

1988 No. 1175

ECCLESIASTICAL LAW, ENGLAND

Church of England (Legal Aid) Rules 1988

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Coming into Operation 1st August 1988

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In exercise of the powers conferred on it by sections 3(3) and 4 of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988(a) the Standing Committee of the General Synod of the Church of England hereby makes the following Rules:

PART I PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Church of England (Legal Aid) Rules 1988 and shall come into force on the first day of August 1988.

Revocation

2. The Ecclesiastical Jurisdiction (Legal Aid) Rules 1964 made under section 59 of the Ecclesiastical Jurisdiction Measure 1963(b) and the Vacation of Benefices (Legal Aid) Rules 1978(c) are hereby revoked.

Interpretation

3.—(1) In these Rules—

“applicant” means an applicant for legal aid;

“assisted person” means a person in respect of whom a certificate is in force and—

(a) for the purposes of rules 22 to 26 in their application to costs incurred before notice of the discharge of a certificate is received by the solicitor, includes the person in respect of whom that certificate was issued, and

(b) for the purposes of rules 23 to 26 in their application to costs incurred before notice of the revocation of a certificate is received by the solicitor, includes the person in respect of whom that certificate was issued.

“certificate”, except in rule 10, means a certificate issued by the Commission;

“the Commission” means the Legal Aid Commission appointed in accordance with section 1(2) of the Measure;

“costs” includes fees, charges, disbursements, expenses and remuneration;

“the Fund” means the Legal Aid Fund maintained by the General Synod in accordance with section 1(1) of the Measure;

“legal aid” has the meaning assigned to it by section 2(2) of the Measure;

“the Measure” means the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988;

“the secretary” means the secretary to the Commission;

“tribunal” means any court, commission, committee, archbishop, bishop, examiner or other tribunal or body in or before whom or which any proceedings mentioned in the first column of Schedule 1 to the Measure (as amended by rule 4) have been or are proposed to be taken.

(2) The Interpretation Measure 1925(d) and the Interpretation Act 1978(e) shall apply for the interpretation of these Rules as they apply for the interpretation of Measures passed by the General Synod.

(a) 1988 No. 1.
(b) 1963 No. 1.
(c) S.I. 1978/951.
(d) 1925 No. 1.
(e) 1978 c.30.

PART II

ADDITIONAL PROCEEDINGS FOR WHICH LEGAL AID MAY BE GRANTED

Appeals against revocation of licences

4. In Schedule 1 to the Measure there shall be added at the end the following entry—
“5. Proceedings on an appeal under section 7 of this Measure ^{The appellant.}
against revocation of a licence granted to a minister, deaconess,
lay worker or stipendiary reader.

PART III

GENERAL PROVISIONS

Meetings of Commission

5. The quorum for meetings of the Commission shall be five members, except that in the case of a meeting held for the purposes of the taxation or assessment of costs under Part VII the quorum shall be three.

Services of notices etc.

6.—(1) Any notice required to be served on or sent to any person under these Rules shall be served or sent either—

- (a) by delivering it to him; or
- (b) by sending it by post to his last known address,

and any other document required by these Rules to be sent to any person shall be sent by post to his last known address.

(2) Any application or other document required by these Rules to be lodged with the secretary shall be so lodged at the office of the Secretary-General of the General Synod.

Notification of issue, amendment, discharge or revocation of certificate

7. Where any certificate or any notice of the amendment, discharge or revocation of a certificate is sent to any solicitor in accordance with rule 12, 14 or 15 the solicitor shall—

- (a) send a copy of the certificate or notice to any other party to the proceedings or his solicitor and to any other person who subsequently becomes a party to the proceedings or his solicitor; and
- (b) lodge a copy of the certificate or notice with the registrar of the tribunal before which the proceedings to which the certificate relates have been or are proposed to be taken (or, if there is no such registrar, with the tribunal).

PART IV

APPLICATIONS FOR LEGAL AID AND ISSUE OF CERTIFICATES

Applications for legal aid

8.—(1) An application for legal aid—

- (a) shall be made in writing on a form approved by the Commission or in such other manner, being in writing, as the secretary may accept as sufficient in the circumstances of the case; and

- (b) shall be lodged with the secretary.

(2) Every application for legal aid shall state the name and address of the solicitor selected by the applicant to act for him in the proceedings concerned, and shall also contain such information and be accompanied by such documents as may be requisite to enable the Commission to determine—

- (a) the nature of the proceedings to which the application relates,
- (b) whether the applicant could afford to proceed without legal aid; and
- (c) (except in the case of an application mentioned in rule 11(2)) whether the applicant has reasonable grounds for taking or defending or being a party to the proceedings.

