) any costs which are the subject of an order made by an arbitral tribunal in accordance with section 21(4) of the Arbitration Act 2010 for the adjudication of the costs of the arbitration by a Legal Costs Adjudicator,

(c) the costs of a receiver appointed in any cause or matter, on the application of the receiver or of any party to the cause or matter,

(d) costs that arise from an inquiry, investigation or other proceeding conducted under an enactment, and

(e) the cost of registering judgments as mortgages, of obtaining grants of probate and of letters of administration, of satisfying judgments, and any other costs usually adjudicated *ex parte*;

### <sup>v</sup> ***S.154 of the Legal Services Regulation Act, 2015***

The 2015 Act provides at s.154. (1) that in a case where a person is ordered by a court, tribunal or other body to pay, in whole or in part, the legal costs of another person, the person whose legal costs are to be paid by reason of that order shall furnish a bill of costs to the person who is the subject of the order to pay the legal costs, in a form and manner consistent with—

(a) the terms of the order,

(b) this Act, and

(c) any rules of court relating to the preparation and furnishing of bills of costs in a case to which this subsection refers.

### <sup>vi</sup> ***Application for adjudication of legal costs – Legal Practitioner and Client***

(4) Where a legal practitioner provides a bill of costs in accordance with section 152 to his or her client and the client considers that any matter or item or the amount charged in respect of any matter or item in the bill of costs is not properly chargeable, taking account of the provisions of this Act, and any rules of court relating to costs payable to legal practitioners by clients, the client may apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

(5) (a) Where a legal practitioner provides a bill of costs in accordance with section 152 to his or her client and the bill of costs or any part thereof remains unpaid on the expiry of a period of 30 days from the date on which the bill of costs was provided, the legal practitioner may apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

(b) Where a barrister has, in accordance with section 152(8), provided a bill of costs to a solicitor, and the bill of costs or any part thereof remains unpaid on the expiry of a period of 30 days from the date on which the bill of costs was provided, the solicitor concerned may, with the consent of the barrister, apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

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(c) An application to the Chief Legal Costs Adjudicator pursuant to paragraph (a) or (b) may not be made after the expiry of 12 months after the date on which the bill of costs concerned was provided to the client under section 152.

(6) Where the legal practitioner applies for adjudication pursuant to subsection (5), the legal practitioner shall indicate whether or not he or she is aware of any dispute regarding an item in the bill of costs and if so aware the matter to which the dispute relates.

(7) Subject to subsection (8), an application to the Chief Legal Costs Adjudicator by a client pursuant to subsection (4) may not be made after the expiry of 6 months after the date on which the bill of costs concerned was provided to the client under section 152, or 3 months from the date of payment of the bill of costs, whichever first occurs, so long as the bill of costs is in a form and manner consistent with—

(a) this Act, and

(b) any rules of court relating to the preparation and provision of bills of costs by a legal practitioner to a client.

(8) Where a bill of costs has been provided by a legal practitioner to his or her client and the legal practitioner has agreed to accept a lesser amount in discharge of the bill of costs which lesser amount is paid, neither the legal practitioner nor the client may make an application to the Chief Legal Costs Adjudicator for adjudication of the bill of costs under this section.

(9) A legal practitioner who has provided a bill of costs in accordance with section 152 to his or her client may apply ex parte to the High Court or to a Legal Costs Adjudicator for the abridgement of the period of 30 days referred to in subsection (5) and, where it appears that it is just to do so, the Court or the Legal Costs Adjudicator, as appropriate, may grant an abridgement of that period.

### *vii Rules of the Superior Courts (Costs) Rule, 2019*

In applying for an Adjudication as between legal practitioner and client the Superior Court Rules provide at Order 99 Rule 23 (4)

(4) Every notice of application for a legal practitioner and client adjudication shall be accompanied by:

(i) the bill of costs in the form prescribed by these Rules;

(ii) vouchers, invoices and/or receipts in respect of any disbursement which has not been agreed;

(iii) any other records on which an applicant legal practitioner relies in support of the costs claimed, separately indexed and paginated, and

(iv) where the applicant relies on time records in support of the costs claimed, those time records, separately indexed and paginated, showing —

I. each legal practitioner or other person concerned;

II. the hourly rate(s) applicable;

III. the date(s) on which the relevant work was undertaken and the 2015 Actual hours, or portions of hours, expended thereon;

IV. a total of the hours, or portions of hours, expended thereon, and

V. where any such time is estimated, a statement that such time has been estimated.

(v) a true copy of each notice provided by the legal practitioner concerned to the client in accordance with section 150 and/or agreement under section 151(1) of the 2015 Act;

(vi) a true copy of any statement in writing sent under section 153(1) of the 2015 Act;

(vii) a true copy of any opinion in writing sent under section 153(3) of the 2015 Act,

and

(viii) a true copy of any demand for payment.

(5) In the case of an application for legal practitioner and client adjudication, the applicant shall serve copies of the issued notice of application including the return date and the documents lodged therewith in the manner provided by these Rules on the client or, as the case may be, the legal practitioner concerned.

### *viii Order 99 Rule (27) provides*

27.(1) An index or schedule of the documents included in each brief shall be produced on adjudication if required by the Legal Costs Adjudicator.

(2) Subject to the direction of the Legal Costs Adjudicator, there shall be produced on adjudication the documents or portions of documents entered in evidence or produced at any hearing in respect of which a charge is claimed in the bill of costs.

(3) Accounts for disbursements charged in a bill of costs, together with all rulings, orders, reports and other important documents shall be produced on adjudication.

(4) Subject to the direction of the Legal Costs Adjudicator, there shall be produced on adjudication all drafts and other documents in respect of the preparation of which a charge is claimed in the bill of costs.

(5) Subject to the direction of the Legal Costs Adjudicator, there shall be produced or provided on adjudication the following details in respect of each witness in respect of whom expenses are claimed in a bill of costs:

(i) the person's name, address and occupation;

(ii) the place at which the person was subpoenaed;

(iii) the distance the person had to travel for the purpose of attending the trial;

(iv) the dates on which the person was required to attend at the trial;

(v) where applicable, the loss of income, duly certified, claimed by the person arising from the requirement to attend at trial;

(vi) the note of the evidence of such person as briefed to counsel for the trial.

