Costs Orders in Financial Remedies

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[A] General Rule or Clean Sheet?

1. **GENERAL RULE (NO ORDER PRINCIPLE)**

This applies "…in relation to financial remedy proceedings" (FPR 28.3(1), term defined at FPR PD 28A § 4.1):

a) "…the **general rule** in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party"[1] (FPR 28.3(5)), unless warranted by the other party's conduct (FPR 28.3(6)), taking into account the checklist of factors at FPR 28.3(7):

> **(7)** In deciding what order (if any) to make under paragraph (6), the court must have regard to –
> (a) any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant;
> (b) any open offer to settle made by a party;
> (c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
> (d) the manner in which a party has pursued or responded to the application or a particular allegation or issue;
> (e) any other aspect of a party's conduct in relation to proceedings which the court considers relevant; and
> (f) the financial effect on the parties of any costs order.

b) Only open offers are admissible (FPR 28.3(8), FPR PD 28A § 4.3) save at FDR (FPR 9.17(4)). Accordingly, *Calderbank* offers are ineffective since there can be no 'without prejudice save as to costs' where the 'general rule' applies (although watch this space);

[1] As to the 'general practice' of making no order for costs absent unreasonable conduct, see Lord Phillips in *Re T (Children) (Care Proceedings: Costs) (CAFCASS and another intervening)* [2012] 1 WLR 2281 at [44]: "…the general practice of not awarding costs against a party, including a local authority, in the absence of reprehensible behaviour or an unreasonable stance, is one that accords with the ends of justice…"

c) The terms of an open offer are a relevant factor for conduct (FPR 28.3(7)(b)). Following amendments to PD28A effective on 25 May 2019, PD 28A § 4.4 now provides that:

> "…the court… will generally conclude that to refuse to negotiate reasonably and responsibly will amount to conduct in respect of which the court will consider making an order for costs. This includes in a 'needs' case where the applicant litigates unreasonably resulting in the cost incurred by each party becoming disproportionate to the award…"

2. CLEAN SHEET (CPR 44 MODIFIED BY FPR 28.2)

"In connection with" financial remedy proceedings (FPR 28.2). FPR PD28A § 4.7 provides that:

> "…where rule 28.3 does not apply, the exercise of the court's discretion as to costs is governed by the relevant provisions of the CPR and in particular rule 44.2 (excluding 44.2(2) and (3))…"

a) Accordingly the 'civil' general rule that the unsuccessful party normally pays the successful party's costs is disapplied (CPR 44.2(2)(b). In its place, the family court operates a '**clean sheet**', although query if this is an accurate description of what actually happens in practice (see below);

b) The main provision to note (that do apply) are contained at 44.2(4) and 44.2(5), i.e.

> **(4)** In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including—
> (a) the conduct of all the parties;
> (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
> (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.
>
> **(5)** The conduct of the parties includes—
> (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
> (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

> (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
> (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

c) Note the difference between the checklists at CPR 44.2(4-5) and FDR 28.3(7): the 'civil' rules make no allowance for the financial effect of any costs order on the paying party. (Although many judges would take that into account as part of the court's discretion with the 'clean sheet').

d) In proceedings that come under the 'clean sheet', *Calderbank* offers are admissible. They are only inadmissible under FPR 28.3 by virtue of the specific provision at FPR 28.3(5).

[B] So, which rules apply to which hearings?

Hearing		**Why? / Notes**
ANCILLARY RELIEF[2]		
a) First Appointment	General Rule	General order will be costs in the application. Where a party is in default, causing the First Appointment to be ineffective/ adjourned, in addition to the factors at FPR 28.3(7), bear in mind FPR 9.15(6) requires the court to have "…particular regard to the extent to which each party has complied with the requirement to send documents with the financial statement and the explanation given…"
b) Hearing to consider Part 25 application to appoint expert	General Rule	What about a discrete hearing to consider a contested Part 25 application to instruct an expert? No authority directly on point, but general rule would seem to apply. If the point is argued out