(3) Any application for legal aid shall contain an undertaking made by the applicant that he will comply with the provisions of the Measure which relate to legal aid and with these Rules, and any such undertaking shall be made on a form approved by the Commission, or in such other manner, being in writing, as the secretary may accept as sufficient in the circumstances of the case.

Provision of additional information

9. An applicant shall, if required by the secretary or the Commission to do so for the purpose of providing additional information—

- (a) attend for interview by the secretary or the Commission;
- (b) supply such further documents or other information as the secretary or the Commission may require.

Interim certificates

10.—(1) The Commission may authorise the secretary to grant an interim certificate for legal aid in any case in which the secretary on receiving an application under rule 8 considers that it is in the interests of justice that the applicant should be granted legal aid in respect of the whole or part of costs to be incurred during the period between the issue of the certificate by the secretary and the determination of the application by the Commission.

(2) An interim certificate may be issued only in respect of costs incurred in connection with proceedings not actually begun and only for an amount not exceeding such sum as the Commission may from time to time authorise.

Determination of applications for legal aid

11.—(1) Without prejudice to section 2(4) of the Measure (which provides that an applicant shall not be given legal aid if it appears to the Commission that he could afford to proceed without it) and section 2(5) of the Measure (which provides that in cases to which that subsection applies an applicant shall not be given legal aid unless he shows that he has reasonable grounds for taking or defending the proceedings or being a party thereto), the Commission in considering whether and to what extent to grant legal aid on an application made in accordance with these rules shall have regard to all the circumstances of the case.

(2) The provisions of section 2(5) of the Measure shall not apply in relation to an application for legal aid if the applicant is an accused person in proceedings for an offence under the Ecclesiastical Jurisdiction Measure 1963.

(3) Where the Commission consider that legal aid should be granted in respect of some but not all the costs incurred by the applicant, (being costs incurred in or in relation to or directly or indirectly arising out of the proceedings concerned), the Commission may issue a certificate for—

- (a) the payment of a contribution towards those costs of an amount specified in the certificate, or
- (b) the payment of those costs subject to a contribution from the applicant of an amount so specified, or
- (c) the payment of such proportion of those costs as may be so specified, or

(d) the payment of the costs of, or a specified proportion of the costs of, such part of the proceedings as may be so specified, whether by reference to issues in or stages of those proceedings.

(4) Where on any application the Commission consider that legal aid should not be granted, the Commission before making a final decision shall afford the applicant an opportunity of making representations, whether in writing or orally and whether in person or by his solicitor or counsel with respect to the application.

(5) The secretary shall notify the applicant and his solicitor in writing of the Commission's decision on his application for legal aid, but neither the applicant or his solicitor shall be entitled to any information as to the grounds for the decision.

(6) The decision of the Commission on any application shall be final.

(7) Where an application for legal aid is refused, no further application for legal aid may be made by the same applicant in relation to the same proceedings unless it contains or is accompanied by further information showing a material change of circumstances.

Issue and contents of certificates

12.—(1) The secretary shall send any certificate issued by or on behalf of the Commission together with a copy of the certificate to the applicant's solicitor and shall send a further copy of the certificate to the applicant.

(2) In addition to any provision included in the certificate by virtue of rule 11, the certificate shall specify—

- (a) the date on which it is issued;
- (b) the name and address of the applicant;
- (c) the name and address of the applicant's solicitor; and
- (d) the proceedings to which the certificate relates.

Contributions by assisted person

13. Where a certificate is issued under rule 11(3)(b), any contribution to be made by the assisted person which is specified in the certificate shall not be payable to the Commission or into the Fund, but the amount paid or payable out of the Fund on the authority of the certificate shall not exceed the amount (if any) by which the total amount of the costs incurred by the applicant, as taxed or assessed in accordance with Part VII, exceeds the amount of that contribution.

PART V

AMENDMENT, DISCHARGE AND REVOCATION OF CERTIFICATES

Power to amend certificates

14.—(1) The Commission may, either upon the application of the assisted person or of their own motion, amend any certificate issued by them where in their opinion—

- (a) there is some mistake in the certificate; or
- (b) it has become desirable for the certificate to extend to additional proceedings;
or
- (c) it has become desirable for the certificate to extend to additional stages of, or not to extend to certain stages of, the proceedings in respect of which it was issued; or
- (d) there has been a material change in the financial circumstances of the assisted person;

or where the assisted person desires to change his solicitor or his solicitor withdraws from the conduct of the assisted person's case.

