
STATUTORY INSTRUMENTS

1991 No. 2038

**LEGAL AID AND ADVICE,
ENGLAND AND WALES**

**The Legal Aid in Family Proceedings
(Remuneration) Regulations 1991**

Made - - - - 9th September 1991
Laid before Parliament 10th September 1991
Coming into force - - 14th October 1991

The Lord Chancellor, in exercise of the powers conferred on him by sections 2(5), (7), 34 and 43 of the Legal Aid Act 1988⁽¹⁾ and all other powers enabling him in that behalf, having had regard to the matters specified in section 34(9) and consulted the General Council of the Bar and the Law Society, and with the consent of the Treasury, hereby makes the following Regulations:—

Citation, commencement and transitional provisions

1.—(1) These Regulations may be cited as the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 and shall come into force on 14th October 1991.

(2) Subject to paragraph (3), these Regulations shall apply to remuneration payable in respect of work done on or after 14th October 1991 and remuneration payable in respect of work done before that date shall be determined as if these Regulations had not been made.

(3) Schedule 2 shall apply to remuneration payable in respect of work done before 14th October 1991 as it applies to work done after that date.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the relevant authority” means the Area Director in the case of an assessment and the taxing officer in the case of a taxation, and “determination” shall mean an assessment or taxation as the case may be;

⁽¹⁾ 1988 c. 34; section 43 is an interpretation provision and is cited because of the meaning assigned to the word “regulations”; sections 2(7), 34 and 43 were amended by the Courts and Legal Services Act 1990 (c. 41); Schedule 18, paragraphs 60, 61 and 63.

“care proceedings” means proceedings for an order under Parts IV or V of the Children Act 1989;(2)

“fee-earner” means a solicitor, a legal executive or any clerk who regularly does work for which it is appropriate to make a direct charge to a client;

“the General Regulations” means the Civil Legal Aid (General) Regulations 1989(3);

“prescribed family proceedings” means proceedings with respect to which rules may be made under section 40 of the Matrimonial and Family Proceedings Act 1984(4), excluding care proceedings;

“the Rules” means the Matrimonial Causes (Costs) Rules 1988(5).

(2) Unless the context otherwise requires—

- (a) expressions used in the Rules, the Family Proceedings Rules 1991(6) and in the General Regulations shall have the same meanings as in those Rules or Regulations; and
- (b) any reference in these Regulations to a regulation, Part or Schedule by number means the regulation, Part or Schedule so numbered in these Regulations.

Remuneration

3.—(1) The sums to be allowed to legal representatives in connection with family proceedings shall be determined in accordance with these Regulations, Part XII of the General Regulations, the Family Proceedings (Costs) Rules 1991(7) and paragraphs 1(3), (4)(a) and (5) and paragraph 2(2) (a) of Part I of Schedule I to the Rules.

(2) Subject to the following paragraphs, the amounts to be allowed on determination under this regulation shall be—

- (a) in accordance with Schedule 1 where the certificate was issued in relation to care proceedings;
- (b) in accordance with Schedule 2 where the certificate was issued in relation to prescribed family proceedings, or, in relation to proceedings in a magistrates' court, any family proceedings other than care proceedings;
- (c) in accordance with RSC Order 62 or CCR Order 38 where the certificate was issued in relation to family proceedings not falling within sub-paragraphs (a) and (b);
- (d) in accordance with paragraph (2) of rule 8 of the Rules where the costs incurred relate to the kind of work to which that paragraph applies;
- (e) in accordance with paragraph 1(1) of Part I of Schedule 1 to the Rules where no provision is made in the Schedules to these Regulations for the kind of work to which the costs relate.

(3) Where a certificate relating to proceedings under paragraph 2(c) is extended to cover proceedings falling within sub-paragraphs (a) or (b), the amounts to be allowed on determination shall be in accordance with Schedule 1 or 2 as the case may be, or, if it is extended to cover proceedings falling within both sub-paragraphs, in accordance with Schedule 2.

(4) On determination the relevant authority—

- (a) in allowing costs under item 4 of Part I of Schedule 1, shall allow costs at the higher rate where the work was done by a fee-earner whose office is situated within legal aid area 1;

(2) 1989 c. 41.

