
STATUTORY INSTRUMENTS

1989 No. 339

The Civil Legal Aid (General) Regulations 1989

PART VIII

AUTHORITY TO INCUR COSTS

Instructing counsel

59.—(1) Where it appears to an assisted person's solicitor that the proper conduct of the proceedings so requires, he may instruct counsel; but, unless authority has been given in the certificate or by the Area Director,—

- (a) counsel shall not be instructed in authorised summary proceedings; and
- (b) a Queen's Counsel or more than one counsel shall not be instructed.

(2) Any instructions delivered to counsel under paragraph (1) shall—

- (a) include a copy of the certificate (and any amendments to it) and any authority to incur costs under this Part of these Regulations;
- (b) be endorsed with the legal aid reference number; and
- (c) in the case of authorised summary proceedings, show the authority for counsel to be instructed;

but no fees shall be marked on any set of papers so delivered.

Power of Board to give general authority

60. The Board may give general authority to solicitors acting for assisted persons in any particular class of case to incur costs by—

- (a) obtaining a report or opinion from one or more experts or tendering expert evidence;
- (b) employing a person to provide a report or opinion (other than as an expert); or
- (c) requesting transcripts of shorthand notes or tape recordings of any proceedings;

and, if such authority is given, the Board shall specify the maximum fee payable for any such report, opinion, expert evidence or transcript.

Other cases where authority may be sought

61.—(1) Where it appears to an assisted person's solicitor to be necessary for the proper conduct of the proceedings to incur costs by taking any of the steps specified in paragraph (2), he may, unless authority has been given in the certificate, apply to the Area Director for such authority.

(2) The steps referred to in paragraph (1) are—

- (a) obtaining a report or opinion of an expert or tendering expert evidence in a case of a class not included in any general authority given under regulation 60; or

- (b) paying a person, not being an expert witness, a fee to prepare a report and, if required, to give evidence in a case of a class not included in any general authority given under regulation 60; or
 - (c) in a case of a class included in a general authority given under regulation 60, paying a higher fee than that specified by the Board or obtaining more reports or opinions or tendering more evidence (expert or otherwise) than has been specified; or
 - (d) performing an act which is either unusual in its nature or involves unusually large expenditure; or
 - (e) bespeaking any transcripts of shorthand notes or tape recordings of any proceedings not included in any general authority given under regulation 60.
- (3) Where the Area Director gives authority for the taking of any step referred to in paragraph (2) (a) to (d), he shall specify the number of reports or opinions that may be obtained or the number of persons who may be authorised to give expert evidence and the maximum fee to be paid to each.

Reasons to be given for refusing authority

62. If an Area Director refuses an application for authority made under regulation 59 or 61, he shall give written reasons for his decision.

Effect of obtaining and failing to obtain authority

63.—(1) Subject to paragraph (2), no question as to the propriety of any step or act in relation to which prior authority has been obtained under regulation 59, 60 or 61 shall be raised on any taxation of costs.

(2) Where costs are incurred in accordance with and subject to the limit imposed by a prior authority given under regulation 59, 60 or 61, no question shall be raised on any taxation as to the amount of the payment to be allowed for the step or act in relation to which the authority was given unless the solicitor or the assisted person knew or ought reasonably to have known that the purpose for which the authority was given had failed or become irrelevant or unnecessary before the costs were incurred.

(3) Without prejudice to regulation 59, where costs are incurred in instructing a Queen's Counsel or more than one counsel, without authority to do so having been given in the certificate or under regulation 59(1), no payment in respect of those costs shall be allowed on any taxation unless it is also allowed on an inter partes taxation.

(4) Where costs are incurred in instructing counsel or in taking any step or doing any act for which authority may be given under regulation 60 or 61, without authority to do so having been given in the certificate or under regulation 59, 60 or 61, payment in respect of those costs may still be allowed on taxation.

Restriction on payment otherwise than from the fund

64. Where a certificate has been issued in connection with any proceedings, the assisted person's solicitor or counsel shall not receive or be party to the making of any payment for work done in those proceedings during the currency of that certificate (whether within the scope of the certificate or otherwise) except such payments as may be made out of the fund.