[2] The term 'ancillary relief' is used here rather than 'financial remedies', which is an umbrella term which includes claims such as Schedule 1 (see FPR 2.1) which do not come under the costs rules 'relating to financial remedy proceedings" (FPR 28.3). The correct term, according to the FPR, for an ancillary relief application is now an application for 'financial orders', which is rarely if ever used. In any event, per Mostyn J, the term 'ancillary relief' is still acceptable (see *AB v CB* [2015] 2 FLR 25 at [1])

		at a First Appointment, one would not expect a costs order to be made. If the other side resists and an application is successful, a costs order is still possible – but against presumption of no order with Calderbank inadmissible.
c) Maintenance pending suit/ legal services	**Clean Sheet**	FPR 28.3(4)(b)(i) expressly disapplies MPS/ LSPO applications. Accordingly, *Calderbank* offers are admissible (hence, invariably send one, especially when on the defending side). In most LSPO applications, the costs of the application are normally accounted for in the sum sought, hence separate costs order unusual as it would involve double-counting.
d) Interim orders, e.g. freezing order, interim injunctions, declarations etc.	**Clean Sheet**	FPR 28.3(4)(b)(i) expressly disapplies "any other form of interim order for the purposes of rule 9.7(1)(a), (b), (c) and (e)" from the 'general rule' FPR 9.7(1)(a), (b) and (c) cover different forms of interim maintenance application. FPR 9.7(1)(e) refers to 'any other form of interim order', i.e. as set out at FPR 20, notably at 20.2(f) a freezing injunction. Save that, the normal order at a without notice freezing application hearing is costs reserved (see template attached to *L v K* [2014] Fam 35)
e) Section 37 applications	**Clean Sheet**	Logically, same rule applies to S. 37 as would apply to a freezing order. See *Solomon v Solomon* [2013] EWCA Civ 1095, per Ryder LJ at [19]-[25]
f) FDR	General Rule	An *ineffective* FDR may lead to a costs order, e.g. where failure to disclose or directions not complied with, e.g. applying FPR 28.3(7)(a); Editors of *Family Court Practice* (2019) suggest that it is possible at a costs order could be made after an effective FDR (no authority given, see p.1460) – presumably where one party failing to use best endeavours to reach agreement (9.17(6)) - but very difficult, if not impossible, in practice. How to assess 'best endeavours' as relevant conduct? Would this involve a failure to respond to an indication?

		How would a judgment be framed, to describe how confidential negotiations have progressed?
g) Final hearing	General Rule	See above as to the revised PD 28A § 4.4 in relation to open offers.
VARIATION APPLICATIONS	General Rule*	General rules applies: FPR 28.3(4)(b) includes 'financial orders' which is defined to include a 'variation order': FPR 2.3 *PD 28A § 4.4 directs that a consideration of the overriding objective "…may be of particular significance" in a variation case. (Query what precisely that is supposed to mean in practice)
APPEALS	**Clean Sheet**	"…an appeal is in my judgment *in connection with* and not *in* financial remedy proceedings and therefore is not subject to FPR 28.3(5)… it starts with a clean sheet" *H v W (No. 2)* [2015] 2 FLR 161 at [21] *Calderbank* offers are admissible in an appeal, relating to the costs of the appeal: *WD v HD* [2017] 1 FLR 160 at [69]
SET ASIDE APPLICATIONS	**Clean Sheet**	FPR 28.3(9) expressly disapplies the general rule in set aside applications (i.e. under FPR 9.9A) Also see *Judge v Judge* [2009] 1 FLR 1287, per Wilson LJ [**51**] .. her application for an order setting those orders aside was not itself an application for ancillary relief, as defined in r 1.2(1) of the Rules of 1991. So, although the proceedings before the judge were *in connection with* ancillary relief, they were not *for* ancillary relief… [**53**] there was no 'general rule' in either direction for the judge to apply to his decision. He had before him a clean sheet; but by reference to the facts of the case, and in particular, the wife's responsibility for the generation of the costs of a failed application, he remained perfectly entitled to record upon it, as

