

ROYAL COURT OF JERSEY
RC 09/01
TAXATION OF COSTS AWARDED ON THE STANDARD
BASIS IN CIVIL PROCEEDINGS

1.0 INTRODUCTION

- 1.1 This Practice Direction applies to the taxation of costs awarded by the Royal Court on the standard basis in civil proceedings. It is issued pursuant to Rule 12/14 of the Royal Court Rules 2004 and largely repeats the provisions of Practice Direction RC05/11 which is hereby revoked. For taxation of costs on the indemnity basis see Practice Direction RC 09/02 and for taxation by summary assessment in interlocutory applications see Practice Direction RC 09/03.

2.0 AMOUNT OF COSTS ON TAXATION: DETERMINATION OF THE TOTAL SUM FOR FACTOR 'A' AND THE FACTOR 'B' UPLIFT

- 2.1 The amount of costs to be allowed on taxation shall (subject to any Rule or Order of the Court fixing the costs to be allowed) be in the discretion of the Greffier.
- 2.2 In exercising his discretion with regard to the total sum for Factor 'A' and the Factor 'B' uplift, the Greffier shall have regard to all the relevant circumstances, and in particular to:
- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
 - (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or advocate;
 - (c) the number and importance of the documents (however brief) prepared or perused;
 - (d) the place and circumstances in which the business involved is transacted;
 - (e) the importance of the cause or matter to the client;
 - (f) where money or property is involved, its amount or value; and
 - (g) any other fees and allowances payable to the solicitor or advocate in respect of other items in the same cause or matter, but only where

work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

3.0 **SPECIFIED FORMAT FOR THE LAYOUT OF THE BILL OF COSTS**

The bill of costs shall be set out in either Form 1 or Form 2 attached hereto and consist of such items specified below as may be appropriate. Each such item (other than an item relating only to time spent in travelling and waiting) may include an allowance for general care and conduct having regard to such of the circumstances referred to in paragraph 2 above as may be relevant to that item.

3.1 Interlocutory Attendances:

- (a) (i) Attending the hearing of any summons or other application at Court, in chambers, the Judicial Greffe or elsewhere.
- (ii) Care and conduct.
- (b) Travelling and waiting.

3.2 Conferences

- (a) (i) Attending in conference.
- (ii) Care and conduct.
- (b) Travelling and waiting.

3.3 Attendance at Trial or Hearing

- (a) (i) Attending the trial or hearing of a cause or matter, or an appeal or to hear a deferred judgment.
- (ii) Care and conduct.
- (b) Travelling and waiting.

3.4 Preparation

Part A: The doing of any work which was reasonably done arising out of or incidental to the proceedings, including:-

- (i) The Client: taking instructions to sue, defend, counterclaim, petition, cross-petition, appeal or oppose etc., attending upon and corresponding with Client; taking and preparing proofs of evidence;
- (ii) Witnesses: interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court;
- (iii) Expert Evidence: obtaining and considering reports or advice from experts and plans, photographs and models; where appropriate arranging their attendance at Court;
- (iv) Inspections: inspecting any property or place material to the proceedings;
- (v) Searches and Enquiries: making searches at offices of public records and elsewhere for relevant documents; searches in the Company Records maintained by the Financial Services Commission and similar matters;
- (vi) Special Damages: obtaining details of special damages and making or obtaining any relevant calculations;
- (vii) Other Parties: attending upon and corresponding with other parties or their advocates or solicitors;
- (viii) Discovery: perusing, considering or collating documents for affidavit or list of documents; attending to inspect or produce for inspection any documents required to be produced or inspected by order of the Court; considering and collating documents in response to questionnaires for further disclosure;
- (ix) Documents: preparation and consideration of pleadings and affidavits;
- (x) Authorities: research, consideration and preparation of relevant cases, statutes, textbook extracts and others authorities;
- (xi) Court Bundle: preparation, photocopying, paginating and compiling court bundles or other documents;
- (xii) Hearing Preparation: consideration and preparation for trial or hearing;
- (xiii) Negotiations: work done in connection with negotiations with a view to settlement;

- (xiv) Interest: where relevant, the calculation of interest;
- (xv) Notices: preparation and service of miscellaneous notices, including notices to witnesses to attend court.

