
STATUTORY INSTRUMENTS

1989 No. 339

The Civil Legal Aid (General) Regulations 1989

PART XII

COSTS OF ASSISTED PERSONS

Payment on account

100.—(1) A solicitor acting for an assisted person under a certificate to which this regulation applies may submit a claim to the Financial Controller of the Board on a form approved by the Board for the payment of sums on account of profit costs incurred in connection with the proceedings to which the certificate relates.

(2) Counsel instructed on behalf of an assisted person under a certificate to which this regulation applies may submit a claim to the Financial Controller of the Board on a form approved by the Board for the payment of sums on account of his fees for work done in connection with the proceedings to which the certificate relates.

(3) A claim may be made under this regulation in relation to a certificate—

- (a) which was issued on or after 1st October 1986, after a period of 18 months has elapsed since the date on which the certificate was issued;
- (b) which was issued before 1st October 1986, after a period of 30 months has elapsed since the date on which the certificate was issued.

(4) Further claims may be made under this regulation in relation to—

- (a) a certificate to which paragraph (3)(a) applies, after periods of 12 months and 24 months have elapsed since the date on which a claim could first be made;
- (b) a certificate to which paragraph (3)(b) applies, after a period of 12 months has elapsed since the date on which a claim could first be made.

(5) The maximum payment to be made for each claim under paragraph (1) or (2) in any one financial year shall be—

for the financial year 1989/90	38%
for the financial year 1990/91	46%
for the financial year 1991/92	54%
for the financial year 1992/93	62%
for the financial year 1993/94	70%
for the financial year 1994/95 and thereafter	75%

(6) Where a solicitor's retainer has been determined and another solicitor (who is not a member of the same firm) is acting on behalf of the assisted person, the appropriate area committee may

authorise payment of a sum on account of the original solicitor's costs where it appears unlikely that the costs will be taxed within 6 months of the date on which the retainer was determined.

(7) The making of a payment under this regulation shall not release a solicitor from any obligation under these Regulations to submit his costs and counsel's fees for taxation or assessment on conclusion of the case.

(8) Where, after taxation or assessment, payments made under this regulation are found to exceed the final costs of the case, the solicitor or counsel (if any) shall, on demand, repay the balance due to the fund and, where the total costs exceed any payments made under this regulation, the balance shall be paid from the fund.

Payment on account of disbursements, in cases of hardship, etc

101.—(1) Without prejudice to regulation 100, a solicitor acting for an assisted person may apply to the appropriate area committee for the payment of a sum on account of

- (a) disbursements incurred or about to be incurred in connection with the proceedings to which the certificate relates;
- (b) profit costs or counsel's fees where the proceedings to which the certificate relates have continued for more than 12 months and it appears unlikely that an order for taxation will be made within the next 12 months and delay in the taxation of those costs or fees will cause hardship to the solicitor or counsel.

(2) Without prejudice to regulation 100, where—

- (a) the proceedings to which the certificate related have concluded or the solicitor is otherwise entitled to have his costs taxed; and
- (b) counsel acting for the assisted person has not received payment in respect of his fees for at least 6 months since the event which gave rise to the right to taxation,

counsel may apply to the appropriate area committee for payment of 75 per cent of the amount claimed on account of his fees for work done in connection with the proceedings to which the certificate related.

Deferment of solicitor's profit costs

102. Where an assisted person's solicitor has failed to comply with any provision of these Regulations and, as a result of his default or omission, the fund incurs loss—

- (a) the appropriate area committee may defer payment of all or part of the solicitor's profit costs in connection with the proceedings to which the certificate relates until he has complied with such provisions; and
- (b) if the Board refers the conduct of the solicitor to the Solicitors' Disciplinary Tribunal and the solicitor is disciplined, the Board may retain any sum, payment of which has been deferred under sub-paragraph (a), in accordance with the finding of the Tribunal.

Legal aid granted after costs incurred

103.—(1) Where, after proceedings have been instituted in any court, a party becomes an assisted person in relation to those proceedings, the provisions of section 17(1) of the Act shall apply only to so much of the costs of the proceedings as are incurred while a certificate is in force.

(2) Any solicitor who has acted on behalf of the assisted person in the proceedings to which a certificate relates before the date of the certificate, and any solicitor who has a lien on any documents necessary for the proceedings and who has delivered them up subject to his lien, may give notice of that fact to the appropriate area committee.