		he did, that he would start from the position that the husband was entitled to his costs.
'SHOW CAUSE' APPLICATIONS	**Clean Sheet**	*T v T* [2013] EWHC B3 (Fam), per Parker J at [**67**] "… I take the view that these proceedings are not financial remedy proceedings of the normal nature to which the no order as to costs rule would apply. These are discrete proceedings. The rationale behind the principle that there is no order for costs usually in financial remedy proceedings is that each party has an interest in determining how the matrimonial assets should be divided or allocated, and each is usually in a position to meet costs out of his/her allotted share.
INTERVENOR CLAIMS/ TRUSTEES	**Clean Sheet**	In practice, and bearing in mind the nature of an intervenor's position, the court's approach to costs of an intervener claim is practically indistinguishable from the civil starting point of costs following the event. *Baker v Rowe* [2010] 1 FLR 761, per Ward LJ at [35]: "…The orders might well have been made *in* ancillary relief proceedings but they were not orders *for* nor even *in connection with* ancillary relief. The rule must be construed purposively as my Lord explained in *Judge v Judge* [2008] EWCA Civ 1458, [2009] 1 FLR 1287 and in his judgment above. Proceedings between interveners do not come within the ambit of the rule. The judge making the costs order has, therefore, a wide discretion". Hence, in *A v A (No. 2) (Ancillary Relief: Costs)* [2008] 1 FLR 1428 W was responsible for a proportion of the trustee's costs where she had failed to establish her sham case.
PART III **CIVIL PARTNERSHIP FINANCIAL RELIEF (CPA 2004 SCH 7)**	General Rule	These claims are expressly included at FPR 28.3(4)(b) *Ditto*

FIVE YEARS SEPARATION (SECTION 10(2))		*Ditto*
SCHEDULE 1 CA 1989	**Clean Sheet**	*KS v ND (Schedule 1: Appeal: Costs)* [2013] 2 FLR 698 per Mostyn J [**17**] Schedule 1 Children Act 1989 proceedings have, since 6 April 2011, been excepted - along with certain other proceedings (of which the most prominent is maintenance pending suit) - from the "general rule of no order as to costs principle" introduced for almost all family financial proceedings with effect from 3 April 2006 by the insertion of rule 2.71 into the then Family Proceedings Rules 1991 (and which now is found in FPR 2010 rule 28.3). [**18**] These, and the other specified proceedings, have thus been restored to the position in which all family financial proceedings were before 3 April 2006. Then, the position was that the general rule in RSC Ord 62 rule 3(5) of costs following the event was formally disapplied, but by virtue of the decision of the Court of Appeal in *Gojkovic v Gojkovic (No. 2)* [1991] 2 FLR 233, [1992] 1 All ER 267 an equivalent, but perhaps less unbending, principle should prima facie apply, at least to ancillary relief proceedings between husband and wife. For a recent case in which costs were ordered (against the Applicant for her litigation misconduct in pursuing an entirely 'misconceived' application): see *PK v BC (Financial Remedies: Schedule 1)* [2012] 2 FLR 1426

[C] The clean sheet

3. An expression that often creates confusion is the 'clean sheet'. What does this actually mean? Does it mean complete untrammelled discretion? To what extent should one party's 'success' be taken into account on a clean sheet?

4. In practice, there are several authorities which point to the 'clean sheet' in fact being interpreted as a "'soft' costs-follows-the-event regime"[3] (italics added):

a) *Gojkovic (No. 2)* [1991] 2 FLR 233, per Butler-Sloss LJ

> "…However, in the Family Division there still remains the necessity for some starting-point. *That starting-point, in my judgment, is that costs prima facie follow the event* (see Cumming-Bruce LJ in *Singer v Sharegin* [1984] FLR 114 at p. 119), but may be displaced much more easily than, and in circumstances which would not apply, in other Divisions of the High Court."

b) *Judge v Judge* [2009] 1 FLR 1287, per Wilson LJ

> **[53]** Thus there was no 'general rule' in either direction for the judge to apply to his decision. He had before him a clean sheet; but by reference to the facts of the case, and in particular, the wife's responsibility for the generation of the costs of a failed application, he remained perfectly entitled to record upon it, as he did, that *he would start from the position that the husband was entitled to his costs.*

c) Baker v Rowe, [2010] 1 FLR 761, per Ward LJ

> [**35**] … In the result, costs do not follow the event. The judge making the costs order has, therefore, a wide discretion. *He could not properly ignore the fact that one side had won and the other had lost but that is not determinative nor even his starting point. It is simply a fact to weigh but in the circumstances of this case it is a fact of overwhelming weight.*