Part B: The general care and conduct of the proceedings.

Part C: Travelling and waiting time in connection with the above matters.

3.5 Taxation of Costs

- (a) (i) Preparing the bill, responding to notified objections or questions and, if applicable, preparing for and attending the taxation;
- (ii) Care and conduct;
- (b) Travelling and waiting.

3.6 Further information and detail on the content and layout of a bill of costs is contained in Appendix 'A' attached to this Practice Direction and should be referred to and considered in conjunction with this Practice Direction.

4.0 EFFECTIVE DATE

4.1 This Practice Direction comes into force on 1st February 2009.

APPENDIX `A' TO PRACTICE DIRECTION RC 09/01

TAXATION PRACTICE: NOTES FOR GUIDANCE

1.0 INTRODUCTION

- 1.1 This Taxation Practice shall apply to all taxation proceedings arising from an Order of the Court for costs made on or after 1st February, 2009.

It seeks to:-

- (a) assist by explaining what information to include in a bill of costs without resorting to prolixity;
- (b) identify costs that may or may not be allowed on taxation; and
- (c) assist in identifying what supporting documents should accompany the bill of costs.

- 1.2 Reference to a paragraph number in this Taxation Practice without further reference shall mean a paragraph number under Practice Direction RC 09/01.

- 1.3 Every chargeable item shown in the bill of costs should be represented in two parts, namely a direct cost component (**Factor `A'**) and a component for care and conduct (**Factor `B'**), unless some other method of charging is referred to or allowable. The direct cost component is intended to cover the salary and the appropriate share of the general overheads of each such person. The particular elements that are found to constitute the average direct costs of that category of average fee earner and the methodology employed therein shall be determined by the Superior Number of the Royal Court with the advice and assistance of a committee specially constituted for that purpose.

- 1.4 The second component, the allowance for care and conduct, is intended to reflect all the relevant circumstances of the case and in particular the matters set out in Practice Directions RC 09/01 and RC 05/12. It is also intended to reflect those imponderable factors, for example general supervision of subordinate staff, for which no direct time charge can be substantiated, and the element of commercial profit. Accordingly the allowances to be made for different items may, in the discretion of the taxing officer, be allowed at different rates. In particular it is anticipated that, save in unusual circumstances, the rate appropriate to paragraphs 3(1),(2) and (5) for care and conduct will be less than the rate appropriate to paragraphs 3(3) and (4) for general care and conduct. See paragraph 5 of this Taxation Practice for further information.

2.0 BILL OF COSTS FORMAT

- 2.1 A bill of costs submitted for taxation should be in either Form 1 or Form 2. The bill should commence with a headnote that mirrors the headnote of the pleadings. Pending or Sine die numbers should be shown, where applicable, and the names of the legal practices representing each party, who are parties entitled to be heard at these taxation proceedings, should also be included. This should be followed by the details of the receiving and paying parties and the Act of Court under which the bill of costs is drawn. The first entry under the headnote should contain a brief narrative setting out the factors on which the receiving party relies in support of care and conduct [Factor 'B'] claimed in his bill if that claimed is above the base Factor 'B' rates set out at paragraphs 5 of this Taxation Practice. All unusual or exceptional factors should be identified. If bill of costs, Form 2, is adopted, this statement in support of Factor B should be in greater detail and listed by area. The second entry under the headnote should set out the status of the fee-earners concerned and the expense rates [Factor 'A'] claimed for each. The third entry under the headnote should set out the care and conduct rates [Factor 'B'] claimed under paragraphs 3(1) to 3(5).
- 2.2 The bill should then set out in chronological order (with the date shown) all the relevant events that constitute a chargeable item and the amount claimed should be shown against it. Where any event has occasioned a disbursement, the amount claimed for that disbursement should be shown. All chargeable items and disbursements inserted within the bill should be numbered consecutively. This number should be set out in a separate column located on the far left hand side of the bill. Finally, every bill shall be signed by the Advocate or Jersey Solicitor submitting the bill prior to lodging for taxation. (Also add name in block capitals). The signature implies that the bill has been checked by an appropriately qualified person, the bill is complete, and accepts responsibility for the factual accuracy of the bill.
- 2.3 For bills of costs set out in Form 1, paragraphs 3(1), (2) and (3) should show separately the time engaged and the allowances claimed for care and conduct and for the time engaged in traveling and waiting. Also, paragraph 3(4), which comprises the general work of preparation, is to be placed after all the other items save only paragraph 3(5) which is to be the last item.
- 2.4 For bills of costs set out in Form 1, paragraph 3(4) should be divided into three parts:
- Part A In this part the work done and the amount claimed for it should be set out in separate sections as indicated in paragraph 3(4). Each section or sub-section should contain a breakdown of the work comprised in it and should have its separate sub-total. At the foot of the last of these sections there should be shown a total part A figure.

