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STATUTORY INSTRUMENTS

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**2000 No. 441**

**The Community Legal Service (Costs) Regulations 2000**

**PART II**

**COSTS ORDERS AGAINST CLIENT AND AGAINST COMMISSION**

**Application of regulations 6 to 13**

5. Regulations 6 to 13 apply only where cost protection applies.

**Security for costs**

6. Where in any proceedings a client is required to give security for costs, the amount of that security shall not exceed the amount (if any) which is a reasonable one having regard to all the circumstances, including the client's financial resources and his conduct in relation to the dispute to which the proceedings relate.

**Assessment of resources**

7.—(1) The first £100,000 of the value of the client's interest in the main or only dwelling in which he resides shall not be taken into account in having regard to the client's resources for the purposes of section 11(1) of the Act.

(2) Where, but only to the extent that, the court considers that the circumstances are exceptional, having regard in particular to the quantity or value of the items concerned, the court may take into account the value of the client's clothes and household furniture, or the tools and implements of his trade, in having regard to the client's resources for the purposes of section 11(1) of the Act.

(3) Subject to paragraph (4), in having regard to the resources of a party for the purposes of section 11(1) of the Act, the resources of his partner shall be treated as his resources.

(4) The resources of a party's partner shall not be treated as that party's resources if the partner has a contrary interest in the dispute in respect of which the funded services are provided.

(5) Where a party is acting in a representative, fiduciary or official capacity, the court shall not take the personal resources of the party into account for the purposes of section 11(1) of the Act, but shall have regard to the value of any property or estate, or the amount of any fund out of which he is entitled to be indemnified, and may also have regard to the resources of the persons, if any, including that party where appropriate, who are beneficially interested in that property, estate or fund.

**Statements of resources**

8.—(1) Any person who is a party to proceedings in which another party is a client may make a statement of resources, and file it with the court.

(2) A person making and filing a statement of resources under paragraph (1) shall serve a copy of it on the client.

(3) Where a copy of a statement of resources has been served under paragraph (2) not less than seven days before the date fixed for a hearing at which the amount to be paid under a section 11(1) costs order falls, or may fall, to be decided, the client shall also make a statement of resources, and shall produce it at that hearing.

### **Procedures for ordering costs against client and Commission**

**9.—(1)** Where the court makes a section 11(1) costs order, it shall consider whether, but for cost protection, it would have made a costs order against the client and, if so, whether it would, on making the costs order, have specified the amount to be paid under that order.

(2) If the court considers that it would have made a costs order against the client, but that it would not have specified the amount to be paid under it, the court shall, when making the section 11(1) costs order:

- (a) specify the amount (if any) that the client is to pay under that order if, but only if:
  - (i) it considers that it has sufficient information before it to decide what amount is, in that case, a reasonable amount for the client to pay, in accordance with section 11(1) of the Act; and
  - (ii) it is satisfied that, if it were to determine the full costs at that time, they would exceed the amount referred to in sub-paragraph (i);
- (b) otherwise, it shall not specify the amount the client is to pay under the section 11(1) costs order.

(3) If the court considers that it would have made a costs order against the client, and that it would have specified the amount to be paid under it, the court shall, when making the section 11(1) costs order:

- (a) specify the amount (if any) that the client is to pay under that order if, but only if, it considers that it has sufficient information before it to decide what amount is, in that case, a reasonable amount for the client to pay, in accordance with section 11(1) of the Act;
- (b) otherwise, it shall not specify the amount the client is to pay under the section 11(1) costs order.

(4) Any order made under paragraph (3) shall state the amount of the full costs.

(5) The amount (if any) to be paid by the client under an order made under paragraph (2)(b) or paragraph (3)(b), and any application for a costs order against the Commission, shall be determined in accordance with regulation 10, and at any such determination following an order made under paragraph (2)(b), the amount of the full costs shall also be assessed.

(6) Where the court makes a section 11(1) costs order that does not specify the amount which the client is to pay under it, it may also make findings of fact, as to the parties' conduct in the proceedings or otherwise, relevant to the determination of that amount, and those findings shall be taken into consideration in that determination.

**10.—(1)** The following paragraphs of this regulation apply where the amount to be paid under a section 11(1) costs order, or an application for a costs order against the Commission, is to be determined under this regulation, by virtue of regulation 9(5).

(2) The receiving party may, within three months after a section 11(1) costs order is made, request a hearing to determine the costs payable to him.

(3) A request under paragraph (2) shall be accompanied by:

- (a) if the section 11(1) costs order does not state the full costs, the receiving party's bill of costs, which shall comply with any requirements of relevant rules of court relating to the form and content of a bill of costs where the court is assessing a party's costs;

