

## SCHEDULE 1

### **The Rules of the Supreme Court (Northern Ireland) 1980** COURT OF APPEAL ETC.

## ORDER 62

### COSTS

#### ASSESSMENT OF COSTS

#### **Costs payable to one party by another or out of a fund**

27.—(1) This rule applies to costs which by or under these Rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative) and shall have effect subject to rule 28.

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

(3) Subject to paragraph (6) the Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be taxed on the common fund basis.

(4) On a taxation on the common fund basis, being a more generous basis than that provided for by paragraph (2), there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and paragraph (2) shall not apply; and accordingly in all cases where costs are to be taxed on the common fund basis the ordinary rules applicable on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

(5) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if:—

- (a) the costs are to be paid out of a fund, or
- (b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be taxed as if that person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be, and where the Court so orders or directs rule 33(2) shall have effect in relation to the taxation in substitution for paragraph (2) of this rule.

(6) Paragraph (3) shall riot apply to any proceeding for the recovery of a penalty.

[E.r. 28]

#### **Costs of a litigant in person**

28.—(1) On a taxation of the costs of a litigant in person there may, subject to the provisions of this rule, be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on the litigant's behalf.

(2) The amount allowed in respect of any item shall be such sum as the Taxing Master thinks fit not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the

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Taxing Master would have been allowed in respect of that item if the litigant had been represented by a solicitor.

(3) Where in the opinion of the Taxing Master the litigant has not suffered any pecuniary loss in doing any work to which the costs relate, he shall not be allowed in respect of the time reasonably spent by him on the work more than £2 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his own case shall not be entitled to a witness allowance in addition.

(5) Nothing in Order 6, rule 2(b), or rule 34(4) or Appendix 3 to this Order shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising solicitor.

[E.r. 28A]

### **Limitations on the amount of costs recoverable where proceedings could have been brought in the county court**

29.—(1) This rule applies to costs which by or under these Rules are to be taxed in accordance with the provisions of rule 27(2).

(2) Subject to the provisions of any statutory provision and save in cases within Order 14 or rule 34(5), in any proceedings which were commenced in the High Court but which, having regard to the subject matter thereof, to the amount recovered or relief awarded, could have been brought in the county court the plaintiff shall not be entitled to any more costs than those which he could have recovered if the proceedings had been brought in the county court unless the parties otherwise agree or, by reason of the question of law or issues of fact involved or the extent of the right to property affected or the full amount of the claim or other circumstances, the judge shall otherwise direct.

(3) In cases to which paragraph (2) applies where the full amount of the claim exceeds the amount which could have been claimed in proceedings brought in the county court, the plaintiff shall, unless the judge otherwise directs, and without prejudice to any direction under paragraph (2), be entitled to recover one-half of his costs.

(4) For the purposes of paragraph (2) the full amount of the claim shall be deemed to be the amount quantified by the Court for which judgment could have been entered if the Court had not made any deduction in respect of the claimant's own fault.

(5) Where a plaintiff is entitled to costs on a county court scale only, the Taxing Master shall have the same discretion to allow any item of costs as the judge of the county court would have had if the action had been brought in that court.

(6) The provisions of this rule shall not apply where any defendant has successfully opposed the remittal of the proceedings to the county court which was sought or concurred in by the plaintiff.

### **Further limitations on the amount of costs recoverable**

30.—(1) Where in pursuance of any direction by the Court draft documents are settled by any counsel appointed by the Court the costs of having those draft documents prepared or subsequently settled by other counsel on behalf of the same parties for whom such draft documents are settled by the counsel appointed by the Court shall not be allowed.

(2) In any action for libel where the jury shall give damages under £2 the plaintiff shall not be entitled to more costs than damages.

(3) Unless the Court otherwise directs the plaintiff who brings more than one action upon a negotiable instrument shall not be entitled to recover more than one half of his costs in such second or subsequent action.

(4) In any action for words spoken under the Slander of Women Act 1891(1) a plaintiff shall not recover more costs than damages unless the Court shall certify that there was reasonable ground for bringing the action.

(5) Paragraph (1) shall only apply to taxations pursuant to rule 27(2) and (4).

(6) Paragraphs (2), (3) and (4) of this rule shall only apply to taxations pursuant to rule 27(2).

#### **Costs payable to a solicitor by his own client**

31.—(1) On the taxation of a solicitor's bill to his own client (except a bill to be paid out of the legal aid fund under the Legal Aid and Advice Act (Northern Ireland) 1965(2), or a bill with respect to non-contentious business) all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(2) For the purposes of paragraph (1), all costs incurred with the express or implied approval of the client shall, subject to paragraph (3), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(3) For the purposes of paragraph (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs in a case to which rule 27(Z) applies shall, unless the solicitor expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

(4) In paragraphs (2) and (3) the references to the client shall be construed—

- (a) if the client was at the material time incapable by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(3) of managing and administering his property and affairs and represented by a person acting as guardian ad litem or next friend, as references to that person acting, where necessary, with the authority of the authority having jurisdiction under that Act;
- (b) if the client was at the material time an infant and represented by a person acting as guardian ad litem or next friend, as references to that person.