### <sup>ix</sup> **Superior Courts (Costs) Rules 2019 – Some General Provisions**

Order 99 provides at Rule 24. (1) On the initial return date of the application for adjudication, or on any date to which that application is adjourned, the Legal Costs Adjudicator may, if he does not proceed to adjudicate the matters or items concerned in the bill of costs:

(i) give directions as to the service of notice of the adjudication on any other person;

(ii) give such further directions, if any, as he considers necessary as to the furnishing of further documents, records and vouchers to the Chief Legal Costs Adjudicator or to other parties to the adjudication;

(iii) give directions as to the delivery and filing of written submissions for the purposes of the adjudication;

(iv) give such further directions in exercise of the powers available under the 2015 Act and this Order as he considers convenient for the determination of the adjudication in a manner which is just, expeditious and likely to minimise the costs of the adjudication.

### <sup>x</sup> **Powers of Legal Costs Adjudicator**

**156.** (1) For the purposes of determining an application for adjudication of legal costs, a Legal Costs Adjudicator may—

(a) inspect documents relating to or relevant to the matter concerned, and

(b) where there is an oral hearing, summon and examine witnesses and administer oaths, and apply to the High Court for the enforcement of a summons.

(2) A Legal Costs Adjudicator may invite the parties to an adjudication to refer their dispute to mediation or another informal resolution process if he or she considers that to do so would be appropriate in all the circumstances, whether or not any of the parties have requested that the Legal Costs Adjudicator do so.

(3) If the parties agree to refer their dispute to mediation or other process referred to in *subsection (2)*, the Legal Costs Adjudicator shall adjourn the determination of the application and may give any other direction that he or she considers will facilitate the resolution of the dispute.

(4) An oral hearing held for the purposes of an adjudication shall be held in public unless, in the opinion of the Legal Costs Adjudicator, the hearing or part thereof ought, in the interests of justice, be held otherwise than in public.

(5) The Legal Costs Adjudicator may, with the consent of the parties, conduct an adjudication without an oral hearing where he or she is of the opinion that it is expedient and in the interests of justice to do so.

(6) The High Court, in an application referred to in *subsection (1)*, may make such order as to costs as it thinks fit in respect of the application.

### *<sup>xi</sup> Notice of the hearing and some general requirements*

25.(1) A notice of application for adjudication shall be issued and served so as to allow 14 clear days to elapse between the day of service and the initial return date. Under urgent circumstances (to be decided on by the Legal Costs Adjudicator) a notice of application for adjudication may, by leave of the Legal Costs Adjudicator, be issued returnable to an earlier date.

(2) It shall not be necessary to serve the opposing party with a copy of any document or item which accompanied the notice filed in the Office of the Legal Costs Adjudicators which has been previously served on or sent to the opposing party or which has been provided to the party effecting service by the opposing party.

(3) A notice of application for adjudication issued and served in respect of any bill of costs may be restricted so as to seek the adjudication of only one or more matters or items in the bill of costs. Any such notice of application for adjudication shall specify precisely the matters or items on which the Legal Costs Adjudicator is required to adjudicate and the matters or items which have been agreed between the parties or the legal practitioner and client, as the case may be. The Legal Costs Adjudicator shall, if satisfied that such notice has been issued and served and that not all of the matters or items in the bill of costs require to be adjudicated, adjudicate that part of the bill and the matters and items thereon in respect of which the notice has issued.

26.(1) Every bill of costs lodged for adjudication shall be indorsed with the name and registered place of business of any legal practitioner by or for whom it is so lodged. Where value added tax is claimed in a bill of costs the registered number allocated by the Revenue Commissioners to the person registered for value added tax must appear in a prominent place on every bill of costs, account or voucher, as appropriate, on which value added tax is claimed or chargeable.

## Guidelines on Functional Performance

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(2) Bills of costs and notices, the service of which is required, shall have the service as effected indorsed upon them in a manner sufficiently, though briefly, specifying the person served, the time, place and mode of service, and the person serving, and the documents so indorsed shall be produced on proving service.

(3) No addition or alteration shall be made in a bill of costs after it is lodged for adjudication except by permission or direction of the Legal Costs Adjudicator.

(4) No entry, initialling or marking in a bill of costs lodged shall be made, save by the Legal Costs Adjudicator, nor shall any erasures be allowed. Where this provision is infringed the Legal Costs Adjudicator may, subject to an appeal to the Court, disallow any matter or item in respect of which the infringement has taken place, or may report the matter to the Court.

(5) Subject to sub-rule (6), a bill of costs lodged for adjudication shall be in the Form No. 3 in Part V of Appendix W.

(6) Where an agreement has been made under section 151 of the 2015 Act by a legal practitioner and the legal practitioner's client, sub-rule (5) shall have application subject to sections 152(5) to (7) of the 2015 Act.

<sup>xii</sup> **Order 25 (3)** A notice of application for adjudication issued and served in respect of any bill of costs may be restricted so as to seek the adjudication of only one or more matters or items in the bill of costs. Any such notice of application for adjudication shall specify precisely the matters or items on which the Legal Costs Adjudicator is required to adjudicate and the matters or items which have been agreed between the parties or the legal practitioner and client, as the case may be. The Legal Costs Adjudicator shall, if satisfied that such notice has been issued and served and that not all of the matters or items in the bill of costs require to be adjudicated, adjudicate that part of the bill and the matters and items thereon in respect of which the notice has issued.

<sup>xiii</sup> **Agreement regarding legal costs, etc.**

**151.** (1) A legal practitioner and his or her client may make an agreement in writing concerning the amount, and the manner of payment, of all or part of the legal costs that are or may be payable by the client to the legal practitioner for legal services provided in relation to a matter.

(2) An agreement under *subsection (1)* may include all the particulars required by **section 150(4)** and if it does—

(a) the legal practitioner need not also provide a notice referred to in *subsection (2)* of that section,  
and

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(b) references to the notice under that section shall be taken to include references to the agreement.

(3) An agreement under *subsection (1)* shall constitute the entire agreement between the legal practitioner and the client as respects the provision of legal services in relation to the matter concerned, and no other amount shall be chargeable in relation to those legal services, except to the extent otherwise indicated in the agreement.

(4) An agreement under *subsection (1)* shall, in an adjudication under this Part, be amenable to adjudication by the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator.

It is a requirement of Order 99 Rule (6) that the requirement to have the bill of costs in accordance with Order 99 Rule 26(5) shall have application, subject to s.152(5) to (7) of the 2015 Act, which provides

(5) Where an agreement has been made under **section 151** by a legal practitioner and his or her client, that agreement shall be set out in, or annexed to, the bill of costs relating to the matter to which the agreement relates.

(6) Where an agreement referred to in *subsection (5)* concerns all of the legal costs that are payable by the client to the legal practitioner for legal services provided in relation to the matter concerned, an invoice prepared by the legal practitioner containing a summary of the costs and outlays pursuant to the agreement, together with a copy of the agreement, shall constitute a bill of costs of the purposes of this section.