(3) Subject to paragraph (4), if moneys are recovered for the assisted person, the Board shall pay to any solicitor who has given notice under paragraph (2) out of the sum so recovered the costs to which he would have been entitled following a solicitor and own client taxation.

(4) In any case where the sums so recovered are insufficient to pay the solicitor's costs in full in accordance with paragraph (3) and also to meet the sums paid out or payable out of the fund on the assisted person's account, the sums recovered in the proceedings shall be divided between the fund and the solicitor in the same proportions as the solicitor's costs and the cost to the fund bear to the aggregate of the two, and the first charge for the benefit of the Board imposed by virtue of section 16(6) of the Act on property recovered or preserved in the proceedings shall take effect accordingly.

(5) In any case in which the amount of—

- (a) the costs payable to a solicitor under this regulation; or
- (b) the inter partes costs incurred during the period in which the certificate was in force,

have not been ascertained on taxation, they shall, for the purpose of this regulation, be assessed by the appropriate area committee and, where the committee makes an assessment under this regulation, it shall do so with a view to allowing, for the costs referred to in sub-paragraph (a) above, such costs as the solicitor would have been entitled to on a solicitor and own client taxation and, for the costs referred to in sub-paragraph (b) above, such costs as would have been allowed on a taxation on the standard basis.

(6) For the purposes of this regulation, work done by a solicitor—

- (a) immediately prior to the issue of an emergency certificate, and
- (b) at a time when no application for an emergency certificate could be made because the appropriate area office was closed,

shall be deemed to be work done while such a certificate is in force if the solicitor applies for an emergency certificate at the first available opportunity and the application is granted.

Remuneration of counsel and solicitors in the Crown Court and magistrates' courts

104.—(1) The sums to be allowed to solicitors and counsel in connection with authorised summary proceedings or proceedings in the Crown Court for which legal aid is available under Part IV of the Act shall be assessed by the Area Director.

(2) Any assessment or review under this regulation shall be made in accordance with the provisions of regulation 6 of and Schedule 1 Part I paragraph 1(a) to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989(1) as if the work done was work to which those provisions apply.

(3) Paragraphs (4) to (8) of regulation 105 shall apply where costs are assessed by an Area Director under paragraph (1) as they apply to an assessment under that regulation.

(4) Subject to paragraph (3), regulations 105 to 110 shall not apply to costs in respect of authorised summary proceedings or proceedings in the Crown Court for which legal aid is available under Part IV of the Act.

Assessment of costs

105.—(1) In this regulation and in regulation 106, “assessment” means an assessment of costs with a view to ensuring that the amounts of costs to be allowed are those which would be allowed on a taxation on the standard basis under rules of court.

(2) Where the retainer of an assisted person's solicitor or counsel is determined before proceedings are actually begun and there has been no subsequent change of solicitor or counsel under the certificate, the amount of the solicitor's costs and counsel's fees (if any) shall be assessed by the Area Director.

(3) Where proceedings have begun and—

- (a) the solicitor is of the opinion that the total amount which he and counsel (if any) would receive after taxation on the standard basis would not be more than £500; or
- (b) the case of an assisted person (who is not such a person as is referred to in Order 62, rule 16, of the Rules of the Supreme Court 1965) has been settled after the commencement of proceedings without any direction of the court as to costs on terms that include provision for an agreed sum in respect of costs to be paid to the assisted person which the solicitor and counsel (if any) is willing to accept in full satisfaction of the work done; or
- (c) there are special circumstances where a taxation would be against the interest of the assisted person or would increase the amount payable from the fund; or
- (d) after a direction or order that the assisted person's costs shall be taxed on the standard basis, the solicitor incurs costs for the purpose of recovering moneys payable to the fund,

the solicitor may apply to the Area Director for an assessment of the amount of his costs and counsel's fees (if any) in respect of the work done.

(4) If any solicitor or counsel is dissatisfied with any decision on an assessment in accordance with paragraph (2) or (3), he may, within 21 days of that decision, make written representations to the appropriate area committee; and that committee shall review the assessment of the Area Director whether by confirming, increasing or decreasing the amount assessed by the Area Director.

(5) A solicitor or counsel who is dissatisfied with the decision of an area committee on a review under paragraph (4) may, within 21 days of the decision, apply to that committee to certify a point of principle of general importance.