(2) An application for the amendment of a certificate shall contain such information and be accompanied by such documents as the secretary considers necessary or desirable to enable the Commission to determine the application, and rules 8(1), 9 and 11(1), (5), (6) and (7) shall apply in relation to an application for the amendment of a certificate as they apply in relation to an application for legal aid.

(3) Before amending a certificate in the circumstances specified in paragraph (1)(c) or (d) so as to reduce or restrict the assisted person's entitlement to legal aid, the Commission shall—

- (a) notify the assisted person that they are considering making the amendment; and
- (b) afford him an opportunity of making representations, whether in writing or orally and whether in person or by his solicitor or counsel, with respect to the proposed amendment.

(4) An amendment to a certificate shall take effect from such date as the Commission may specify, and (subject to rule 16) shall have effect in respect of costs incurred on or after that date.

(5) Where a certificate has been amended the secretary shall send notice of the amendment, specifying the date from which it takes effect, together with a copy of the notice, to the assisted person's solicitor, and shall send a further copy of the notice to the assisted person.

Power to discharge or revoke certificates

15.—(1) The Commission may terminate a certificate by discharging or revoking it in accordance with this rule.

(2) Subject to rule 16—

- (a) where a certificate which has been issued in respect of any person is discharged, that certificate shall cease to be in force on the date from which the discharge takes effect; and
- (b) where a certificate which has been issued in respect of any person is revoked, that certificate shall be deemed never to have been in force.

(3) The Commission may discharge a certificate in the following circumstances—

- (a) where the assisted person has requested or consented to the discharge;
- (b) where the Commission are satisfied, by the report of the assisted person's solicitor or otherwise, that—
 - (i) the assisted person has died or has had a bankruptcy order made against him; or
 - (ii) the proceedings or the part of the proceedings to which the certificate relates have or has been disposed of or completed; or
- (c) where as a result of information which has come to the Commission they are satisfied that—
 - (i) (except in the case of an application mentioned in rule 11(2)) the assisted person no longer has reasonable grounds for taking, defending or being a party to the proceedings or for continuing to do so;
 - (ii) the assisted person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the proceedings be continued;
 - (iii) the financial circumstances of the assisted person are such that he could afford to proceed without legal aid; or
 - (iv) it is unreasonable in the particular circumstances that the assisted person should continue to receive legal aid.

(4) Where as a result of information which has come to the Commission—

- (a) the Commission are satisfied that an assisted person has wilfully failed to comply with these Rules; or
- (b) they are satisfied that an assisted person has knowingly made a false statement or false representation in connection with an application for legal aid or for an amendment of a certificate; or

- (c) they are satisfied that an assisted person has failed to disclose a material fact in connection with an application for legal aid or an application for an amendment of a certificate, and he cannot show that he used due care and diligence to avoid that failure;

the Commission may discharge the certificate issued in respect of the assisted person or, if the act or omission or the first of the acts or omissions by the assisted person specified in sub-paragraph (a), (b) or (c) occurred before the date on which the certificate was issued, may revoke the certificate.

(5) Before discharging a certificate in the circumstances specified in paragraph (3)(c) or discharging or revoking a certificate in the circumstances specified in paragraph (4), the Commission shall—

- (a) notify the assisted person that they are considering the discharge or revocation of the certificate; and
- (b) afford him an opportunity of making representations, whether in writing or orally and whether in person or by his solicitor or counsel, with respect to the proposed discharge or revocation.

(6) The discharge of a certificate under the foregoing provisions of this rule shall take effect from such date as the Commission may consider appropriate.

(7) Where a certificate is discharged or revoked—

- (a) the secretary shall send notice of the discharge or revocation (specifying in the case of a discharge the date from which it takes effect), together with a copy of the notice, to the solicitor of the person in relation to whom the certificate was issued and shall (except where the certificate has been discharged because of the death of that person) send a further copy of the notice to that person; but
- (b) neither that person nor his solicitor shall be entitled to any information as to the grounds for the discharge or revocation.

Effect of amendment, discharge or revocation on costs already incurred

16.—(1) Where a certificate is amended so as to reduce or restrict the amount of legal aid payable under it or is discharged or revoked, that amendment, discharge or revocation shall not affect the payment, or the amount of the payment, out of the Fund to the solicitor of the person in relation to whom the certificate was issued in respect of costs incurred before the date on which notice of the amendment, discharge or revocation is received by that solicitor.

