

**PROTOCOL RELATING TO COSTS AND COSTS CAPPING  
IN PROBATE PROCEEDINGS (21 JULY 2025)**

**GENERAL PARAMETERS**

1. NOTE that it is the intention of the Court that, unless otherwise ordered by a Judge or a Registrar:
  - a. this Protocol applies to all proceedings in the Probate List concerning an application for probate or administration or an interlocutory or ancillary application, in respect of a deceased estate.
  - b. orders 5, 6, and 7 of this Protocol will operate if, and only if, an order is made (by a Judge or a Registrar) for the filing of a Costs Disclosure Statement pursuant to order 5 of the Protocol.
2. ORDER that, unless the Court (whether constituted by a Judge or a Registrar) otherwise orders, each party to proceedings in the Probate List is under a continuing obligation from the commencement of the proceedings, to inform the Court (in writing) if the net value of an estate the subject of the proceedings is less than \$1.5 million.
3. NOTE that:
  - a. as soon as may be practicable in proceedings in the Probate List concerning an estate with a net value of less than \$1.5 million, the court may make a maximum costs order pursuant to the Uniform Civil Procedure Rules 2005, rule 42.4.
  - b. the Court reserves for consideration, at any time during the course or at the conclusion of all proceedings in the Probate List, whether any (and, if so, what) limitations should be imposed upon the recovery of costs:
    - i. by one party to the proceedings against another party;
    - ii. out of the estate of the deceased;
    - iii. as between lawyer and client;
    - iv. where a party has retained a lawyer on a conditional costs agreement providing for an uplift in the event of a successful outcome.
4. NOTE that:
  - a. no person should expect to have an unqualified entitlement to an order for costs, either out of an estate or otherwise.

- b. all parties are on notice, from the outset of these proceedings, that the Court may, on the application of a party or on its own motion, limit the recovery of costs in order:
  - i. to ensure, so far as may be practicable, that no more costs are incurred or recoverable (on any account) than is fair and reasonable in all the circumstances of the particular case.
  - ii. to preserve the particular estate from an excessive costs burden.
- c. a costs capping order, if made, operates as a limit on recoverable costs, not an encouragement or authority to incur costs of the magnitude of the cap.
- d. an application for a costs capping order may be made by any party or other interested person (by a notice of motion returnable before the Probate Registrar) at his, her or its own risk as to costs.
- e. an application for revocation or variation of a costs capping order may be made informally but must be made on reasonable notice to affected parties and is made at each party's own risk as to costs.
- f. a contested application for a costs order, or for revocation or variation of a costs capping order, may not attract an order for costs and, if it does, may not attract an order other than an order for the payment of costs in a specified sum.
- g. a costs capping order may be made at any time but, in the ordinary course, may not be made until the parties have had a reasonable opportunity to file a "Costs Disclosure Statement" and a "Disclosure Statement".

## **STANDARD ORDERS IN PREPARATION FOR COSTS CAPPING**

5. ORDER, subject to further order, that each party to these proceedings, no later than \_\_\_\_\_, file and serve a "Costs Disclosure Statement" comprising:
- a. a written estimate of:
    - i. the amount of solicitors' costs, counsel's fees and disbursements incurred in these proceedings to date.
    - ii. both the gross and net value of the estate of the deceased (and, so far as may be known, the principal assets of the estate).
    - iii. the amount of solicitors' costs, counsel's fees and disbursements for the preparation and completion of:

- A. a mediation (if any) in the event that all interested parties have been joined in the proceedings or duly served with notice of the proceedings;
    - B. a final hearing, with an estimated duration of 3 days (or whatever may be the anticipated duration of a final hearing).
  - b. a written disclosure of whether a solicitor or counsel has been retained on the basis of a retainer in the nature of a conditional costs agreement.
  - c. in a case in which an executor is a solicitor, disclosure of whether he or she reserves a right to claim commission or costs.
  - d. a written recommendation as to whether one or more costs capping orders should be made (and, if so, the nature and amounts of any such orders) or not (and, if not, why not).
6. (If verified disclosure statements have not been earlier filed) ORDER that each party, no later than \_\_\_\_\_, file and serve a verified "Disclosure Statement" of the kind described in paragraph 19 of Practice Note SC Eq 7.
7. RESERVE for consideration in chambers or (as the Court may determine) a directions hearing:
- a. whether any (and, if so, what) costs capping orders should be made pursuant to UCPR rule 42.4;
  - b. what, if any, directions should be given in relation to the capping of costs; and
  - c. whether a direction should be given that a beneficiary (or other person interested in an estate) be given notice of an application relating to the making, revocation or variation of a costs capping order or of a costs capping order as made, revoked or varied.

## **STANDARD COSTS CAPPING ORDERS**

8. ORDER, subject to further order, that the maximum professional legal costs and disbursements that any party may recover from any other party in these proceedings is specified as \$\_\_\_\_\_.
9. ORDER that an executor, administrator or other representative of the estate of the deceased who may claim an indemnity from the estate for professional legal costs and

disbursements reasonably and properly incurred may not enforce that claim beyond the sum of \$\_\_\_\_\_ without the leave of the Court, upon showing cause to the Court why any greater sum should be allowed.