
STATUTORY INSTRUMENTS

1989 No. 339

The Civil Legal Aid (General) Regulations 1989

PART XIII

COSTS AWARDED AGAINST AN ASSISTED PERSON

Security for costs given by assisted person

123. Where in any proceedings an assisted person is required to give security for costs, the amount of such security shall not exceed the amount which could be ordered under section 17(1) of the Act.

Assisted person's liability for costs

124.—(1) Where proceedings have been concluded in which an assisted person (including, for the purpose of this regulation, a person who was an assisted person in respect of those proceedings) is liable or would have been liable for costs if he had not been an assisted person, no costs attributable to the period during which his certificate was in force shall be recoverable from him until the court has determined the amount of his liability in accordance with section 17(1) of the Act.

(2) Where the assisted person's certificate does not relate to, or has been amended so that it no longer relates to the whole of the proceedings, the court shall nevertheless make a determination under section 17(1) of the Act in respect of that part of the proceedings to which the certificate relates.

(3) The amount of an assisted person's liability for costs shall be determined by the court which tried or heard the proceedings.

Affidavit of means by unassisted party

125.—(1) Any person, not being himself an assisted person, who is a party to proceedings (other than authorised summary proceedings) to which an assisted person is a party, may file in the appropriate court office or registry an affidavit exhibiting a statement setting out the rate of his own income and amount of his own capital and any other facts relevant to the determination of his means in accordance with section 17(1) of the Act.

(2) Any person filing an affidavit under paragraph (1) shall serve a copy of it, together with the exhibit, upon the assisted person's solicitor, who shall forthwith serve him with a copy of the certificate and shall send a copy of the affidavit to the Area Director.

Determination of liability for costs

126. In determining the amount of the assisted person's liability for costs—

- (a) his dwelling-house, clothes, household furniture and the tools and implements of his trade shall be left out of account to the like extent as they are left out of account by the assessment officer in determining his disposable income and disposable capital; and

- (b) any document which may have been sent to the court office or registry or filed or exhibited under these Regulations shall, subject to regulation 128, be evidence of the facts stated therein.

Postponement, adjournment or referral of determination

127. The court may, if it thinks fit,—

- (a) postpone or adjourn the determination for such time and to such place (including chambers) as the court thinks fit; or
- (b) refer to a master, registrar or the Clerk of the Parliaments or (in the case of an appeal from a decision of the Crown Court or a court of summary jurisdiction) to the chief clerk or clerk to the justices of the court from which the appeal is brought, for investigation (in chambers or elsewhere) any question of fact relevant to the determination, and require him to report his findings on that question to the court.

Oral examination of parties

128.—(1) The court may, if it thinks fit, order the assisted person and any party who has filed an affidavit pursuant to regulation 125 to attend for oral examination as to his means and as to any other facts (whether stated in any document before the court or otherwise) which may be relevant to the determination of the amount of the assisted person's liability for costs and may permit any party to give evidence and call witnesses.

(2) Where the court has made an order under regulation 127(b), the person to whom the matter has been referred for investigation may exercise the power conferred on the court by this regulation.

Order for costs

129. The court may direct—

- (a) that payment under the order for costs shall be limited to such amount, payable in instalments or otherwise (including an amount to be determined on taxation), as the court thinks reasonable having regard to all the circumstances; or
- (b) where the court thinks it reasonable that no payment should be made immediately or that the assisted person should have no liability for payment, that payment under the order for costs be suspended either until such date as the court may determine or indefinitely.

Variation of order for costs

130. The party in whose favour an order for costs is made may, within six years from the date on which it was made, apply to the court for the order to be varied on the ground that—

- (a) material additional information as to the assisted person's means, being information which could not have been obtained by that party with reasonable diligence at the time the order was made, is available; or
- (b) there has been a change in the assisted person's circumstances since the date of the order;

and on any such application the order may be varied as the court thinks fit; but save as aforesaid the determination of the court shall be final.

Assisted person acting in representative, fiduciary or official capacity

131. Where an order for costs is made against an assisted person who is concerned in the proceedings in a representative, fiduciary or official capacity, he shall have the benefit of section 17(1) of the Act and his personal resources shall not (unless there is reason to the contrary)

be taken into account for that purpose, but regard shall be had to the value of the property or estate, or the amount of the fund out of which he is entitled to be indemnified.

Assisted person a minor

132. Where a minor is an assisted person, his means for the purpose of determining his liability for costs under section 17(1) of the Act shall be taken as including the means of any person whose resources have been taken into account under the Civil Legal Aid (Assessment of Resources) Regulations 1989⁽¹⁾ by the assessment officer in assessing the disposable income and disposable capital of the minor.

Order against next friend or guardian ad litem

133. Where an order for costs is made against a next friend or guardian ad litem of an assisted person who is a minor or patient, he shall have the benefit of section 17(1) of the Act as it applies to an assisted person and the means of the next friend or guardian ad litem shall, for the purposes of regulation 132, be taken as being the means of the minor or, as the case may be, of the patient.

(1) S.I.1989/338.