d) *KS v ND (Schedule 1: Appeal Costs)* [2014] 2 FLR 689 per Mostyn J

> [**21**] … It is certainly correct that by virtue of CPR 44.3(4) (which is applied to these proceedings by FPR 2010 rule 28.2(1)) the court has to consider the conduct of the parties; whether a party has been successful in whole or in part; and any admissible offers made by the parties (which, as I have pointed out, include Calderbank offers). *These would be the first things to write on the clean sheet.*

e) See Singer J in *Joy v Joy-Morancho (No 3)* [2015] EWHC 2507 at [201] as to the difficulty in reconciling the approach taken to the 'clean sheet' by Ryder LJ in *Solomon* [2013] EWCA Civ 1095 (who emphasised a starting point of costs following the event) and Ward LJ in *Baker v Rowe* (who emphasised discretion) – although, as Singer J

[3] Se 'Financial Remedies Practice' (2019) § 28.14

commented, this could only be taken so far since *Solomon*, as an application for permission to appeal, is not citable authority[4]

[D] Practical steps in applying for costs/ defending an application

5. Summary or detailed assessment?

The general rule is that costs should be summarily assessed at the conclusion of a hearing that has not lasted more than *one day* (CPR PD 44 §9.2(b)) unless there is a good reason not to do so.

But where the court orders a detailed assessment, per CPR 44.2(8), "Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so."

Hence, where a court cannot conduct a summary assessment (see below as to 24 hour rule), it can still make an order for a payment on account.

6. Do you have to give notice?

Where a party intends to seek a costs order, parties should "…ordinarily make this plain in open correspondence or in skeleton arguments before the date of the hearing" (FPR PD28A § 4.5)

7. What should you serve 24 hours in advance?

Where seeking a summary assessment, serve Form N260, or a document setting out all of the information required by CPR PD44 §9.5, which provides that each party who intends to claim costs must prepare a written statement in the form of a schedule showing the number of hours claimed, hourly rate, grade of fee earner etc.

[4] Practice Direction (Citation of Authorities) [2001] 1 WLR 1001, § 6.2, aka why everyone was wrong to cite *Wright v Wright* [2015] EWCA Civ 201 (also, a non-citable application for permission for appeal which did not purport to set out any new principle of law) about the 'end of the meal ticket for life'

The 24 hour rule is set out at CPR PD44 § 9.5(4)(b) which provides that the costs schedule "must be served on any party against whom an order for payment of those costs is intended to be sought as soon as possible and in any event… not less than 24 hours before the time fixed for the hearing".

8. What happens if you fail to serve in time?

A failure to serve 24 hours in advance "…will be taken into account by the court in deciding what order to make about the costs of the claim, hearing or application and about the costs of any further hearing or detailed assessment hearing that may be necessary as a result of that failure" (CPR PD44A 9.6).

So, does that mean a court should make a costs order and leave the quantum to a detailed assessment (putting over the issue of the successful party's default)? Not necessarily. The *White Book* provides the following guidance (italics added);

> "… *Where the only factor against awarding costs was merely the failure to serve a statement of costs without aggravating factors a party should not be deprived of all their costs*. The court would take the matter into account but its reaction should be proportionate. *The court should ask itself what if any prejudice there had been to the paying party and how that prejudice should be dealt with, e.g. by allowing a short adjournment or adjourning the summary assessment to another date, or directing detailed assessment*: *MacDonald v Taree Holdings Ltd, The Times,* 28 December 2000, Neuberger J. *The court may mark the failure to serve a statement by disallowing some of the costs that would otherwise have been allowed*: *Simpson v MGN* [2015] EWHC 126 (QB)(Warby J)."

Also see the fascinating[5] case of *Devon CC v Celtic Bioenergy Ltd* [2014] EWHC 309, where the point was taken that a costs schedule was served 18 minutes late – unsuccessfully, per Stuart Smith J at [11]

> "…Accordingly, while taking Devon's failure into account as directed by paragraph 9.6, I also take into account Celtic's conduct, the substantive irrelevance of the failure, and the complete absence of any disadvantage to Celtic. In the circumstances of this case I decline to make any deduction from the costs that would otherwise be ordered to be paid by Celtic in respect of Devon's injunction application on 20 December 2013