(7) Where an agreement referred to in *subsection (5)* concerns a part of the legal costs that are payable by the client to the legal practitioner for legal services provided in relation to the matter concerned, a summary prepared by the legal practitioner of the costs and outlays pursuant to the agreement shall, as respects that part of the legal costs, satisfy the requirements of *paragraphs (a), (b) and (d) of subsection (2)*.

### ***xiv Order 99 Rule 25 (1) Superior Courts (Costs) Rules 2019***

Order 99 Rule 25. (1) A notice of application for adjudication shall be issued and served so as to allow 14 clear days to elapse between the day of service and the initial return date. Under urgent circumstances (to be decided on by the Legal Costs Adjudicator) a notice of application for adjudication may, by leave of the Legal Costs Adjudicator, be issued returnable to an earlier date.

### ***xv Legal practitioner to provide bill of costs***

**152.** (1) A legal practitioner shall, as soon as is practicable after concluding the provision of legal services in relation to a legal matter for a client, prepare and sign a bill of costs, which shall contain

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the particulars specified in this section and shall be in such form (if any) as may be specified in rules of court.

(2) Subject to *subsections (5) to (7)*, a bill of costs shall contain the following particulars:

- (a) a summary of legal services provided to the client in connection with the matter concerned;
- (b) an itemised statement of the amounts in respect of the legal costs in connection with the legal services;
- (c) the registration number of the legal practitioner for the purposes of value-added tax, and the amount of value-added tax chargeable in respect of the amounts referred to in *paragraph (b)*;
- (d) where time is a factor in the calculation of the legal costs concerned, the time spent in dealing with the matter;
- (e) the amount, where known to the legal practitioner, of any damages or other moneys that are recovered by, or payable to, the client and that arose from the matter in respect of which the legal services were provided;
- (f) the amount of any legal costs recovered by or payable to the legal practitioner concerned on behalf of the client, including costs recovered from another party, or an insurer on behalf of another party, to the matter concerned.

(3) The legal practitioner shall provide to the client, along with the bill of costs, an explanation in writing of the procedure available to the client should the client wish to dispute any aspect of the bill of costs, which shall contain the following information:

- (a) that the client may discuss the matter with the legal practitioner;
- (b) that the client is obliged under [section 153 \(1\)](#) to communicate to the legal practitioner the existence of a dispute on any aspect of the bill of costs, and the date and means by which this is to be communicated;
- (c) that, where a dispute is communicated under [section 153 \(1\)](#), the legal practitioner is obliged under [section 153](#) to attempt to resolve the dispute by informal means, including mediation;
- (d) that the client may have the dispute referred to mediation, including a reference to the procedures available for such mediation;
- (e) that the client may apply for adjudication of legal costs, including the contact information for the Office and the potential cost to the client of seeking an adjudication of a bill of costs; and

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- (f) the date on which the legal practitioner may, subject to [section 153](#), make an application under [section 154](#) (5) for an adjudication in the event that the bill of costs or any part thereof remains unpaid.
- (4) This section shall not be construed as limiting a right that any other person has to require a legal practitioner to submit a bill of costs for adjudication.
- (5) Where an agreement has been made under [section 151](#) by a legal practitioner and his or her client, that agreement shall be set out in, or annexed to, the bill of costs relating to the matter to which the agreement relates.
- (6) Where an agreement referred to in *subsection (5)* concerns all of the legal costs that are payable by the client to the legal practitioner for legal services provided in relation to the matter concerned, an invoice prepared by the legal practitioner containing a summary of the costs and outlays pursuant to the agreement, together with a copy of the agreement, shall constitute a bill of costs of the purposes of this section.
- (7) Where an agreement referred to in *subsection (5)* concerns a part of the legal costs that are payable by the client to the legal practitioner for legal services provided in relation to the matter concerned, a summary prepared by the legal practitioner of the costs and outlays pursuant to the agreement shall, as respects that part of the legal costs, satisfy the requirements of *paragraphs (a), (b) and (d) of subsection (2)*.
- (8) Where a practising solicitor, having received instructions from a client in relation to a matter, proceeds to instruct a practising barrister in relation to that matter, and the barrister has concluded providing legal services in relation to that matter—
- (a) an obligation on the barrister under this section to provide a bill of costs shall be fulfilled where the barrister provides the bill of costs concerned to the solicitor,
- (b) the solicitor concerned shall immediately on receipt of a bill of costs referred to in *paragraph (a)*, provide that bill of costs to the client. XX

### <sup>xvi</sup> **Legal practitioner to attempt to resolve dispute**

153. (1) Where a client disputes any aspect of a bill of costs, he or she shall, within 21 days of the bill of costs being provided to him or her under section 152, send the legal practitioner concerned a statement in writing setting out the nature of the dispute.

(2) Where a legal practitioner receives a statement in accordance with subsection (1), he or she shall, before making an application under section 154(5), take all appropriate and reasonable steps to attempt to resolve

the dispute by informal means, which may include, where appropriate and with the consent of the client, mediation.

(3) Where the legal practitioner or the client, as the case may be, having made reasonable attempts to resolve the dispute in accordance with subsection (2), is of the opinion that the attempt has failed, he or she shall inform the other party in writing of that opinion.

(4) In reckoning the period of time for the purposes of subsection (5) or (7) of section 154, the period beginning on the date on which the client sends the legal practitioner a statement under subsection (1) and ending on the date on which the legal practitioner or the client, as the case may be, informs the other party of his or her opinion referred to in subsection (3), shall be disregarded.

(5) Failure by a client to pay a bill of costs to a legal practitioner within the time period referred to in section 154(5) shall not be construed as a formal communication of the existence of a dispute by the client to the legal practitioner.

### *xvii* **Legal Practitioner and Client – S 154**

(5) (a) Where a legal practitioner provides a bill of costs in accordance with section 152 to his or her client and the bill of costs or any part thereof remains unpaid on the expiry of a period of 30 days from the date on which the bill of costs was provided, the legal practitioner may apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

(b) Where a barrister has, in accordance with section 152(8), provided a bill of costs to a solicitor, and the bill of costs or any part thereof remains unpaid on the expiry of a period of 30 days from the date on which the bill of costs was provided, the solicitor concerned may, with the consent of the barrister, apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

(c) An application to the Chief Legal Costs Adjudicator pursuant to paragraph (a) or (b) may not be made after the expiry of 12 months after the date on which the bill of costs concerned was provided to the client under section 152.

