
STATUTORY INSTRUMENTS

1995 No. 2034

The Church of England (Legal Aid) Rules 1995

PART VI

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 appeal;
- (b) instructing 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;
- (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 its 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) Any taxation of costs under these Rules may be carried out in such manner as the Commission considers appropriate.

(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 its 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 is 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 the 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) Paragraph (2) 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 taxation in accordance with these Rules would not be more than £1000 (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 paragraph applies the assisted person's solicitor may apply in writing to the secretary for an assessment by the Commission of the amount of the assisted person's costs.

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

(4) Where no such application has been made and the Commission is satisfied that—

- (a) there are special circumstances rendering it desirable to assess the amount of those costs without a taxation; and
- (b) to do so would not be against the interests of the assisted person,

the Commission may assess the amount of those costs without a taxation.

(5) 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 thinks fit in a case within sub-paragraph (1)(c), the agreed amount referred to in that sub-paragraph.

Appointment of committee

27.—(1) The Commission may appoint a committee to carry out its functions under rules 25 and 26 in relation to cases where it has not directed that the matter is to be dealt with by the full Commission.

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(2) A committee appointed under paragraph (1) shall consist of at least three members of the Commission two of whom shall be legally qualified.