Part B The amount claimed for general care and conduct on the basis of the guidance given in these notes should be claimed as a separate monetary amount which should also be expressed as a percentage of the total part A figure. This part should include a statement identifying those factors in Practice Direction RC 09/01, paragraph 2 which are relied on in relation to the assessment of the claim for general care and conduct.

Part C In this part an amount should be claimed for time engaged in travelling and waiting without uplift in connection with the work comprised in part A only. Details should be given showing to which part of that work the claim or claims relate.

The section sub-totals and the totals of parts A, B and C figures referred to above should be shown in the narrative column of the bill. The aggregate of those figures should be shown in the costs column.

2.5 Bills of Costs set out in Form 2 should show separately (a) the time claimed; (b) the status of the fee earner; (c) the Factor B area, namely paragraph 3(1) to 3(5); and (d) the total cost; in that order.

2.6 Travelling time will be allowed in respect of each item at the full amount of the appropriate expense rate. Waiting time will be similarly allowed but neither travelling nor waiting time will attract any allowance for care and conduct.

3.0 **SPECIFIC MATTERS OF TAXATION**

3.1 Letters (including facsimile and e-mail) and telephone calls will in general be allowed on a unit basis of 6 minutes each, the charge being calculated by reference to the appropriate expense rate. The unit charge for letters will include perusing and considering the relevant letters in and no separate charge should be made for incoming letters. The Greffier may allow an actual time charge for letters of substance and for telephone calls which properly amount to an attendance, providing details of the work done are provided and the date and time taken has been recorded.

3.2 Properly kept and detailed contemporaneous time records are helpful in support of a bill provided they explain the nature of the work as well as recording the time involved. However, they cannot be accepted as conclusive evidence that the time recorded either has been spent or if spent, is "reasonably" chargeable. The absence of such records may disadvantage the party claiming costs.

3.3 Accounts should accompany the bill for all payments claimed (other than court fees or minor out of pocket disbursements) and should, when appropriate, be accompanied by details showing the work done, the time spent, by whom and

when, and the computation of the charge. Lawyers are also reminded that this should include details of all accounts, both sent and pending, to be paid by their client.

- 3.4 Bills of costs submitted by lawyers outside the jurisdiction (including Counsel) should include within the bill sufficient detail to enable the paying party to properly consider that claimed. In this regard, Counsel's fees should be broken down identifying the work undertaken and the corresponding cost. In appropriate cases the Greffier may request further information.
- 3.5 Where travelling expenses are claimed they should be shown as a disbursement and details supplied. Local travelling expenses will not be allowed.
- 3.6 The cost of postage, couriers, outgoing telephone calls, fax and telex messages is in general part of the lawyer's normal overhead expense, but the Greffier may in his discretion allow such a disbursement in unusual circumstances or where the cost is unusually heavy. In these circumstances the lawyer must show that this cost could not reasonably be supposed to have been taken into account when the expense rate was ascertained.
- 3.7 The making of copies of documents is part of the lawyer's normal overhead expense. The Greffier may in his discretion make an allowance for copying in unusual circumstances or when the documents copied are unusually numerous in relation to the nature of the case. Where this discretion is invoked the number of copies made, their purpose, and the charge claimed should be set out in the bill. If copies have been made out of the office the cost should be shown as a disbursement. If made in the office, a charge equivalent to the commercial cost should be claimed. A charge based on the time expended by a member of the lawyer's staff will not be allowed.
- 3.8 No details of the work done need be provided for item 3(5)(a) but on taxation the party entitled to the costs must justify the amount claimed. In general, the drawing of a bill of costs is not Advocate's work and should be delegated.

