

## The Civil Legal Aid (General) Regulations 1989 (as amended)

(S.I. 1989 No. 339)

### **Abridged to include only the provisions relevant to assessment of costs.**

*The words in bold were added or substituted by the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. 2000No.451) with effect from 20 March 2000, the Access to Justice Act 1999 (Commencement No. 3, and Transitional Provisions and Savings) Order 2000 (S.I. 2000 No.774) and, in relation to cases commenced under the 1999 Act only, the Community Legal Service (Funding) Order 2000 (S.I. 2000 No.627) with effect from 1 April 2000, the Civil Legal Aid (General) (Amendment No.2) Regulations 2001 (S.I. 2001 No.3735) with effect from 3 December 2001 and the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No.3033) with effect from 31 December 2002. Changes made by previous amending instruments have been incorporated but are not shown in bold.*

*References to the Legal Aid Board are replaced by references to the Legal Services Commission by virtue of the 1999 Act. References to area committees are replaced by references to a Costs Committee to reflect the terminology in the Legal Services Commission Review Panel Arrangements 2000.*

### **Part I General**

#### **General**

#### **3. Interpretation (selected definitions only)**

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

**“CPR” means the Civil Procedure Rules 1998, and a reference to a rule or a Part, prefixed by “CPR”, means the rule or (as the case may be) Part so numbered in the CPR**

**“costs judge” has the meaning given in CPR rule 43.2(1)(b)**

**“costs officer” has the meaning given in CPR rule 43.2(1)(c)**

**“detailed assessment” has the meaning given in CPR rule 43.4**

**“fund” means the Community Legal Service fund;**

**“standard basis” and “indemnity basis”, in relation to the detailed assessment of costs, have the meanings assigned by CPR rule 44.4**

### **Part VI Issue and Effect of Certificates**

#### **Issue and Effect of Certificates**

**48. Power to restrict costs allowable to distant solicitor**

- (1) Where the solicitor selected by the applicant to whom a certificate is issued carries on his practice at a place which is so far away from where his services will be required in acting under the certificate that his selection will result in significantly greater expense to the fund than would have been incurred if the applicant had selected another solicitor, the certificate may provide that the solicitor shall not be entitled to payment in respect of any additional costs or disbursements incurred by reason of the fact that he does not carry on his practice at or near the place where his services are required in acting under the certificate.
- (2) Where a certificate includes a provision under paragraph (1), payment of such additional costs or disbursements shall not be allowed on determination of the costs.

**Part VIII Authority to Incur Costs**

**Authority to Incur Costs**

**59. Instructing counsel**

- (1) Where it appears to a **client's** solicitor that the proper conduct of the proceedings so requires, he may instruct counsel; but, unless authority has been given in the certificate or by the **Regional Director**—
  - (a) counsel shall not be instructed in **proceedings in a magistrates' court**; and
  - (b) a Queen's Counsel or more than one counsel shall not be instructed.
- (2) Any instructions delivered to counsel under paragraph (1) shall:
  - (a) include a copy of the certificate (and any amendments to it) and any authority to incur costs under this Part of these Regulations;
  - (b) be endorsed with the **Legal Services Commission** reference number; and
  - (c) in the case of **proceedings in a magistrates' court**, show the authority for counsel to be instructed;

but no fees shall be marked on any set of papers so delivered.

**60. Power of Commission to give general authority**

The **Commission** may give general authority to solicitors acting for **clients** in any particular class of case to incur costs by—

- (a) obtaining a report or opinion from one or more experts or tendering expert evidence;

- (b) employing a person to provide a report or opinion (other than as an expert); or
- (c) requesting transcripts of shorthand notes or tape recordings of any proceedings;

and, if such authority is given, the **Commission** shall specify the maximum fee payable for any such report, opinion, expert evidence or transcript.

**61. Other cases where authority may be sought**

- (1) Where it appears to a **client's** solicitor to be necessary for the proper conduct of the proceedings to incur costs by taking any of the steps specified in paragraph (2), he may, unless authority has been given in the certificate, apply to the **Regional Director** for prior authority.
- (2) The steps referred to in paragraph (1) are—
  - (a) obtaining a report or an opinion of an expert or tendering expert evidence in a class of case not included in any general authority given under regulation 60; or
  - (b) paying a person, not being an expert witness, a fee to prepare a report and, if required, to give evidence in a case of a class not included in any general authority given under regulation 60; or
  - (c) in a case of a class included in a general authority given under regulation 60, paying a higher fee than that specified by the **Commission** or obtaining more reports or opinions or tendering more evidence (expert or otherwise) than has been specified; or
  - (d) performing an act which is either unusual in its nature or involves unusually large expenditure; or
  - (e) bespeaking any transcripts of shorthand notes or tape recordings of any proceedings not included in any general authority given under regulation 60.
- (3) Where the **Regional Director** gives prior authority for the taking of any step referred to in paragraph (2)(a), (b), (c) or (e), he shall specify
  - (a) the number of reports or opinions that may be obtained or the number of persons who may be authorised to give expert evidence, and
  - (b) the maximum fee to be paid for each report, opinion transcript or to each person for tendering evidence, as the case may be.

**62. Reasons to be given for refusing authority**

If a **Regional Director** refuses an application for authority made under regulation 59 or 61, he shall give written reasons for his decision.