(2) Where a certificate has been amended or discharged with effect from a date earlier than the date on which notice of the amendment or discharge is received by the solicitor of the person to whom the certificate was issued, that person shall pay into the Fund the amount of any legal aid paid or payable to his solicitor by virtue of paragraph (1) in respect of costs incurred between those dates.

(3) Where a certificate has been revoked, the person to whom it was issued shall pay into the Fund the amount of any legal aid paid or payable to his solicitor by virtue of paragraph (1) in respect of costs incurred before the date on which notice of the revocation is received by that solicitor.

PART VI

CONDUCT OF PROCEEDINGS

Notification of changes in circumstances

17.—(1) Without prejudice to rule 8(3) an applicant or assisted person shall forthwith inform his solicitor of—

- (a) any material change in his financial circumstances, and

(b) any other change in the circumstances of his case which he has reason to believe might affect the terms or continuation of the certificate; and
an applicant's or assisted person's solicitor who receives any such information from the applicant or assisted person or otherwise shall forthwith report that information to the Commission.

(2) Without prejudice to paragraph (1), where a solicitor who has acted or is acting for an assisted person is satisfied—

(a) that the assisted person has died or has had a bankruptcy order made against him; or

(b) that the proceedings or the part of the proceedings to which the certificate relates have or has been disposed of or completed;

he shall forthwith report those matters to the Commission.

Abuse of legal aid

18.—(1) Where an assisted person's solicitor or his counsel (if any) has reason to believe that any of the circumstances mentioned in paragraph (3) exist, he shall forthwith report those circumstances to the Commission.

(2) Where at any time during the hearing of any proceedings in respect of which legal aid is granted, the tribunal before which the proceedings are being heard considers that any of the circumstances mentioned in paragraph (3) exist, that tribunal may make an order referring to the Commission the question whether the assisted person's certificate should continue.

(3) The circumstances referred to in paragraphs (1) and (2) are that—

(a) the assisted person has required the proceedings to which the certificate relates to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the proceedings be continued;

(b) the assisted person has wilfully failed to comply with these Rules;

(c) the assisted person has knowingly made a false statement or false representation in connection with an application for legal aid or for amendment of a certificate; or

(d) the assisted person has failed to disclose a material fact in connection with an application for legal aid or for amendment of a certificate and he cannot show that he used due care and diligence to avoid that failure.

Provision of further information

19. An assisted person and his solicitor shall give to the Commission such information regarding the progress and disposal of the proceedings in respect of which the certificate has been issued as the Commission may from time to time require to enable them to perform their functions.

Privilege etc. not to prevent disclosure

20.—(1) No solicitor or counsel shall be precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client from disclosing to the Commission any information or from giving any opinion which—

(a) he is required to disclose or give to the Commission under these Rules; or

(b) may enable the Commission to perform their functions.

(2) For the purpose of providing information under these Rules to enable the Commission to perform their functions, any party to proceedings to which an assisted person is or was a party may disclose to the Commission communications relating to those proceedings which have been sent by the assisted person's solicitor, whether or not they are expressed to be "without prejudice".

PART VII

COSTS

Authority to incur costs

21.—(1) Where—

- (a) it appears to the assisted person's solicitor to be necessary for the proper conduct of proceedings to which the certificate relates to incur costs by taking any of the steps specified in paragraph (2); and
- (b) payment of legal aid in respect of those costs is not specifically authorised by the certificate;

the assisted person's solicitor shall apply to the Commission for authority to incur those costs, and no payment of legal aid shall be made in respect of any such costs incurred without authority from the Commission.

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

- (a) lodging an interlocutory or final appeal;
- (b) instructing Queen's Counsel or more than one counsel;
- (c) obtaining a report or opinion from one or more experts or tendering expert evidence;
- (d) employing a person to provide a report or opinion (other than as an expert) or paying a person (not being an expert witness) a fee to prepare a report or opinion and to give evidence if required;
- (e) requiring transcripts of shorthand notes or tape recordings of any proceedings; or
- (f) performing any act which either is unusual in its nature or involves unusually large expenditure.

Orders and agreements as to assisted persons' costs etc.

22.—(1) Where, in any proceedings to which a certificate relates, an order or agreement is made for the payment to an assisted person of any costs to which this rule applies, the Commission may take proceedings in their own name in place of the assisted person to enforce that order or agreement so far as it relates to those costs.

(2) Subject to paragraph (3), any sum received (otherwise than out of the Fund) by or on behalf of the assisted person in respect of costs to which this rule applies shall be paid into the Fund.