4.0 **DOCUMENTS IN SUPPORT**

- 4.1 Proceedings for the taxation of costs should commence by filing the requisite documents at the Judicial Greffe, as required by Rule 12/10.

In addition the following supporting documentation should be submitted at the same time:

- (a) Work done under "Preparation", item 3(4)(ix),(x),(xi) and (xii) (Form 1) or in the case of a bill of costs set out in form 2, should include within the bill the following information:
 - (i) the date when the work was done;
 - (ii) a description of the work;
 - (iii) the status of the fee earner who did the work; and
 - (iv) how long the work took;
- (b) If the receiving party is on legal aid, a copy of that certificate;
- (c) A copy of the indexes to Court bundles relied on by both sides. If an agreed bundle was submitted this should be noted;
- (d) Copies of accounts referred to under 3.3 above;
- (e) Copies of documents in support of disbursements referred to under 3.5 and 3.6 above;
- (f) If bills of costs by lawyers outside the jurisdiction are claimed, full documentation as required under 3.4 above;
- (g) Office time records referred to under 3.2 above;

4.2 In appropriate cases the Greffier may request that the receiving party submit their office files to assist with taxation. If this request is made, it is the responsibility of the Lawyer submitting the office files to ensure that everything necessary to justify the bill of costs is included. In particular, the lawyer may wish to specifically identify documents referred to in the bill of costs or on which he relies in support of the sum claimed for care and conduct. A simplified method would be acceptable, for example, by yellow tags or the like. The said files should be delivered to the Judicial Greffe within seven days after receiving notice of the same, unless in all the circumstances of the matter a longer time period has been allowed.

5.0 **FACTOR 'B' NOTES FOR GUIDANCE**

5.1 Practice Directions RC 09/01 and RC 05/12 set out the basis for the determination of factor 'B' in Civil and Criminal cases respectively.

In the exercise of his Judicial discretion the taxing officer should have regard to:

- all the circumstances of the case;
- those particular matters set out in RC 09/01 (for Civil bills) or RC 05/12, (for Criminal bills); and
- the representations of both sides on taxation, setting out their contentions in support of or in opposition to the factor 'B' claimed in the receiving party's bill of costs. This is an opportunity for all sides on taxation to set out in detail with supporting authorities their submission on factor 'B'.

5.2 The specified format for the layout of the bill of costs provides that the bill should contain up to 5 items, namely:

- Item 1: Interlocutory attendances
- Item 2: Conferences
- Item 3: Attendances at Trial or Hearing
- Item 4: Preparation
- Item 5: Taxation

Factor 'B' is determined for each item in the bill. See below for guidance.

5.3 Whilst factor 'B' is a new concept on taxation in this jurisdiction, it has nevertheless been successfully applied for many years in England. As this jurisdiction has adopted many of the principles and practices found under the English system of taxation, for example the layout of the bill of costs and the determination of factor 'B', decided case law on taxation matters under the English system may offer some assistance in identifying an appropriate factor 'B' for a particular set of facts in this jurisdiction. The actual factor 'B' allowable on taxation will, of course, flow from the exercise of judicial discretion on the facts of the particular case, as referred to above.

5.4 The following cases may assist the legal practitioner in arriving at an appropriate factor 'B':

(A) ITEM 1, 2 AND 5

Brush v Bower Cotton & Bower [1993] 4 ALL ER 741 QBD.

Guidance set down on the starting point by Brooke J:

"One should start with a norm of 35%."

