

33.3 In particular, in making any order as to costs, the Court may take account of any reasonable settlement offers made by either party.

33.4 Where the Court has incurred the costs of an expert or assessor, or other costs in relation to the proceedings, it may make such order in relation to the payment of those costs as it thinks fit.

33.5 In the event that the Court makes an order for the payment by one party to another of costs to be assessed if not agreed, and the parties are unable to reach agreement as to the appropriate assessment, the necessary assessment will be made by the Registrar, subject to review, if necessary, by the Judge.

4. This Practice Direction supplements article 33 by setting out in more detail, as derived from the Court’s case law, the principles applicable to costs assessment and allocation, including factors influencing the Court’s discretion, exceptional circumstances, and the role of submissions in ensuring equitable and just cost allocations. It should not hereafter generally be necessary to refer to the case law.

Reasonableness and assessment criteria

General principle

5. In order for a party to recover costs awarded by the Court, they must be **reasonable**. For costs to be considered reasonable, they must be both reasonably incurred and reasonable in amount. Any costs that fail to meet these criteria are not recoverable.

Factors to consider

6. When determining whether costs are reasonable, the following non-exhaustive list of factors will be considered:
 - i. Proportionality.
 - ii. The conduct of the parties (both before and during the proceedings).
 - iii. Efforts made to try and resolve the dispute without recourse to litigation (for example through alternative dispute resolution).

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- iv. Subject to rules as to privilege, whether any reasonable settlement offers were made and rejected.
- v. The extent to which the party seeking to recover costs has been successful.

Proportionality assessment

- 7. When making the proportionality assessment, which involves evaluating whether the costs incurred are proportionate to the complexity and significance of the case, the following factors, while not exhaustive, are likely to be relevant:
 - i. In monetary or property claims, the amount or value involved.
 - ii. The importance of the matter(s) raised to the parties.
 - iii. The complexity of the matter(s).
 - iv. The difficulty or novelty of any particular point(s) raised.
 - v. The time spent on the case.
 - vi. The manner in which work on the case was undertaken.
 - vii. The appropriate use of resources by the parties including, where appropriate, the use of available information and communications technology.
- 8. As noted, the Court will have regard to the sum in issue. It is particularly important that in claims assigned to the Small Claims Track, the principle of proportionality is considered by the parties at every stage of the proceedings.
- 9. Where costs are awarded on the indemnity basis, the proportionality limb does not apply.