(3) S.I. 1989/339, as amended by S.I. 1991/524 and 1991/2036.

(4) 1984 c. 42; section 40 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18 paragraph 50.

(5) S.I. 1988/1328, as amended by S.I. 1989/385 and 1021, 1990/490 and 1991/530 ; as these Rules have effect as part of the Family Proceedings (Costs) Rules 1991 (S.I. 1991/1832) by virtue of rule 2(2) of those Rules.

(6) S.I. 1991/1247.

(7) S.I. 1991/1832.

- (b) in allowing costs under item 4 of Part I of Schedule 2(a), shall allow costs at the higher rate where at the time when the relevant work was done the proceedings were conducted in the principal registry or in another court on the South-Eastern Circuit;
- (c) may allow a larger amount than that specified in column 2 or column 3, as the case may be, of Parts I, II, III and V of Schedules 1 and 2(a) where it appears to him reasonable to do so having regard to—
 - (i) the exceptional competence with which the work was done, or
 - (ii) the exceptional expedition with which the work was done, or
 - (iii) any other exceptional circumstances of the case including, in the case of care proceedings, the fact that the solicitor was a member of the Law Society's Children Act panel,

but, without prejudice to regulation 109 of the General Regulations or rules 15 or 16 of the Rules, the relevant authority may in respect of any item in Part I, II, III or V of Schedule I or 2(a) allow a lower amount than that specified in column 2 or column 3 of that Part, as the case may be, where it appears to him reasonable to do so having regard to any failure on the part of the solicitor to provide timely preparation or advice, or for any similar reason.

- (5) Without prejudice to regulation 109 of the Legal Aid General Regulations or rules 14 or 15 of the Rules, where a standard fee is specified in Part IV of Schedules 1 or 2(a) for work done by junior counsel that fee shall be allowed unless the relevant authority considers that it would be unreasonable to do so, in which case he shall allow such lesser or greater fee as may be reasonable—

Provided that the fee allowed shall not exceed any maximum fee which is specified unless the relevant authority considers that, owing to the time and labour expended by counsel or to any other special circumstance of the case, the maximum fee specified would not provide reasonable remuneration for some or all of the work done, in which case the fee to be allowed shall be in the discretion of the relevant authority.

- (6) For the purpose of determining which of the brief fees provided by item 12 of Schedule I and item 13 of Schedule 2(a) should be allowed—

- (a) a one hour fee shall be allowed where the hearing lasts for one hour or less than one hour;
- (b) a half day fee shall be allowed where the hearing lasts for more than one hour and
 - (i) begins and ends before the luncheon adjournment; or
 - (ii) begins after the luncheon adjournment and ends before 5.30p.m.;
- (c) a full day fee shall be allowed where the hearing lasts for more than one hour and
 - (i) begins before and ends after the luncheon adjournment but before 5.30p.m.; or
 - (ii) begins after the luncheon adjournment and ends after 5.30p.m.; and
- (d) a more than a full day fee shall be allowed where the hearing
 - (i) begins before the luncheon adjournment and ends after 5.30p.m. on the same day; or
 - (ii) begins on one day and continues into a subsequent day.

- (7) In exercising his discretion under this regulation or in relation to any provision of the Schedules where the amount of costs to be allowed is in his discretion, the relevant authority shall exercise his discretion in accordance with paragraph 1(2) of Part I of Schedule 1 to the Rules.

- (8) Disbursements (other than counsel's fees) for which no allowance is made in Schedules 1 or 2(a) shall be determined and allowed, or disallowed, according to the general principles applicable to the taxation of costs in R.S.C. Order 62.

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Statutory Instruments are not carried in their revised form on this site.