[5] i.e. not fascinating. But an interesting insight into civil procedure in the period between *Mitchell v News Group Newspapers* [2013] EWCA Civ 1537 and the restoration of sanity by the CA in *Denton Decadent and Utilise* [2014] EWCA Civ 906

[**E**] Two paragraphs about 'wasted costs'

9. 'Wasted costs' is a term of art. It refers to orders against legal representatives who have acted "improperly, unreasonably or negligently". An application for wasted costs falls outside the FPR or CPR and is governed by statute, i.e. Section 51(6) of the Senior Courts Act 1981 (see CPR PD 46 § 5), as interpreted in the leading cases of *Ridehaalgh v Horsefield* [1994] 2 FLR 194, and *Medcalf v Mardell* [2003] 1 AC 120.

10. As a matter of law, threats in correspondence (or in counsel's skeleton argument) to seeking 'wasted costs' against the other party are completely meaningless. 'Wasted costs' is not the same as 'seeking costs for a wasted hearing'.

[**F**] Standard and indemnity costs

11. Standard basis:

Where a costs order is made, it is normally on the 'standard' basis. CPR r.44.3(2) provides where costs are to be assessed on the standard basis, the Court will only allow costs which are *proportionate* to the matters in issue; and resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

12. Proportionality can bite on a standard assessment. See *K v K (Appeal: Excessive Costs)* [2016] 4 WLR 143 where MacDonald J summarily assessed a father's claim for costs for £38,813 down to £3,737.50 (c. 10%) to reflect the proportionality principle.

13. Indemnity basis:

CPR r.44.3(3) provides where costs are to be assessed on the indemnity basis the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. There is no automatic proportionality requirement. However costs which are

"unreasonable in amount" (CPR 44.4(1)(b)(ii)) can be disallowed: see *Timokhina v Timokhin* [2019] EWCA Civ 1284.

14. In what circumstances can you get indemnity costs? The principles were considered by Coulson J in *Elvanite Full Circle Ltd v AMEC Earth & Environmental (UK) Ltd* [2013] EWHC 1643 (TCC), [2013] 4 Costs LR 612:

> [**16**] The principles relating to indemnity costs are rather better known. They can be summarised as follows:
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> (a) Indemnity costs are appropriate only where the conduct of a paying party is unreasonable "to a high degree. 'Unreasonable' in this context does not mean merely wrong or misguided in hindsight": see Simon Brown LJ (as he then was) in *Kiam v MGN Ltd [2002] 1 WLR 2810* .
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> (b) The court must therefore decide whether there is something in the conduct of the action, or the circumstances of the case in general, which takes it out of the norm in a way which justifies an order for indemnity costs: see Waller LJ in *Excelsior Commercial and Industrial Holdings Ltd v Salisbury Hammer Aspden and Johnson [2002] EWCA Civ 879* .
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> (c) The pursuit of a weak claim will not usually, on its own, justify an order for indemnity costs, provided that the claim was at least arguable. But the pursuit of a hopeless claim (or a claim which the party pursuing it should have realised was hopeless) may well lead to such an order: see, for example, *Wates Construction Ltd v HGP Greentree Alchurch Evans Ltd [2006] BLR 45* .
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> (d) If a claimant casts its claim disproportionately wide, and requires the defendant to meet such a claim, there was no injustice in denying the claimant the benefit of an assessment on a proportionate basis given that, in such circumstances, the claimant had forfeited its rights to the benefit of the doubt on reasonableness: see Digicel (St Lucia) Ltd v Cable and Wireless plc [2010] EWHC 888 (Ch); [2010] 5 Costs LR 709 .

[G] Other practical points

15. How do *Calderbank* offers actually work?

    a) A *Calderbank* offer[6] ('without prejudice save as to costs') is without prejudice as to the offering party's right to continue to litigate, on the basis that it will be admissible to the court at the conclusion of the litigation on the issue of costs;

[6] *Calderbank v Calderbank* [1976] Fam 93

b) The '*Calderbank* rule' was summarised by Butler-Sloss LJ in *Gojkovic (No. 2)* [1991] 2 FLR 233 at 236, and p. 238 (italics added):