(6) Where an area committee certifies a point of principle of general importance, the solicitor or counsel may, within 21 days of the certification, appeal in writing to a committee appointed by the Board against the decision of the area committee under paragraph (4).

(7) On an appeal under paragraph (6) the committee appointed by the Board may reverse, affirm or amend the decision of the area committee under paragraph (4).

(8) The assisted person's solicitor shall within 7 days after an assessment or review under this regulation notify counsel in writing where the fees claimed on his behalf have been reduced or disallowed on assessment or review.

Agreement in respect of costs

106.—(1) Where, in proceedings to which an assisted person (or a former assisted person) has been a party and which have been brought to an end by a judgment, decree or final order, there has been an agreement as to the costs to be paid by any other party to the assisted person (or former assisted person) which that person's solicitor and counsel (if any) is willing to accept in full satisfaction of the costs of the work done, the amount of those costs shall be assessed by the Area Director.

(2) Where costs are to be assessed in the circumstances specified in paragraph (1), the Area Director may, if he thinks fit, request the taxing officer of the court in which the proceedings were conducted to assess the costs on the standard basis without a taxation.

(3) Paragraphs (4) to (8) of regulation 105 shall apply where costs are assessed by an Area Director under paragraph (1) as they apply to an assessment under that regulation.

Taxation of costs

107.—(1) The costs of proceedings to which an assisted person is a party shall be taxed in accordance with any direction or order given or made in the proceedings irrespective of the interest (if any) of the assisted person in the taxation; and, for the purpose of these Regulations, an order for the taxation of the costs of a review of taxation or of the costs of an appeal from a decision of a judge on such a review shall be deemed to be a final order.

(2) Any certificate or notice of revocation or discharge, or a copy of any such certificate or notice, shall be made available on the taxation.

(3) Where in any proceedings to which an assisted person is a party—

- (a) judgment is signed in default, the judgment shall include a direction that the costs of any assisted person shall be taxed on the standard basis;
- (b) the court gives judgment or makes a final decree or order in the proceedings, the judgment, decree or order shall include a direction (in addition to any other direction as to taxation) that the costs of any assisted person shall be taxed on the standard basis;
- (c) the plaintiff accepts money paid into court, the costs of any assisted person shall be taxed on the standard basis.

(4) Where in any proceedings to which an assisted person or a former assisted person is a party and—

- (a) the proceedings are, or have been, brought to an end without a direction having been given, whether under paragraph (3) or otherwise, as to the assisted person's costs being taxed on the standard basis; or
- (b) a judgment or order in favour of an opposing party, which includes a direction that the assisted person's costs be so taxed, has not been drawn up or, as the case may be, entered by him; or
- (c) a retainer is determined under regulation 83 in such circumstances as to require a taxation in accordance with the provisions of these Regulations;

the costs of that person shall be taxed on the standard basis on production of a copy of the notice of discharge or revocation of the certificate at the appropriate taxing office.

Failure to apply for taxation

108. Where, in any proceedings to which a former assisted person was a party, an order or agreement was made for the payment to him of costs and he has failed to ask for the costs to be taxed or his certificate is discharged before taxation, the Board may authorise the making of the application for taxation on his behalf and the costs of the application and of taxation shall be deemed to be costs in the proceedings to which the certificate related.

Disallowance or reduction of costs

109.—(1) Without prejudice to Order 62, rules 10 and 11 of the Rules of the Supreme Court 1965⁽²⁾ or to Order 38, rule 1(3) of the County Court Rules 1981⁽³⁾, on any taxation of an assisted person's costs in connection with proceedings (except authorised summary proceedings and proceedings in the Crown Court), any costs wasted by failure to conduct the proceedings with reasonable competence and expedition shall be disallowed or reduced, and where the solicitor has without good reason delayed putting in his bill for taxation the whole of the costs may be disallowed or reduced.

(2) S.I. 1965/1776; the relevant amending instrument is S.I. 1986/632.

(3) S.I. 1981/1687; the relevant amending instrument is S.I. 1986/636.

(2) No costs shall be disallowed or reduced under paragraph (1) until notice has been served by the taxing officer on the solicitor whose name appears on the assisted person's certificate and, in a case where those costs relate to counsel's fees, on the assisted person's counsel, requiring the solicitor or, as the case may be, counsel to show cause orally or in writing why those costs should not be disallowed or reduced.