(6) Where the legal practitioner applies for adjudication pursuant to subsection (5), the legal practitioner shall indicate whether or not he or she is aware of any dispute regarding an item in the bill of costs and if so aware the matter to which the dispute relates.

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(7) Subject to subsection (8), an application to the Chief Legal Costs Adjudicator by a client pursuant to subsection (4) may not be made after the expiry of 6 months after the date on which the bill of costs concerned was provided to the client under section 152, or 3 months from the date of payment of the bill of costs, whichever first occurs, so long as the bill of costs is in a form and manner consistent with—

(a) this Act, and

(b) any rules of court relating to the preparation and provision of bills of costs by a legal practitioner to a client.

### *xviii* **Legal practitioner to attempt to resolve dispute**

153. (1) Where a client disputes any aspect of a bill of costs, he or she shall, within 21 days of the bill of costs being provided to him or her under section 152, send the legal practitioner concerned a statement in writing setting out the nature of the dispute.

(2) Where a legal practitioner receives a statement in accordance with subsection (1), he or she shall, before making an application under section 154(5), take all appropriate and reasonable steps to attempt to resolve the dispute by informal means, which may include, where appropriate and with the consent of the client, mediation.

(3) Where the legal practitioner or the client, as the case may be, having made reasonable attempts to resolve the dispute in accordance with subsection (2), is of the opinion that the attempt has failed, he or she shall inform the other party in writing of that opinion.

(4) In reckoning the period of time for the purposes of subsection (5) or (7) of section 154, the period beginning on the date on which the client sends the legal practitioner a statement under subsection (1) and ending on the date on which the legal practitioner or the client, as the case may be, informs the other party of his or her opinion referred to in subsection (3), shall be disregarded.

(5) Failure by a client to pay a bill of costs to a legal practitioner within the time period referred to in section 154(5) shall not be construed as a formal communication of the existence of a dispute by the client to the legal practitioner.

### *xix* **Costs of Adjudication**

#### **Order 99 Rule 13 (2)**

The costs and expenses of an adjudication shall, unless the Legal Costs Adjudicator, for special reason to be stated in his determination otherwise directs, follow the event.

### Lodgment and Tender Provisions

#### <sup>xx</sup> *Legal Services Regulation Act s.154(10)*

S.154 (10)

(e) a procedure whereby a party to an adjudication may, upon notice to another party —

(i) pay into court a sum of money, or

(ii) make an offer by way of tender to the other party,

in satisfaction of the costs of the other party that are the subject of the adjudication, and

(f) the respective liability of the parties referred to in *paragraph (e)* for the costs of the adjudication where the amount of a payment or offer referred to in that paragraph is equal to or greater than the amount of the costs concerned that, in the adjudication, are determined to be paid.

#### <sup>xxi</sup> *Legal Practitioner and Client - Reduction of a Bill of Costs by more than 15%*

### Effect of determination

158. (1) Subject to section 160, the determination of a Legal Costs Adjudicator is final and shall take effect 20 days after it is furnished under section 157(2) to the parties to the adjudication.

(2) Where an adjudication concerns only legal costs as between a legal practitioner and his or her client, and the Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid is less than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the party chargeable to those costs shall pay the costs of the adjudication.

(3) Where a Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid in respect of the legal costs referred to in subsection (2) is 15 per cent or more than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the legal practitioner who issued the bill of costs shall be responsible for the costs of the adjudication.

(4) Where subsection (3) applies, the Legal Costs Adjudicator may determine that the costs of the adjudication be set-off against the aggregate amount determined.

#### <sup>xxii</sup> *Procedures for Adjudication – Legal Services Regulation Act*

142. (1) After consulting with the Minister, the Minister for the Environment, Community and Local Government and any person or body that the Chief Legal Costs Adjudicator considers to be an appropriate person or body to be consulted for the purposes of this section, the Chief Legal Costs Adjudicator may from

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time to time prepare, for the guidance of Legal Costs Adjudicators, legal practitioners and the public, guidelines not inconsistent with this Act (including any regulations made under this Act) or Rules of Court indicating the manner in which the functions of the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators are to be performed.

(2) The Chief Legal Costs Adjudicator shall ensure that guidelines prepared by him or her under this section are published as soon as practicable after the guidelines have been prepared.

(3) Without prejudice to the generality of *subsection (1)*, guidelines under this section may—

(a) describe the procedures for the adjudication of legal costs under this Part,

(b) set out the documents and other information that are required by or under this Part to accompany an application for the adjudication of legal costs,

(c) describe the notices and other information that will be provided by the Legal Costs Adjudicator in relation to any such applications,

(d) identify the provisions of this Part and the Rules of Court relevant to an application, including those relating to the time limits within which the documentation and information referred to in *paragraph (b)* are to be provided,

(e) describe the procedures that are to be followed in the Office of the Legal Costs Adjudicators in relation to the adjudication of legal costs,

(f) provide guidance as to the circumstances in which a Legal Costs Adjudicator may exercise his or her powers under *subsection (4) or (5) of [section 156](#)*,

(g) set out the fees that are to be charged in the Office of the Legal Costs Adjudicators in respect of the services provided by it, and the manner in which those fees may be paid,

(h) provide such other information as appears to the Chief Legal Costs Adjudicator to be appropriate, having regard to the purposes of the guidelines referred to in *subsection (1)*.

### *xxiii Rules of the Superior Courts (Costs) 2019*

**Party and Party Adjudication – Or 99 Rule 23 (3)** Subject to rule 26, every notice of application for a party and party adjudication shall be accompanied by:

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- (i) the bill of costs in the form prescribed by these Rules;
- (ii) vouchers, invoices and/or receipts in respect of any disbursement which has not been agreed;
- (iii) any other records on which the applicant relies in support of the costs claimed, separately indexed and paginated; and
- (iv) where the applicant relies on time records in support of the costs claimed, those time records, separately indexed and paginated; showing –
  - I. each legal practitioner or other person concerned;
  - II. the hourly rate(s) applicable;
  - III. the date(s) on which the relevant work was undertaken and the 2015 Actual hours, or portions of hours, expended thereon;
  - IV. a total of the hours, or portions of hours, expended thereon, and
  - V. where any such time is estimated, a statement that such time has been estimated;
- (v) a true copy of the order of the Court, award of the arbitrator or other order or instrument by which the costs have been awarded or allowed, and
- (vi) in the case of a party and party adjudication applied for by the person the subject of the order to pay the costs, a certificate that the person has complied with section 154(2) of the 2015 Act.