Dated 6th September 1991

Mackay of Clashfern, C

We Consent,

9th September 1991

Sydney Chapman
Irvine Patrick
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE 1
CARE PROCEEDINGS

PART I
PREPARATION

<i>Column 1</i>	<i>Column 2 High Court</i>	<i>Column 3 County Court or Magistrates' Court</i>
ITEM		
1. Writing routine letters	£4.00 per item	£3.50 per item
2. Receiving routine letters	£2.00 per item	£1.75 per item
3. Routine telephone calls	£4.00 per item	£3.50 per item
4. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine	£62.50 per hour (£66.75 per hour for a fee-earner whose office is situated within legal aid area 1)	£55.50 per hour £58.50 per hour
5. Travelling and waiting time in connection with the above matters	£30.50 per hour	£28.00 per hour

PART II
CONFERENCES WITH COUNSEL

6. Attending counsel in conference	£35.50 per hour	£31.00 per hour
7. Travelling and waiting	£30.50 per hour	£28.00 per hour

PART III

ATTENDANCES

8. Attending with counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, of other appointment	£35.50 per hour	£31.00 per hour
9. Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment	£61.00 per hour	£61.00 per hour
10. Travelling and waiting	£30.50 per hour	£28.00 per hour

PART IV

FEES FOR JUNIOR COUNSEL

11. With a brief on an unopposed application for an injunction, or procedural issue	Standard £84.50 Maximum £140.00	£73.00 £121.00
12. With a brief on the trial of a cause or matter or on the hearing of an application where the hearing lasts for	Standard £127.50 Maximum £256.00	£109.00 £218.50
(a) one hour		
(b) a half day	Standard £176.50 Maximum £291.00	£152.00 £256.00
(c) a full day	Standard £352.00 Maximum £559.00	£304.00 £486.00
(d) more than a full day	Discretionary	Discretionary
13. For each day or part of a day on which the trial of a cause or matter, or the hearing of an ancillary application, or a children appointment, is continued after the first day	Discretionary	Discretionary
14. Conference (including time reasonably spent in preparation and conference, but not otherwise remunerated)	Standard £19.50 per half hour	Standard £17.00 per half hour

(a) Complex items of written work (such as advices on evidence, opinions and affidavits of a substantial nature, requests for particulars or answers)	Standard £92.00 per item	Standard £79.00 per item
(b) All other written work	Standard £54.50 per item	Standard £48.00 per item
16. Except where the court is within 40 kilometres of Charing Cross or where there is no local Bar in the court town, or within 40 kilometre thereof, for travelling time	Standard £17.70 per hour plus expenses	Standard £15.20 per hour plus expenses

PART V

TAXATION AND REVIEW OF TAXATION (HIGH COURT AND COUNTY COURT ONLY)

17. Preparing the bill (where allowable) and completing the taxation (excluding preparing for and attending the taxation)	£30.50-£85.50	£30.50-£48.75
18. Preparing for and attending the taxation (including travelling and waiting)	Discretionary	Discretionary
19. Review by district judge or judge (including preparation)	Discretionary	Discretionary

SCHEDULE 2

PRESCRIBED FAMILY PROCEEDINGS

(a) High Court and county court proceedings

PART I

PREPARATION

<i>Column 1</i>	<i>Column 2</i> <i>High Court</i>	<i>Column 3</i> <i>County Court</i>
ITEM		
1. Writing routine letters	£4.00 per item	£3.50 per item
2. Receiving routine letters	£2.00 per item	£1.75 per item
3. Routine telephone calls	£4.00 per item	£3.50 per item
4. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine	Where the proceedings were conducted in the principal registry or in another court on the South-Eastern Circuit at the time when the relevant work was done: £44.50 per hour	£39.00 per hour
	All other circuits: £41.75 per hour	£37.00 per hour
5. In addition to items 1-4 above, to cover the general care and conduct of the proceedings	Plus 50%	Plus 50%
6. Travelling and waiting time in connection with the above matters	£30.50 per hour	£28.00 per hour

PART II

CONFERENCES WITH COUNSEL

7. Attending counsel in conference	£35.50 per hour	£31.00 per hour
8. Travelling and waiting	£30.50 per hour	£28.00 per hour

PART III
ATTENDANCES

9. Attending with counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment	£35.50 per hour	£31.00 per hour
10. Attending without counsel at the trials or hearing of any cause or the hearing of any summons or other application at court, or other appointment	£53.50 per hour	£50.50 per hour
11. Travelling and waiting	£30.50 per hour	£28.00 per hour