Solicitor's duty to safeguard the interests of the fund

110. It shall be the duty of an assisted person's solicitor to safeguard the interests of the fund on any inter partes taxation pursuant to an order for costs made in favour of the assisted person where that person may himself have no interest in the result of the taxation, and for this purpose to take such steps as may appear to the solicitor to be necessary to obtain a review of taxation under regulation 113 or 114.

Costs of applications, reports, etc., under these Regulations

111. Costs incurred by reason of any application made under Part VIII, and of any report made by an assisted person's solicitor under Part IX, of these Regulations shall be taxed on the standard basis and costs incurred by reason of regulation 25, 50, 54, 82 or 124 shall be costs in the cause.

Duty to inform counsel

112.—(1) The assisted person's solicitor shall within 7 days after the taxation (or provisional taxation) notify counsel in writing where the fees claimed on his behalf have been reduced or disallowed on taxation, and shall endorse the bill of costs with the date on which such notice was given or that no such notice is necessary.

(2) Where the bill of costs is endorsed that no notice under paragraph (1) is necessary, the taxing officer may issue the certificate or allocatur but, where such a notice has been given, the taxing officer shall not issue the certificate or allocatur until 14 days have elapsed from the date so endorsed.

Application to carry in objections to the taxation

113.—(1) In this regulation, in regulation 114 and in regulation 116, "legal aid taxation" means the taxation of a solicitor's bill to his own client where that bill is to be paid out of the fund.

(2) Where—

- (a) an assisted person is dissatisfied with any decision of a taxing officer (except a decision under regulation 106) as to the amount which he is entitled to recover by virtue of an order or agreement for costs made in his favour or for which he is liable by virtue of an order for costs made against him; or
- (b) the assisted person's solicitor is dissatisfied with any decision of the taxing officer—
 - (i) on an inter partes taxation pursuant to an order for costs made in favour of the assisted person, or
 - (ii) on a legal aid taxation,

the solicitor shall apply to the appropriate area committee for authority to carry in objections to the taxation; and if the area committee gives authority (but not otherwise) the solicitor may carry in objections in accordance with rules of court.

Application to judge to review taxation

114. Where the assisted person or his solicitor, as the case may be, is dissatisfied with the decision of the taxing officer on any matter to which objection has been taken under regulation 113, the

solicitor shall apply to the Board for authority to have the taxation reviewed; and, if the Board gives authority (but not otherwise), the solicitor may apply (or instruct counsel to apply) to a judge to review the taxation in accordance with rules of court.

Appeal from review of taxation

115.—(1) Subject to paragraph (2) and notwithstanding that the assisted person may have no interest in the appeal or would, but for regulation 118, have an interest adverse to that of his solicitor, an assisted person’s solicitor—

- (a) may, with the authority of the Board, appeal from the decision of the judge on a review of taxation under regulation 114, or
- (b) shall be entitled to be heard on an appeal brought by any other party,

and, on any such appeal, the solicitor may appear by counsel.

(2) Nothing in this regulation shall be deemed to confer a right of appeal in proceedings to which an assisted person is not a party where no such right exists.

(3) Where an assisted person’s solicitor applies for authority under paragraph (1), he shall do so before the expiration of the time allowed by rules of court for an appeal from the decision of a judge and, for this purpose, the time so allowed shall be extended by one month.

Counsel dissatisfied with taxation

116.—(1) Where counsel acting for an assisted person is dissatisfied with any decision on a legal aid taxation, it shall be the duty of the assisted person’s solicitor to report the matter to the appropriate area committee or to the Board, as the case may be, and, if the committee or the Board give authority to do so,—

- (a) to carry in objections to the taxation,
- (b) to apply to a judge to review the taxation, or
- (c) to appeal from the decision of the judge,

as the case may be, and regulations 113 to 115 and 120 shall apply as if the solicitor were the person dissatisfied.

(2) Paragraph (1) shall apply to a provisional taxation with the necessary modifications and in particular with the insertion of the words “to inform the taxing officer that he wishes to be heard on the taxation and to attend on the taxation,” after the words “the assisted person’s solicitor”.

Objection by other party

117. If, in proceedings to which an assisted person is a party, any other party carries in objections to the inter partes taxation or applies to a judge to review the taxation, the assisted person’s solicitor may be heard on the objections or review notwithstanding that the assisted person himself may have no interest in the taxation.