### <sup>xxiv</sup> **Order 99 Rule 24(1) Superior Courts (Costs) Rules 2019**

Order 99 Rule 24.(1) On the initial return date of the application for adjudication, or on any date to which that application is adjourned, the Legal Costs Adjudicator may, if he does not proceed to adjudicate the matters or items concerned in the bill of costs:

- i. give directions as to the service of notice of the adjudication on any other person;
- ii. give such further directions, if any, as he considers necessary as to the furnishing of further documents, records and vouchers to the Chief Legal Cost Adjudicator or to other parties to the adjudication;
- iii. give directions as to the delivery and filing of written submissions for the purposes of the adjudication;

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- iv. give such further directions in exercise of the powers available under the 2015 Act and this Order as he considers convenient for the determination of the adjudication in a manner which is just, expeditious and likely to minimise the costs of the adjudication.

<sup>xxv</sup> **Legal Practitioner and Client and Party Adjudication – Order 99 Rule 23 (4)** Subject to rule 26

4) Every notice of application for a legal practitioner and client adjudication shall be accompanied by:

- (i) the bill of costs in the form prescribed by these Rules;
- (ii) vouchers, invoices and/or receipts in respect of any disbursement which has not been agreed;
- (iii) any other records on which an applicant legal practitioner relies in support of the costs claimed, separately indexed and paginated, and
- (iv) where the applicant relies on time records in support of the costs claimed, those time records, separately indexed and paginated, showing —
  - I. each legal practitioner or other person concerned;
  - II. the hourly rate(s) applicable;
  - III. the date(s) on which the relevant work was undertaken and the 2015 Actual hours, or portions of hours, expended thereon;
  - IV. a total of the hours, or portions of hours, expended thereon, and
  - V. where any such time is estimated, a statement that such time has been estimated.
- (v) a true copy of each notice provided by the legal practitioner concerned to the client in accordance with section 150 and/or agreement under section 151(1) of the 2015 Act;
- (vi) a true copy of any statement in writing sent under section 153(1) of the 2015 Act;
- (vii) a true copy of any opinion in writing sent under section 153(3) of the 2015 Act, and
- (viii) a true copy of any demand for payment.

(5) In the case of an application for legal practitioner and client adjudication, the applicant shall serve copies of the issued notice of application including the return date and the documents lodged therewith in the manner provided by these Rules on the client or, as the case may be, the legal practitioner concerned.

### <sup>xxvi</sup> *Matters to be ascertained in course of adjudication of costs*

155. (1) Schedule 1 on the principles relating to legal costs shall apply to the adjudication of a bill of costs by a Legal Costs Adjudicator.

(2) Where the Chief Legal Costs Adjudicator is adjudicating an application under this Part, a reference to a Legal Costs Adjudicator shall be construed as including the Chief Legal Costs Adjudicator.

(3) In determining an application for the adjudication of legal costs, the Legal Costs Adjudicator shall, to the extent which he or she considers it necessary to do so, consider and have regard to the entire case or matter to which the adjudication relates and the context in which the costs arise.

(4) In particular, the Legal Costs Adjudicator shall, as respects a matter or item the subject of the application—

(a) verify that the matter or item represents work that was actually done,

(b) determine whether or not in the circumstances it was appropriate that a charge be made for the work concerned or the disbursement concerned,

© determine what a fair and reasonable charge for that work or disbursement would be in the circumstances, and

(d) determine whether or not the costs relating to the matter or item concerned were reasonably incurred.

(5) In applying subsection (4) the Legal Costs Adjudicator shall, so far as reasonably practicable, ascertain, in relation to work (including work to which a disbursement relates)—

(a) the nature, extent and value of the work,

(b) who carried out the work, and

© the time taken to carry out the work.

(6) In the application of subsection (3) to an adjudication relating to a bill of costs as between a legal practitioner and his or her client, the Legal Costs Adjudicator shall have regard to an agreement (if any) between the legal practitioner and the client in relation to the matter concerned, made under section 151.

### xxvii **SCHEDULE 1**

#### Principles relating to Legal Costs

Sections 150 (4) and 155.

1. A Legal Costs Adjudicator shall apply the following principles in adjudicating on a bill of costs pursuant to an application pursuant to section 154:

- (a) that the costs have been reasonably incurred, and
- (b) that the costs are reasonable in amount.

2. In determining whether the costs are reasonable in amount a Legal Costs Adjudicator shall consider each of the following matters, where applicable:

- (a) the complexity and novelty of the issues involved in the legal work;
- (b) the skill or specialised knowledge relevant to the matter which the legal practitioner has applied to the matter;
- (c) the time and labour that the legal practitioner has reasonably expended on the matter;
- (d) the urgency attached to the matter by the client and whether this requires or required the legal practitioner to give priority to that matter over other matters;
- (e) the place and circumstances in which the matter was transacted;
- (f) the number, importance and complexity of the documents that the legal practitioner was required to draft, prepare or examine;
- (g) where money, property or an interest in property is involved, the amount of the money, or the value of the property or the interest in the property concerned;
- (h) whether or not there is an agreement to limit the liability of the legal practitioner pursuant to section 48;
- (i) whether or not the legal practitioner necessarily undertook research or investigative work and, if so, the timescale within which such work was required to be completed;
- (j) the use and costs of expert witnesses or other expertise engaged by the legal practitioner and whether such costs were necessary and reasonable.

### <sup>xxviii</sup> *Determination of applications*

**157.** (1) A Legal Costs Adjudicator, having considered an application in accordance with [section 155](#), shall, in accordance with this section, make a determination in respect of that application.

(2) A determination shall, as soon as practicable after it is made, be furnished to the parties to the adjudication.

(3) Subject to the other provisions of this section, and the principles relating to legal costs specified in *Schedule 1*, a Legal Costs Adjudicator shall confirm the charge in respect of an item of legal costs the subject of the application if, having regard to the matters that he or she considered and ascertained under [section 155](#), he or she considers that—

(a) charging in respect of the item is fair and reasonable in the circumstances, and

(b) the amount charged in the bill of costs in respect of that item is fair and reasonable in the circumstances.

(4) A Legal Costs Adjudicator shall, if he or she determines that it is fair and reasonable to charge an amount in respect of an item but that the amount of the charge in respect of the item is not fair and reasonable, determine a different amount to be charged in respect of that item.

(5) A Legal Costs Adjudicator shall not confirm an amount for a disbursement unless—

(a) there is a valid voucher or receipt in respect of the disbursement, or

(b) the parties have agreed, and the Legal Costs Adjudicator is satisfied, that such a voucher or receipt is not required.

(6) A Legal Costs Adjudicator shall not confirm a charge in respect of a matter or item if the matter or item is not included in a notice referred to in [section 150](#) or, as the case may be, is not the subject of an agreement referred to in [section 151](#), unless the Legal Costs Adjudicator is of the opinion that to disallow the matter or item would create an injustice between the parties.