PART IV
FEES FOR JUNIOR COUNSEL

12. With a brief on an unopposed application for an injunction, or procedural issue	Standard £84.50 Maximum £140.00	£73.00 £121.00
13. With a brief on the trial of a cause or matter or on the hearing of an ancillary application or on a children appointment where the hearing lasts for	Standard £127.50 Maximum £256.00	£109.00 £218.50
(a) one hour		
(b) a half day	Standard £176.50 Maximum £291.00	£152.00 £256.00
(c) a full day	Standard £352.00 Maximum £559.00	£304.00 £486.00
(d) more than a full day	Discretionary	Discretionary
14. For each day or part of a day on which the trial of a cause or matter, or the hearing of an ancillary application, or a children appointment, is continued after the first day	Discretionary	Discretionary
15. Conference (including time reasonably spent in preparation and conference, but not otherwise remunerated)	Standard £19.50 per half hour	Standard £17.00 per half hour

(a) Complex items of written work (such as advices on evidence, opinions and affidavits of a substantial nature, requests for particulars or answers)	Standard £92.00 per item	Standard £79.00 per item
(b) All other written work	Standard £54.50 per item	Standard £48.00 per item
17. Except where the court is within 40 kilometres of Charing Cross or where there is no local Bar in the court town, or within 40 kilometres thereof, for travelling time	Standard £17.70 per hour plus expenses	Standard £15.20 per hour plus expenses

PART V

TAXATION AND REVIEW OF TAXATION

18. Preparing the bill (where allowable) and completing the taxation (excluding preparing for and attending the taxation)	£30.50-£85.50	£30.50-£48.75
19. Preparing for and attending the taxation (including travelling and waiting)	Discretionary	Discretionary
20. Review by district judge or judge (including preparation)	Discretionary	Discretionary

(b) Magistrates' court proceedings

<i>Class of work</i>	<i>Rate</i>	
Preparation	£42. Per hour	(£44.50 per our for a fee-earner whose office is situated within legal aid area 1)
Advocacy	£53.00 per hour	
Attendance at court where counsel assigned	£28.50 per hour	
Travelling and waiting	£23.50 per house	
Routing letter written and routine telephone	£3.25 per item	£3.40 per item for a fee-earner whose office is situated within legal aid area 1)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the remuneration of legal representatives of persons granted legal aid in family proceedings.

The rates applicable in care proceedings are in Schedule 1 (regulation 3(2)(a)).

The rates applicable in matrimonial proceedings and non-care proceedings under the Children Act 1989 are in Schedule 2. These consist of the same rates previously applicable in matrimonial proceedings in the High Court and county courts. All magistrates' court family proceedings (other than care proceedings) are paid at the same rates as in criminal proceedings, as previously authorised by regulation 104 of the Civil Legal Aid (General) Regulations 1989 which applied the rates from the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 (S.I.1989/343) (regulation 3(2)(b)).

Family proceedings not falling within the above categories (such as domestic violence injunctions) continue to be taxed in accordance with rules of court (regulation 3(1)(c)).

The appropriate rate is that applicable to the proceedings for which the certificate was originally issued save that where a legal aid certificate in family proceedings which do not attract either of the prescribed rates is extended to cover proceedings that attract one or other of those rates, then that rate is applicable for the whole of the proceedings covered by that certificate. Where the certificate is extended to cover proceedings covered by the Schedule 2 rate as well as care proceedings, the Schedule 2 rate prevails (regulation 3(3)).

The appropriate rate can be summarised as follows:

Proceedings (for which the certificate was issued)	Rate
Care (proceedings under Parts IV and V of the Children Act)	Schedule 1
Matrimonial and non-care Children Act (High Court and county courts)	Schedule 2
Family proceedings other than care (magistrates courts)	Schedule 2
Other family proceedings (High Court and county courts) where no proceedings attracting a rate are added	Rules of Court
Other family proceedings (High Court and county courts) where care proceedings are added	Schedule 1
Other family proceedings (High Court and county courts) where matrimonial and non-care proceedings are added (whether or not care proceedings are added)	Schedule 2

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The mechanism for assessment or taxation of the fees continues to be in accordance with the relevant parts of the rules of court, the Civil Legal Aid (General) Regulations 1989 and the Matrimonial Causes (Costs) Rules 1988, as they take effect through the Family Proceedings (Costs) Rules 1991 (regulation 3(1)). The parts of the 1988 Rules relating purely to legal aid are replaced by provisions in these Regulations (regulations 3(2)(d) and (e) and (4) to (8)).