

Practice Direction 16: Costs Assessment Hearings

- 16.1 OVERVIEW:** Where one party is ordered to pay the costs of another party to proceedings, those parties may end up in dispute over whether the costs claimed were reasonable or necessary for the conduct of the appeal. A party may apply to the Tribunal for a costs assessment hearing (taxation of the bill of costs).
- 16.2 COSTS THAT CAN BE CLAIMED:** See Practice Direction 15.2
- 16.3 ATTEMPTS TO SETTLE COSTS DISPUTES:** Before applying for a costs assessment hearing, the parties are expected to attempt to produce an agreement as to costs payable. A party who is the subject of a costs order is entitled to request details of the costs incurred by the other party or parties – including details of the professional costs and disbursements incurred in the proceedings. If the parties are unable to reach agreement as to the final quantum of costs that should be paid, either party may apply to the Tribunal for an assessment of the bills of costs.
- 16.4 APPLICATION:** The parties should apply in writing to the Tribunal for a costs assessment hearing for any disputed costs – annexing a copy of the bills in their application. The application for a costs assessment hearing and the bills of costs are to be served upon the other party/parties to the costs order. The application needs to advise the party/parties served that they have 14 days to notify the Tribunal if they dispute the bills of costs and they are required to file submissions within that timeframe in accordance with Practice Direction 16.5. Evidence of service of the material needs to be filed with the Tribunal Registry.
- 16.5 NOTIFICATION OF DISPUTE:** A party served with an application for a costs assessment hearing is to notify the Tribunal within 14 days if they seek to dispute the bills of costs annexed to an application for a costs assessment hearing. That notification must identify the items which are disputed with brief submissions addressing the basis of the objection.
- 16.6 FAILURE TO NOTIFY THE TRIBUNAL OF DISPUTE:** If a party who has been served with an application for a costs assessment hearing fails to notify the Tribunal within 14 days of service that they dispute the bills of costs, the Tribunal may proceed to tax the bills without further notice to them. If a party requires additional time to respond to an application for a costs assessment hearing they must notify the Tribunal within the 14 day timeframe, making application for an extension of time.
- 16.7 PRE-COSTS ASSESSMENT CONFERENCE:** If a party seeks to dispute a costs assessment hearing application, the Tribunal may determine that a pre-costs assessment conference be convened before a full costs assessment hearing. A pre-costs assessment conference may be required to ensure all necessary material and information has been supplied to allow the Assessing Officer to hear and determine the dispute.

16.8 COSTS ASSESSMENT HEARING OR HEARING ON THE PAPERS: If no pre-costs assessment conference is required, the Tribunal will write to the parties either setting the matter down for a costs assessment hearing or directing the provision of submissions for a determination on the papers. The Assessing Officer may request the provision of specific information to address particular items on the bills of costs.

Whether a hearing is convened or the assessment is determined on the papers, each party will be afforded the opportunity to make submissions and a right of reply. The Assessing Officer may determine to reserve a determination on one or more items of a bill to issue a ruling in writing.

16.9 CERTIFICATE OF COSTS ASSESSMENT: Once all disputed items have been ruled upon, the Assessing Officer will issue a Certificate of Costs Assessment which confirms the final amount payable as a result of the Costs Assessment Hearing.

16.10 FORMAL ORDER OF COSTS: A party may apply to the Tribunal for the Tribunal to issue a formal order which consolidates a primary determination of the Tribunal for costs liability with the quantum determined by a Costs Assessment Officer.