(7) If a Legal Costs Adjudicator is of the opinion that a party to the application has neglected or refused to provide documents, and that the refusal or neglect would likely be prejudicial to the interests of one or more of the other parties, the Legal Costs Adjudicator shall, in order to minimise the prejudice to those interests—

(a) determine the application to the extent possible in the circumstances, and

(b) determine that only a nominal amount is to be payable to the party who has neglected or refused to provide the required documentation.

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(8) The Legal Costs Adjudicator, having made a determination, shall prepare a report under *subsection (9)*—

(a) where he or she considers it to be in the public interest, or

(b) upon request by any party to the adjudication, made not later than 14 days after the making of the determination.

(9) A report referred to in *subsection (8)* shall set out the matters or items the subject of the adjudication and a brief outline of the background to the provision of the legal services concerned and the principal issues relating to the context of the provision of those services and—

(a) specify the work involved relating to the matters or items the subject of the adjudication which was considered in reaching the determination,

(b) specify the various stages of the legal services and the stage of the legal process at which such work was carried out by reference to distinct aspects of the course of the work,

(c) set out a summary of the written or oral submissions made by or on behalf of the parties to the adjudication, and

(d) give reasons for his or her determination.

(10) A copy of any report under *subsection (8)* shall be furnished to any requesting party to the adjudication as soon as practicable after it has been prepared.

### <sup>xxix</sup> **Effect of determination**

**158.** (1) Subject to [section 160](#), the determination of a Legal Costs Adjudicator is final and shall take effect 20 days after it is furnished under [section 157\(2\)](#) to the parties to the adjudication.

(2) Where an adjudication concerns only legal costs as between a legal practitioner and his or her client, and the Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid is less than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the party chargeable to those costs shall pay the costs of the adjudication.

(3) Where a Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid in respect of the legal costs referred to in *subsection (2)* is 15 per cent or more than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the legal practitioner who issued the bill of costs shall be responsible for the costs of the adjudication.

(4) Where *subsection (3)* applies, the Legal Costs Adjudicator may determine that the costs of the adjudication be set-off against the aggregate amount determined.

On an Adjudication as between party and part, the costs of the Adjudication, being the stamp duty and court duty arising on the Adjudication are usually payable by the paying party. The Legal Costs Adjudicator however has a role in determining the costs of the Adjudication. In cases where the adjudication arises from a dispute between a Legal Practitioner and Client. In that regard, if a gross deduction of less than 15% is made the Client will pay the costs of the Adjudication. If, however a Bill of Costs is reduced by more than 15%, the Legal Practitioner will be responsible for the Clients costs of the Adjudication.

Order 99 Rule 29(1) of the Superior Court Rules provides

29.(1) The Legal Costs Adjudicator may allow a legal practitioner or legal costs accountant attending to oppose the adjudication of costs, otherwise than as between party and party, proper charges for his preparation and attendance.

### <sup>xxx</sup> **XII. Lodgment or tender in respect of costs**

57.(1) In any application for adjudication of costs initiated under this Order by a person in whose favour the order to pay costs has been made or by a legal practitioner, the person who is the subject of the order to pay costs or, as the case may be, the client, may within 21 days of the service upon him of the application, or at any later time by leave of a Legal Costs Adjudicator, upon notice to the party obliged to pay costs or, as the case may be, the legal practitioner concerned, pay into Court a sum of money in satisfaction of the claim for costs (in this Part, a “lodgment in satisfaction of costs”).

(2) Where a lodgment in satisfaction of costs is made, the notice of lodgment in satisfaction of costs shall specify the sum paid in in respect of each of the following (inclusive of Value Added Tax, where applicable): (i) the costs of any firm of solicitors; (ii) the costs of any barrister, and (iii) the total amount of disbursements or outlay (other than in respect of legal practitioners’ fees) claimed, and the total amount so paid in.

(3) A party obliged to pay costs or, as the case may be, a legal practitioner, upon whom a notice of lodgment in satisfaction of costs is served shall serve a copy of the notice of lodgment in satisfaction of costs on each legal practitioner for whose firm or for whom an amount for costs is specified in the notice of lodgment in satisfaction of costs.

(4) The notice of lodgment in satisfaction of costs shall be in the Form No. 5 in Part V of Appendix W, with any necessary modifications, and shall be filed in the Legal Costs Adjudicators’ Office but shall not be disclosed to the Legal Costs Adjudicator until the proceedings on the application for adjudication of costs have been finally determined.

58.(1) Where a lodgment in satisfaction of costs is made under rule 57 the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, may, within 14

days of the receipt of notice of lodgment in satisfaction of costs, or within such further period as may be agreed by the parties, accept the sum in satisfaction of the costs by giving notice to the party liable to pay the costs, in the Form No. 6 in Part V of Appendix W, with any necessary modifications; and thereupon he shall be entitled to receive payment of the accepted sum in satisfaction.

(2) Payment shall be made to the person in whose favour the order to pay costs has been made or on his written authority to his solicitor or, as the case may be, to the legal practitioner concerned, and thereupon proceedings on the adjudication or in respect of the adjudication of the costs shall be stayed.

59. If the money paid in is not taken out under rule 60, the said money shall not be paid out except in satisfaction of the costs in respect of which it was paid in and in pursuance of a certificate of the Legal Costs Adjudicator.

60. If the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, does not accept the sum so paid in but proceeds with the adjudication in respect of such costs and is not determined to be due more than the amount paid into Court, then the following provisions shall apply:

(1) If the amount paid into Court exceeds the amount determined to be due for costs to the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, the excess shall be repaid to the person who is the subject of the order to pay costs or, as the case may be, the client, and the balance shall be retained in Court.

(2) The person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner shall be entitled to the costs of the adjudication up to the time when such payment into Court was made.

(3) The person who is the subject of the order to pay costs or, as the case may be, the client, shall be entitled to the costs of the adjudication from the time such payment into Court was made.

(4) The costs mentioned at paragraphs (2) and (3) shall be set off against each other, and:

(i) if the balance is in favour of the person who is the subject of the order to pay costs or, as the case may be, the client, the amount thereof shall be satisfied pro tanto out of the money remaining in Court and, in so far as the money remaining in Court is not sufficient to satisfy the same, shall be recoverable from the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, or

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(ii) if the balance is in favour of the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, the amount thereof shall be recoverable from the person who is the subject of the order to pay costs or, as the case may be, the client.

(5) Any money remaining in Court after satisfying the balance (if any) due to the person who is the subject of the order to pay costs or, as the case may be, the client, for costs as aforesaid shall be paid out to the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner.