[E.r. 29]

#### **Costs payable to solicitor where money recovered by or on behalf of minor, etc.**

32.—(1) This rule applies to—

- (a) any proceedings in which money is claimed or recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person who is a minor or incapable, by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961 of managing or administering his property and affairs or in which money paid into court is accepted by or on behalf of such a person, and
- (b) any proceedings under the Fatal Accidents (Northern Ireland) Order 1977(4) in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the widow of the person whose death gave rise to the proceedings in satisfaction of a claim under the said Order or in which money paid into court is accepted by her on her behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjusted or ordered or agreed to be paid, or accepted, is a minor, and

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(1) 1891 c. 51

(2) 1965 c. 8 (N.I.)

(3) 1961 c. 15 (N.I.)

(4) S.I. 1977 No. 1251 (N.I. 18)

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(c) any proceedings in the Court of Appeal on an application or appeal made in connection with any proceedings to which this rule applies by virtue of the foregoing provisions of this paragraph.

(2) Unless the Court otherwise directs the costs payable to his solicitor by any plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b), being the costs of those proceedings or incidental to the claim therein or consequent thereon, shall be taxed under rule 31; and no costs shall be payable to the solicitor or any plaintiff in respect of those proceedings except such amount of costs as may be certified in accordance with this rule on the taxation under rule 31 of the solicitor's bill to that plaintiff.

(3) On the taxation under rule 31 of a solicitor's bill to any plaintiff in any proceedings to which this rule applies by virtue of paragraph 1(a) or (b) who is his own client, the Taxing Master shall also tax any costs payable to that plaintiff in those proceedings and shall certify—

- (a) the amount allowed on the taxation under rule 31, the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings and the amount (if any) by which the first-mentioned amount exceeds the other, and
- (b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who is a minor or incapable, by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961, of managing and administering his property and affairs or the widow of the person whose death gave rise to the proceedings and any other party.

(4) Paragraphs (2) and (3) shall apply in relation to any proceedings to which this rule applies by virtue Of paragraph (1)(c) as if for references to a plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings which gave rise to the first-mentioned proceedings.

(5) Nothing in the foregoing provisions of this rule shall prejudice a solicitor's lien for costs.

(6) Where in any proceedings to which this rule applies directions given by the Court under Order 80, rule 10, provide for the transfer or payment of money to or into county court for the payment to the solicitor of any plaintiff in the proceedings of an amount in respect of costs out of the money so transferred or paid, the Taxing Master shall send a copy of his certificate to the county court.

(7) Nothing in this rule shall prejudice the power of the Court to order the payment of a specified gross sum for costs as part of the terms upon which the settlement of the claim is approved.

(8) The foregoing provisions of this rule shall apply in relation to—

- (a) a counterclaim by or on behalf of a person who is a minor or incapable, by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961; of managing and administering his property and affairs and a counterclaim consisting of or including a claim under the Fatal Accidents (Northern Ireland) Order 1977 by or on behalf of the widow of the person whose death gave rise to the claim, and
- (b) a claim made by or on behalf of a person who is an infant or incapable as aforesaid ill an action by any other person for relief under section 504 of the Merchant Shipping Act 1894(5); and a claim consisting of or including a claim under the Fatal Accidents (Northern Ireland) Order 1977 made by or on behalf of that widow in such an action;

as if for references to a plaintiff there were substituted references to a defendant.

[E.r. 30]

**Costs payable to a trustee out of the trust fund, etc.**

33.—(1) This rule applies to every taxation of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.

(2) On any taxation to which this rule applies, no costs shall be disallowed except in so far, as those costs or any part of their amount should not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

[E.r. 31]

**Scales of costs**

34.—(1) Subject to the foregoing rules and the following provisions of this rule, the scale of costs contained in Appendix 2 to this Order, together with the notes and general provisions contained in that Appendix, shall apply to the taxation of all costs incurred in relation to contentious business done on or after 1st January 1981.

(2) On a taxation in relation to which rule 31 or rule 33(2) has effect and in other special cases costs may at the discretion of the Taxing Master be allowed—

- (a) in relation to items not mentioned in the said scale; or
- (b) of an amount higher than that prescribed by the said scale.

(3) Where the amount of a solicitor's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated (in the absence of agreement to the contrary) by any general orders for the time being in force under the Solicitors (Northern Ireland) Order 1976, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scales contained in Appendix 2 to this Order.

(4) Notwithstanding paragraph (1), costs shall, unless the Court otherwise orders, be allowed in the cases to which Appendix 3 to this Order applies in accordance with the provisions of that Appendix.

[E.r. 32]