This starting point of 35% refers to "run of the mill" or straightforward actions. As set out in **Johnson** below, this figure will increase above 35% so as to reflect all the circumstances of the case that take it out of the ordinary category. For example, in **Brush -v- Bower**, Brooke J, allowed 50% for one element of interlocutory work.

Many actions contain issues of specific or technical difficulty, the assessment of volumes of documents and consideration of issues of law. Whether a particular case is different in kind from the category of cases that can be termed straightforward will depend on the facts of each case, The party drawing the bill of costs should set out those matters in support when claiming above the starting point of 35%.

(B) ITEM 3

The separate functions of Counsel and Solicitor, found under the English system, do not apply in this jurisdiction. A Jersey Advocate has an all embracing role encompassing the work of both English Solicitor and Counsel. In recognition of this role and the additional responsibility thereof, for "Attendance at trial or Hearing", this is assessed on the same basis as item 4 below.

(C) ITEM 4

Johnson -v- Reed Corrugated Cases Ltd [1992] 1ALL ER 169. QBD

Guidance set down by Evans J. on the starting point for "run of the mill" cases and in what circumstances a higher factor 'B' may succeed on taxation. The particular case was a personal injury action but the dicta of the decision is not limited to such actions:

"I approach the assessment on the following basis. I am advised that the range for normal, i.e. non-exceptional, cases starts at 50%, which the registrar regarded, rightly in my view, as an appropriate figure for "run of the mill" cases. The figure increases above 50% so as to reflect a number of possible factors - including the complexity of the case, any particular need for special attention to be paid to it and any additional responsibilities which the solicitor may have undertaken toward the client, and others, depending on the circumstances - but only a small percentage of accident cases results in an allowance over 70%. To justify a figure of 100% or even one closely approaching 100% there must be some factor or combination of factors which mean that the case approaches the exceptional. A figure above 100% would seem to be appropriate only when the individual case, or cases of the particular kind, can properly be regarded as

exceptional, and such cases will be rare. I am aware that the figures cannot be precise, but equally in my view the need for consistency and fairness means that some limits, however elastic, should be recognised.

On the particular facts of this case Evans J allowed 75%.

*In **Johnson**, the Plaintiff had claimed 150%, the defendant contended that 60% was appropriate, and at first instance on taxation the registrar had allowed 90%. In conclusion of matters Evans J said that:*

"this litigation is not above mid-scale in the degree of complexity and difficulty, being neither straightforward, on the one hand, nor as burdensome as many cases, particularly heavy 'test' cases, sometimes are."

Brush -v- Bower Cotton & Bower [1993] 4 ALL ER 741. QBD

Brooke J, expanding on the statement of Mr. Justice Evans in **Johnson** above, said:

"I certainly accept that, as one gets higher and higher above 75%, more and more it should be said that a case should be approaching the exceptional".

RE a company K1989 (C No. 4081) 26th July, 1993. Unreported

A commercial case in the Chancery Division concerning an action and counterclaim seeking relief against Trustees. Indemnity costs were awarded. 60% Factor B was claimed. The decision in **Johnson** above suggests an uplift starting at 50% as being appropriate for ordinary cases.

Lindsay J upheld the 60% claimed and said:

"until 14th March, 1991, this case required less attention than would have "an ordinary case". The trustees needed to collect no evidence. They had no case to prove or disapprove. They had to make discovery but there was nothing exceptional about that. On the other hand, the sheer bulk of the documents, 80 files as it became, would have introduced its own difficulties and anxieties."

Lindsay J noted that he had a little doubt about the unreasonableness of the uplift claimed, but as this was an award of indemnity costs those doubts were resolved in favour of the paying party.

(D) GENERAL NOTES ON COMMERCIAL CASES

Commercial actions, by their very nature, may involve large sums of money, the assessment of vast volumes of documents and the consideration of complex facts. In these and other circumstances, a factor 'B' in excess of the starting point may be claimed and allowed on taxation for commercial actions. The actual allowable factor 'B' must, of course, depend on the particular facts of the case on taxation.

Example of Form 1 - [PDF version](#) [Excel version](#)

Example of Form 2 - [PDF version](#) [Excel version](#)