(6) If in any case the Legal Costs Adjudicator is of opinion that for the purposes of the preceding paragraphs of this rule it is not necessary to retain in Court the whole of the balance referred to in paragraph (1) he may direct the payment out to the person in whose favour the order to pay costs has been made or, as the case may be, the legal practitioner, of so much thereof as he deems proper.

61.(1) In this rule, “qualified party” has the same meaning as in Order 22, rule 14.

(2) Where a qualified party is entitled to make a lodgment in satisfaction of costs under rule 57, then such party may, in lieu of lodging any money in Court, make an offer of tender of payment in satisfaction of costs to the other party or parties to the cause or proceedings (in this rule, a “tender in satisfaction of costs”).

(3) Any tender in satisfaction of costs made under this rule shall be deemed to be a lodgment in satisfaction of costs and to have the same effect as a lodgment in satisfaction of costs and all of the provisions of rules 57 to 60 inclusive shall apply mutatis mutandis to such tender in satisfaction of costs as regards time for making and accepting same as they apply to a lodgment in satisfaction of costs.

(4) A tender in satisfaction of costs shall be made in accordance with the Form No. 5 in Part V of Appendix W, with the necessary modifications. Notice of acceptance of a tender in satisfaction of costs shall be in the Form No. 6 in Part V of Appendix W, with the necessary modifications, and the provisions of rule 58 shall apply thereto.

(5) Where a tender in satisfaction of costs has been accepted, the party having made the tender in satisfaction of costs thereupon being required to pay the sum specified, such sum specified shall be paid within four weeks of the date of receipt of notice of acceptance of same.

(6) Any qualified party who has made a tender in satisfaction of costs which has been accepted but who has failed to pay the sum specified in the said tender in satisfaction of costs within the time required shall continue to be liable to pay the sum specified together with interest thereon at the rate fixed for judgments of the Court for each month or portion of the month for which the said sum or any part thereof remains unpaid.”

### <sup>xxx</sup> **Reference to High Court**

**159.** (1) A Legal Costs Adjudicator may, whether or not at the request of a party to an application for adjudication of legal costs, refer a question of law arising in the application to the High Court for the opinion of that Court.

(2) Where, in the determination of an application, a question as to the enforceability of an agreement entered into under [section 151](#) arises, a Legal Costs Adjudicator shall refer the agreement to the High Court and the High Court shall decide if, and to what extent, the agreement is enforceable and—

(a) if it considers that the agreement is enforceable, it shall make the order that it considers appropriate to enforce the agreement, or

(b) if it considers that the agreement is not enforceable, it shall direct that the adjudication of the legal costs proceed as if no agreement had been entered into.

(3) If a question has been referred to the High Court under this section, a Legal Costs Adjudicator may not—

(a) make a determination to which the question is relevant while the reference is pending, or

(b) proceed in a manner, or make a determination, that is inconsistent with the opinion of the High Court on the question.

### <sup>xxxii</sup> **VII. Reference of question of law**

39. Any reference of a question of law to the Court under section 159(1) of the 2015 Act shall be by way of case stated in accordance with Order 62.

### <sup>xxxiii</sup> **Consideration by Legal Costs Adjudicator of determination**

**160.** (1) Where a party to an adjudication is dissatisfied with a decision of a Legal Costs Adjudicator under [section 157](#) to confirm a charge, not to confirm a charge or to determine a different amount to be charged in respect of a matter or item the subject of the adjudication, he or she may, within 14 days of the date on which the determination is furnished to him or her under [section 157\(2\)](#), apply to the Legal Costs Adjudicator for the consideration of the decision and the making of a determination under this section.

(2) An application under *subsection (1)* shall be—

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(a) in such form as may be specified in rules of court or, where applicable, and shall specify by a list in a short and concise form the matters or items, or parts thereof, to which the decision of the Legal Costs Adjudicator being objected to relates and the grounds and reasons for such objections, and

(b) made on notice to the other party to the adjudication.

(3) The Legal Costs Adjudicator shall, if he or she considers it appropriate to do so, and upon the application of the party entitled to the costs, issue an interim determination pending consideration of an application under *subsection (1)*, in respect of—

(a) the remainder of the matters or items in the determination to which no objection has been made, and

(b) such of the matters or items that are subject of the application as the Legal Costs Adjudicator considers reasonable.

(4) For the purposes of an application under *subsection (1)*, the Legal Costs Adjudicator shall reconsider and review his determination having regard to the matters or items specified under *subsection (2)(a)*, and [sections 155 to 158](#) shall apply in relation to such a consideration.

(5) The Legal Costs Adjudicator, having considered an application under this section may decide—

(a) not to vary his or her determination, or

(b) to make a new determination,

and the determination referred to in *paragraph (a)* or *(b)* shall, subject to [section 161](#), take effect immediately.

(6) The functions of a Legal Costs Adjudicator in relation to an application under this section shall, insofar as practicable, be performed by the Legal Costs Adjudicator who made the determination to which the application relates.

### <sup>xxxiv</sup> **Rules of the Superior Courts – Consideration – Order 99 Rule 37**

#### V. Consideration of adjudication

37.(1) Any party who is dissatisfied with the allowance or disallowance by the Legal Costs Adjudicator of the whole or part of any item (including any special allowance) may, within the time permitted by

section 160(1) of the 2015 Act, apply to the Legal Costs Adjudicator by notice in the Form No. 4 in Part V of Appendix W for consideration of the decision or decisions specified in the notice and for a determination under that section. The notice shall list in a concise form the matters or items, or parts thereof, to which the decision of the Legal Costs Adjudicator being objected to relates and the grounds and reasons for such objections. A copy of the notice shall be served on the other party to the adjudication not later than 14 days before the return date assigned for the hearing of the application.

(2) The Legal Costs Adjudicator shall, if he thinks fit, and on the application of the party entitled to the costs, issue pending the hearing of the application under section 160 of the 2015 Act an interim certificate of determination in accordance with section 160(3) of the 2015 Act. Such further certificate as may be necessary shall be issued by the Legal Costs Adjudicator after his decision on the application for consideration of the decision or decisions concerned.

(3) On such application the Legal Costs Adjudicator shall reconsider and review his determination in accordance with section 160(4) of the 2015 Act.

### <sup>xxxv</sup> **Review of determination of Legal Costs Adjudicator**

**161.** (1) A party to an adjudication who has made an application under [section 160](#) may, not later than 21 days after the date on which the Legal Costs Adjudicator has made his or her determination under [section 160](#)(5), apply to the High Court for a review of the determination concerned.