(3) Where a certificate does not provide for the payment out of the Fund of the whole of the costs incurred by the assisted person while the certificate is in force then—

- (a) in the case of any sum recovered by the Commission under paragraph (1), the Commission shall pay to the assisted person such amount (if any) as appears to the Commission to be just in all the circumstances; and
- (b) in the case of any sum received by or on behalf of the assisted person, only such part (if any) of that sum as appears to the Commission to be just in all the circumstances shall be paid into the Fund under paragraph (2).

(4) This rule applies to costs incurred while a certificate issued in respect of those costs is in force.

Costs for legal aid to be taxed or assessed

23. Legal Aid shall be payable only in respect of costs of an assisted person which have been taxed or assessed in accordance with these Rules.

Orders for taxation and payment of taxed etc. costs

24. Where—

- (a) an order in any proceedings in respect of which a certificate has been issued provides—

- (i) for payment of the whole or part of any taxed or assessed costs of the assisted person; or
- (ii) for taxation or assessment of any costs of the assisted person; and
- (b) the costs or part of them have been incurred during a period in respect of which the certificate was in force;

those costs shall be taxed or assessed in accordance with these Rules.

Taxation of costs

25.—(1) Every taxation of costs in accordance with these Rules shall be carried out by the Commission on the standard basis within the meaning of rules of court made under section 84 of the Supreme Court Act 1981(a).

(2) In any proceedings for taxation in accordance with these Rules the Commission shall have power to require the attendance of witnesses and production of documents so far as is necessary for the discharge of their functions.

(3) Proceedings for taxation of costs in accordance with these Rules shall be commenced by the assisted person's solicitor—

- (a) lodging with the secretary an application in writing for taxation, together with the bill of costs and all necessary papers and vouchers (including copies of the certificate and of any notice of amendment, discharge or revocation of the certificate); and
- (b) serving on any other party copies of the application and the bill of costs.

(4) The secretary shall thereupon fix a time and place for the taxation and shall give not less than seven days' notice of that time and place to the assisted person's solicitor and any other party.

(5) If—

- (a) any other party does not attend at the time and place fixed for the taxation; and
- (b) the Commission are satisfied that he had due notice of that time and place;

the Commission may proceed with the taxation in his absence.

(6) Without prejudice to any other provision of these Rules or any statutory provision, on a taxation in accordance with these Rules—

- (a) any costs wasted by failure to conduct the proceedings with reasonable competence and expedition shall be disallowed or reduced; and
- (b) where a solicitor has without good reason delayed in putting in his bill for taxation, the whole of the costs covered by that bill may be disallowed or reduced.

(7) No costs shall be disallowed or reduced under paragraph (6) unless notice has been served by the Commission on the solicitor in question and, in a case where those costs relate to counsel's fees, on counsel in question 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.

(8) For the purposes of this rule "other party" means any person other than the assisted person who is or was a party to the proceedings to which the certificate relates and who has an interest in the taxation.

Assessment of costs

26.—(1) This rule applies where rule 23 or 24 requires any costs to be taxed or assessed in accordance with these Rules and where—

- (a) the retainer of the assisted person's solicitor or his counsel (if any) was determined before the proceedings in question were begun, and there has been no subsequent change in the assisted person's solicitor or counsel; or
- (b) the assisted person's solicitor is of opinion that the total amount of the costs which he and counsel (if any) for the assisted person would receive after a

(a) 1981 c.54.

taxation in accordance with these Rules would not be more than £500 (or any greater sum for the time being authorised by the Commission for the purposes of this rule); or

- (c) there has been an agreement in respect of the amount of the costs to be paid to the assisted person, and the assisted person's solicitor and his counsel (if any) are willing to accept that agreed amount in full satisfaction of work done; or
- (d) there are special circumstances in which a taxation—
 - (i) would be against the interests of the assisted person; or
 - (ii) would increase the amount payable out of the Fund.

(2) Where this rule applies the assisted person's solicitor may apply to the secretary in writing for the Commission to assess the amount of the assisted person's costs.

(3) On any such application the Commission may if they think fit assess the amount of those costs without a taxation.

(4) An assessment under this rule shall be carried out so as to allow—

- (a) as nearly as may be the same amount of costs as would have been allowed on a taxation under these Rules; or
- (b) if the Commission think fit in a case within sub-paragraph (1)(c), the agreed amount referred to in that sub-paragraph,

Dated this 7th day of June 1988

W. D. Pattinson
Secretary-General
On behalf of the Standing Committee of the General Synod

Approved by the General Synod the 6th day of July 1988

W. D. Pattinson
Secretary-General

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