- (b) a statement of resources; and
  - (c) if the receiving party is seeking, or, subject to the determination of the amount to be paid under the section 11(1) costs order, may seek, a costs order against the Commission, written notice to that effect.
- (4) The receiving party shall file the documents referred to in paragraph (3) with the court and at the same time serve copies of them:
- (a) on the client, if a determination of costs payable under section 11(1) of the Act is sought; and
  - (b) on the Regional Director, if notice has been given under paragraph (3)(c).
- (5) Where documents are served on the client under paragraph (4)(a), the client shall make a statement of resources.
- (6) The client shall file the statement of resources made under paragraph (5) with the court, and serve copies of it on the receiving party and, if notice has been given under paragraph (3)(c), on the Regional Director, not more than 21 days after the client receives a copy of the receiving party's statement of resources.
- (7) The client may, at the same time as filing and serving a statement of resources under paragraph (6), file, and serve on the same persons, a statement setting out any points of dispute in relation to the bill of costs referred to in paragraph (3)(a).
- (8) If the client, without good reason, fails to file a statement of resources in accordance with paragraph (6), the court shall determine the amount which the client shall be required to pay under the section 11(1) costs order (and, if relevant, the full costs), having regard to the statement made by the receiving party, and the court need not hold an oral hearing for such determination.
- (9) If the client files a statement of resources in accordance with paragraph (6), or the period for filing such notice expires, or if the costs payable by the client have already been determined, the court shall set a date for the hearing and, at least 14 days before that date, serve notice of it on:
- (a) the receiving party;
  - (b) the client (unless the costs payable by the client have already been determined); and
  - (c) if a costs order against the Commission is or may be sought, the Regional Director.
- (10) The court's functions under this regulation may be exercised:
- (a) in relation to proceedings in the House of Lords, by the Clerk to the Parliaments;
  - (b) in relation to proceedings in the Court of Appeal, High Court or a county court, a costs judge or a district judge;
  - (c) in relation to proceedings in a magistrates' court, by a single justice or by the justices' clerk;
  - (d) in relation to proceedings in the Employment Appeal Tribunal, by the Registrar of that Tribunal.
- (11) The amount of costs to be determined under this regulation may include the costs incurred in relation to a request made under this regulation.

### **Appeals, etc**

**11.—(1)** Subject to the following paragraphs of this regulation, and to regulation 12, any determination made under regulation 9 or regulation 10 shall be final.

(2) Any party with a financial interest in an assessment of the full costs may appeal against that assessment, if and to the extent that that party would, but for these Regulations, be entitled to appeal against an assessment of costs by the court in which the relevant proceedings are taking place.

(3) Where, under regulation 9(2)(a), the court has specified the amount which a client is required to pay under a section 11(1) costs order, the client may apply to the court for a determination of the full costs and if, on that determination, the amount of the full costs is less than the amount which the court previously specified under regulation 9(2)(a), the client shall instead be required to pay the amount of the full costs.

(4) The receiving party or the Commission may appeal, on a point of law, against the making of a costs order against the Commission (including the amount of costs which the Commission is required to pay under the order), or against the court's refusal to make such an order.

### **Variation and late determination of amount of costs**

**12.**—(1) The following paragraphs of this regulation apply where the court makes a section 11(1) costs order.

(2) Where the amount (if any) which the client is required to pay under the section 11(1) costs order, together with the amount which the Commission is required to pay under any costs order against the Commission, is less than the full costs, the receiving party may, on the ground set out in paragraph (4)(a), apply to the court for an order varying the amount which the client is required to pay under the section 11(1) costs order.

(3) Where the court has not specified the amount to be paid under the section 11(1) costs order, and the receiving party has not, within the time limit in regulation 10(2), applied to have that amount determined in accordance with regulation 10, the receiving party may, on any of the grounds set out in paragraph (4), apply for a determination of the amount that the client is required to pay.

(4) The grounds referred to in paragraphs (2) and (3) are the grounds that:

- (a) there has been a significant change in the client's circumstances since the date of the order;
- (b) material additional information as to the client's financial resources is available, and that information could not with reasonable diligence have been obtained by the receiving party in time to make an application in accordance with regulation 10; or
- (c) there were other good reasons justifying the receiving party's failure to make an application within the time limit in regulation 10(2).

(5) Any application under paragraph (2) or (3) shall be made by the receiving party within six years from the date on which the section 11(1) costs order is first made.

(6) On any application under paragraph (2), the order may be varied as the court thinks fit, but the amount of costs ordered (excluding any costs ordered to be paid under paragraph (9)) shall not exceed the amount of the full costs as stated in any previous order of the court.

(7) When the amount which the client is required to pay under the section 11(1) costs order has been determined under regulation 9(2)(a), and the receiving party applies under paragraph (2) for an order varying that amount:

- (a) the receiving party shall file with the application under paragraph (2) his bill of costs, which shall comply with any requirements of relevant rules of court relating to the form and content of a bill of costs where the court is assessing a party's costs; and
- (b) the court shall, when determining the application, assess the full costs.

(8) Where the receiving party has received funded services in relation to the proceedings, the Commission may make an application under paragraph (2) or paragraph (3), and:

- (a) when making the application the Commission shall file with the court a statement of the receiving party's costs or, if those costs have not been assessed, the receiving party's bill of costs; and
- (b) paragraphs (4) to (6) shall apply to that application as if "the Commission" were substituted for "the receiving party" in those paragraphs.

(9) The amount of costs to be determined under this regulation may include the costs incurred in relation to an application made under this regulation.

**Rights to appear**

**13.—**(1) The Regional Director may appear at:

- (a) any hearing in relation to which notice has been given under regulation 10(3)(c);
- (b) the hearing of any appeal under regulation 11(4); or
- (c) the hearing of any application under regulation 12(8).

(2) The Regional Director may, instead of appearing under paragraph (1), give evidence in the form of a written statement to the court, verified by a statement of truth.

(3) The Regional Director shall file with the court any statement under paragraph (2), and serve a copy on the receiving party, not less than seven days before the hearing to which it relates.