(2) A review under this section shall be made by motion on notice to all other parties to the adjudication and the Chief Legal Costs Adjudicator.

(3) The court shall hear and determine the review on the evidence that was tendered to the Legal Costs Adjudicator unless the court orders that other evidence be submitted.

(4) The court shall, having heard the review under *subsection (1)*—

(a) confirm the determination of the Legal Costs Adjudicator, or

(b) allow the review and—

(i) remit the matter to the Legal Costs Adjudicator to determine the adjudication in accordance with the decision of the court, or

(ii) substitute its own determination for that of the Legal Costs Adjudicator.

(5) The High Court shall allow a review under *subsection (4)(b)* only where it is satisfied that the Legal Costs Adjudicator has, in his or her determination, erred as to the amount of the allowance or disallowance so that the determination is unjust.

(6) In this section “court” means—

(a) if the adjudication the subject of the review is in relation to party and party costs, the court that heard the proceedings to which those costs relate, and

(b) in any other case, the High Court.

### *xxxvi Rules of the Superior Courts – Review to the Court – Order 99 Rule 38*

#### **VI. Review of determination of Legal Costs Adjudicator**

38.(1) An application to the Court under section 161(1) of the 2015 Act shall be made by motion on notice to the persons specified in section 161(2) of the 2015 Act. The notice of motion shall be filed in the Central Office and a copy thereof filed in the Office of the Legal Costs Adjudicators. The motion shall be heard and determined by the Court on the evidence brought in before the Legal Costs Adjudicator, and no further evidence shall be received on the hearing thereof, unless the Court otherwise directs.

(2) The party seeking a review of the determination shall produce for the Court duly certified copies of the original bill of costs, notice of application for further consideration and submissions in support of that application and any replying submissions and any other material documents.

(3) After the determination by the Court the matter shall, where necessary, be remitted to the Legal Costs Adjudicator to complete the adjudication in accordance with the decision of the Court and, where necessary, to issue a final certificate of determination.

(4) If the bill of costs or any part thereof is remitted to the Legal Costs Adjudicator for further adjudication, any party may upon such further adjudication apply for a consideration of the further adjudication and the provisions of this rule shall apply to such further adjudication as on the original adjudication.

### *xxxvii Privilege in respect of adjudications*

162. Proceedings and documents created or furnished to the parties to a legal costs adjudication are absolutely privileged except—

- (a) to the extent required for an appeal from the determination of a Legal Costs Adjudicator, and
- (b) in relation to a mediation or other procedure for the resolution of disputes as to the legal costs concerned.

### <sup>xxxviii</sup> **Register of determinations**

140. (1) The Chief Legal Costs Adjudicator shall ensure that a register of determinations is established and maintained in relation to applications for adjudication of legal costs under this Part.

(2) Subject to this section, the register of determinations shall contain the following particulars in relation to each application:

- (a) the date of the receipt by the Office of the application;
- (b) the names of the parties to the adjudication;
- (c) the date of receipt by the Office of the bill of costs and each other document in connection with the application, including, if the application arises from contentious business, the title of the proceedings and record number of the proceedings (if any);
- (d) the date on which the adjudication is assigned and, where the adjudication is assigned to a Legal Costs Adjudicator, the Legal Costs Adjudicator to whom the adjudication is assigned;
- (e) the outcome of determination made under section 157(1) and the dates on which it was made and on which the notice of it was furnished to the parties;
- (f) where a party applies under section 160 for a determination to be considered, the date on which the Legal Costs Adjudicator concerned makes his or her decision under section 160(5), the date on which notice of that decision is furnished to the parties and, where a new determination is made under section 160(5)(b), the outcome of that determination;
- (g) where a party applies under section 161 for a review of a determination made under section 160, the date on which the High Court determines that review, the outcome of the review and, where the High Court remits the matter under section 161(4)(b)(i), the determination of the Legal Costs Adjudicator to whom the matter is remitted;
- (h) the reasons for the determination, prepared by the Chief Legal Costs Adjudicator in accordance with subsection (3).

(3) Subject to subsections (4) to (7), the Chief Legal Costs Adjudicator shall prepare, and cause to be placed on the register of determinations, the reasons for a determination unless—

(a) the adjudication relates to an application for adjudication of legal costs as between the parties to proceedings which—

(i) were held otherwise than in public, or

(ii) if there had been a hearing, would have been held otherwise than in public,

(b) the adjudication relates to an application for adjudication of legal costs as between a legal practitioner and his or her client,

(c) the adjudication relates to an application for adjudication of legal costs as between the parties to proceedings where the proceedings have been settled prior to the conclusion of the hearing by a court of the proceedings, or

(d) the Chief Legal Costs Adjudicator considers, having obtained the views of the parties to the adjudication, that it would be contrary to public interest for that information to be published.

(4) For the purposes of subsection (3), the Chief Legal Costs Adjudicator need not publish the reasons for a determination where he or she is of the opinion that the adjudication concerned does not involve a matter of legal importance.

(5) Where paragraph (a), (b) or (c) of subsection (3) applies, notwithstanding that subsection and subsection (2), the Chief Legal Costs Adjudicator shall cause to be published the outcome of and the reasons for the determination, as well as the information referred to in paragraphs (b) and (c) of subsection (2), in such a manner that—

(a) where subsection (3)(a)(i) applies, information which is protected from disclosure by reason of those proceedings is not disclosed,

(b) where subsection (3)(a)(ii) applies, information is not disclosed which would have been protected from disclosure if the matter had been disposed of by proceedings which would have been held otherwise than in public, and

(c) where subsection (3)(b) applies, the client concerned may not be identified, whether by name, address, or economic activity.

(6) Where the adjudication concerned relates to legal costs as between parties to proceedings, or a legal practitioner and his or her client, the Chief Legal Costs Adjudicator shall ensure that the information referred to in subsection (2) is published in such a manner that commercially sensitive information relating to either party, or to the client, as the case may be, is not disclosed.

(7) A reference to a determination in subsection (2)(h) shall be construed, as the case may be, as a reference to—

(a) subject to paragraphs (b) and (c), a determination made under section 158(1),

(b) subject to paragraph (c), where a party applies under section 160 for a determination to be considered, and a new determination is made under section 160(5)(b), that determination, or

(c) where a party applies under section 161 for a review of a determination made under section 160, and the High Court remits the matter under section 161(4)(b)(i), the determination under that provision of the Legal Costs Adjudicator to whom the matter is remitted.

(8) The register of determinations shall be available for inspection without payment, during office hours by any person who applies to inspect it, and on a website of the Courts Service.

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