Assisted person having no interest or adverse interest in taxation

118. Where the assisted person has no interest in the taxation or would, but for the provisions of this regulation, have an interest adverse to that of his solicitor—

- (a) it shall be the duty of the solicitor carrying in objections under regulation 113 or applying for a review under regulation 114 to ensure that all matters which are proper to be taken into account in consideration of the objections or on the review are placed before the taxing officer or the judge, as the case may be;

- (b) the assisted person shall not be required to make any contribution to the fund on account of the costs of any proceedings arising under regulations 113 to 117 or in consequence of any order made in such proceedings; and
- (c) the charge created by section 16(6) of the Act shall not apply in relation to any resulting increase in the net liability of the fund arising out of the costs of any proceedings under regulations 113 to 117 or in consequence of any order made in such proceedings.

Assisted person having financial interest in taxation

119. Without prejudice to the provisions of regulation 118, where the assisted person has a financial interest in the taxation—

- (a) it shall be the duty of his solicitor to explain to him the extent of his interest in the taxation and the steps which can be taken to safeguard that interest and, if the assisted person so requests, to give notice in accordance with rules of court to the taxing officer that the assisted person has such an interest;
- (b) the assisted person shall not be required to make any contribution to the fund on account of the costs of the taxation proceedings;
- (c) the charge created by section 16(6) of the Act shall not apply in relation to any resulting increase in the net liability of the fund arising out of the costs of the taxation proceedings.

Costs to be paid out of the fund

120. Any proceedings under regulations 113 to 119 shall be deemed to be proceedings to which the assisted person's certificate relates, whether or not it has been discharged or revoked, and the costs of such proceedings shall be paid out of the fund.

Time limits, etc.

121.—(1) Subject to regulation 112 where any party to a taxation is an assisted person, the certificate or allocatur shall not, unless the parties agree, be signed until 21 days after the taxing officer's decision; and where an assisted person's solicitor applies under regulation 113 or 114 (or under regulation 116) for authority to carry in objections or to have a taxation reviewed, he shall do so before the expiration of the time allowed under rules of court for applying to the taxing officer for a review of the taxation and the time so allowed shall, for this purpose, be extended by one month, or such longer period as the taxing officer may allow.

(2) Notice of any application made under regulation 113, 114 or 116 shall be given to the taxing officer and to any opposing party.

Appointment of solicitor to intervene

122.—(1) The Lord Chancellor may appoint a solicitor to intervene in any review by a judge of a taxation of the costs of proceedings to which an assisted person is a party, and any such appointment may be made in respect of a particular review or may extend to any review of taxation during the period for which the solicitor is appointed.

(2) Whenever the Board gives authority to an assisted person's solicitor to apply to a judge to review a taxation, it shall notify the Lord Chancellor and inform him of the name and address of the assisted person's solicitor.

(3) If, in proceedings to which an assisted person is a party, any other party applies to a judge to review the inter partes taxation or the assisted person's solicitor applies to a judge to review any such taxation as is referred to in regulation 113, the assisted person's solicitor shall so inform the Board and the Board shall notify the Lord Chancellor and inform him of the name and address of the

assisted person's solicitor and, where the subject of the review is an inter partes taxation, the name and address of the solicitor acting for the other party.

(4) The solicitor appointed by the Lord Chancellor to intervene in a review of taxation shall be entitled to production of all documents relevant to the matters in issue before the judge and to delivery of copies thereof and to appear by counsel and be heard on the review, with a view to ensuring that all considerations which are proper to be taken into account are placed before the court, whether they relate to the interests of the fund or of the assisted person or to the remuneration of solicitors and counsel acting for assisted persons.

(5) On any review in which a solicitor appointed by the Lord Chancellor has intervened, the judge may make such order as may be just for the payment to or by that solicitor of the costs incurred by him or any other party, and any sum due to the solicitor by virtue of any such order shall be paid by him to the Board and any sum so payable by the solicitor shall be paid out of the fund, and the solicitor shall be entitled to receive from the fund the costs he has incurred on the intervention.

(6) A solicitor appointed by the Lord Chancellor under paragraph (1) may appeal from the decision of the judge on a review of taxation under regulation 115 and paragraphs (2) to (5) above shall apply to such an appeal as it applies to a review.