> "…If the application is contested and the applicant succeeds, in practice in the divorce registries around the country where most ancillary relief applications are tried, if there is money available and no special factors, the applicant spouse is prima facie entitled to, and likely to obtain, an order for costs against the respondent. The behaviour of one party, such as in material non-disclosure of documents, will be a material factor in the exercise of the court's discretion in making a decision as to who pays the costs. "
>
> "…*There are certain preconditions. Both parties must make full and frank disclosure of all relevant assets, and put their cards on the table. Thereafter, the respondent to an application must make a serious offer worthy of consideration. If he does so, then it is incumbent on the applicant to accept or reject the offer and, if the latter, to make her/his position clear and indicate in figures what she/he is asking for (a counter-offer). It is incumbent on both parties to negotiate if possible and at least to make the attempt to settle the case.* This can be done either by open offers or by *Calderbank* offers, both adopted by the husband in this case. It is a matter for the parties which procedure they prefer. *There is a very wide discretion in the court in awarding costs,* and as Ormrod LJ said in *McDonnell* (above at p. 38, the *Calderbank* offer should influence, but not govern, the exercise of discretion. There are many reasons which may affect the court in considering costs, such as culpability in the conduct of the litigation; for instance (as I have already indicated earlier) material non-disclosure of documents. Delay or excessive zeal in seeking disclosure are other examples. The absence of an offer or of a counter-offer may well be reflected in costs, or an offer made too late to be effective. The need to use all the available money to house the spouse and children of the family may also affect the exercise of the court's discretion. It would, however, be inappropriate, and indeed unhelpful, to seek to enumerate, and possibly be thought to constrain in any way, that wide exercise of discretion. But the starting-point in a case where there has been an offer is that, prima facie, if the applicant receives no more or less than the offer made, she/he is at risk not only of not being awarded costs, but also of paying the costs of the other party after communication of the offer and a reasonable time to consider it…"

c) *Calderbank* offers live on in civil litigation as a more flexible alternative to CPR Pt 36 offers, not governed by those strict and detailed provisions. (Hence they are often popular for family lawyers acting in TOLATA or Inheritance Act claims.) A *Calderbank* offer can be <u>influential</u> on the court's approach to costs, but does not have the automatic costs consequences of not accepting a Part 36 offer etc. (cf. *Butcher v Wolfe* [1999] 1 FLR 334 per Mummery LJ at 339, quoting

McDonnell v McDonnell [1977] 1 WLR 34, 38: "A Calderbank offer should influence but not govern the exercise of this discretion";

d) As anyone who practiced in family law pre-2006 may recall, Calderbank offers certainly create a sense of climax at the end of a hearing – but in practice it is unusual to entirely beat all aspects of a *Calderbank* offer: what often happened was that a lump sum or property adjustment offer is beaten but the maintenance provisions are not.

16. What if an order is silent as to costs?

CPR 44.10(1) provides that "Where the court makes an order which does not mention costs – (a) subject to paragraphs (2) and (3), the general rule is that no party is entitled – (i) to costs"

17. Issue based costs orders

See *GS v L (No 2) (Financial Remedies: Costs)* [2013] 1 FLR 407, per Eleanor King J (as she then was) who conducted a comprehensive survey of issue-based costs awards in civil cases.

18. How should a costs order feature on schedule of assets?

What happens when the court makes a costs order at an interim stage – how should this feature in a subsequent schedule of assets?

> 'Where an order for costs is made at an interim stage the court will not usually allow any resulting liability to be reckoned as a debt in the computation of the assets' (FPR 28A § 4.4)

[H] Summary

19. Take home points:

(a) The line between the costs 'relating to' financial remedy application (general rule) and costs arising 'in connection with' financial remedy application (clean sheet) is not always obvious, but is critical to determine where costs are at issue;

(b) The general rule/ presumption of no order is a self-evident concept. The clean sheet is not. In practice it generally means a soft costs following the event regime (with added discretion);

(c) In terms of seeking a summary assessment, missing the 24 hour deadline to serve a costs schedule is not necessarily fatal;

(d) Where the court orders a detailed assessment, seek a payment on account;

(e) Repeat after me: "I will not threaten wasted costs against the other side's client"

(f) The difference between standard and indemnity basis can be significant, and an application for indemnity costs requires careful preparation in order to surmount the high threshold;

(g) If you get a costs order at a hearing, this liability should not appear in the schedule of assets, thereby effectively negating half of the value.

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