**63. Effect of obtaining and failing to obtain authority**

- (1) Subject to paragraph (2), no question as to the propriety of any step or act in relation to which prior authority has been obtained under regulation 59, 60 or 61 shall be raised on any **detailed assessment** of costs.
- (2) Where costs are incurred in accordance with and subject to the limit imposed by a prior authority given under regulation 59, 60 or 61, no question shall be raised on any **detailed assessment** as to the amount of the payment to be allowed for the step or act in relation to which the authority was given unless the solicitor or the **client** knew or ought reasonably to have known that the purpose for which the authority was given had failed or become irrelevant or unnecessary before the costs were incurred.
- (3) Without prejudice to regulation 59, where costs are incurred in instructing a Queen's Counsel or more than one counsel, without authority to do so having been given in the certificate or under regulation 59(1), no payment in respect of those costs shall be allowed on any detailed assessment unless it is also allowed on an inter partes **detailed assessment**.
- (4) Where costs are incurred in instructing counsel or in taking any step or doing any act for which authority may be given under regulation 60 or 61, without authority to do so having been given in the certificate or under regulation 59, 60 or 61, payment in respect of those costs may still be allowed on **detailed assessment**.

**Part X Revocation and Discharge of Certificates**

**Revocation and Discharge of Certificates**

**84. Costs to be determined by way of detailed assessment or assessed under regulation 105 on revocation or discharge**

Upon the determination of a retainer under regulation 3 of the Community Legal Service (Costs) Regulations 2000—

- (a) the costs of the proceedings to which the certificate related, incurred by or on behalf of the person to whom it was issued, shall, as soon as is practicable after the determination of the retainer, be submitted for **detailed assessment** or assessment **under regulation 105**; and
- (b) the fund shall remain liable for the payment of any costs so assessed.

**Part XII Costs of Clients**

**Costs of Clients**

**100. Payment on account**

- (1) A solicitor acting for a **client** under a certificate to which this regulation applies may submit a claim to the **Commission** on a form approved by the **Commission** for the payment of sums on account of profit costs incurred in connection with the proceedings to which the certificate relates.
- (2) Counsel instructed on behalf of a **client** under a certificate to which this regulation applies may submit a claim to the **Commission** on a form approved by the **Commission** for the payment of sums on account of his fees for work done in connection with the proceedings to which the certificate relates.
- (3) A payment may only be made under paragraph (1) or (2) when—
  - (a) a period of 12 months has elapsed since the date on which the certificate was issued; or
  - (b) further periods of 12 months or 24 months have elapsed since that date.
- (4) A claim may only be made under paragraph (1) or (2) within the period of 2 months before to 4 months after any period specified in paragraph (3).
- (5) The maximum payment to be made for each claim under paragraph (1) or (2) in any one financial year shall be:

for the financial year 1993/94	62%
for the financial year 1994/95	70%
for the financial year 1995/96 and thereafter.	75%
- (6) Where a solicitor's retainer has been determined and another solicitor (who is not a member of the same firm) is acting on behalf of the **client**, the **Costs Committee** may authorise payment of a sum on account of the original solicitor's costs where it appears unlikely that the costs will be **determined by way of detailed assessment** within six months of the date on which the retainer was determined.
- (7) The making of a payment under this regulation shall not release a solicitor from any obligation under these Regulations to submit his costs and counsel's fees for **detailed assessment** or assessment **under regulation 105** on conclusion of the case.
- (8) Where, after **detailed assessment** or assessment **under regulation 105**, payments made under this regulation are found to exceed the final costs of the case, the solicitor or counsel (if any) shall, on demand, repay the balance due to the fund and, where the total costs exceed any payment made under this regulation, the balance shall be paid from the fund.
- (9) Claims for payments on account made under regulation 100(1), (2) or (6) or regulation 101(1)(b) shall be made at prescribed rates where such rates are prescribed for solicitors or counsel, as the case may be, in

- (a) the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994; or
- (b) the Legal Aid in Family Proceedings (Remuneration) Regulations 1991.

**101. Payment on account of disbursements, in cases of hardship, etc.**

- (1) Without prejudice to regulation 100, a solicitor acting for a **client** may apply to the **Costs Committee** for the payment of a sum on account of
  - (a) disbursements incurred or about to be incurred in connection with the proceedings to which the certificate relates;
  - (b) profit costs or counsel's fees where the proceedings to which the certificate relates have continued for more than 12 months and it appears unlikely that an order for **detailed assessment** will be made within the next 12 months and delay in the **detailed assessment** of those costs or fees will cause hardship to the solicitor or counsel.
- (1A) A solicitor who has acted for a **client** may make an application under paragraph 1(a) notwithstanding that the proceedings to which the certificate related have concluded and that the certificate has been revoked or discharged.
- (2) Without prejudice to regulation 100, where—
  - (a) the proceedings to which the certificate related have concluded or the solicitor is otherwise entitled to have his costs **determined by way of detailed assessment**; and
  - (b) counsel acting for the **client** has not received payment in respect of his fees for at least six months since the event which gave rise to the right to **detailed assessment**,

counsel may apply to the **Costs Committee** for payment of 75 per cent of the amount claimed on account of his fees for work done in connection with the proceedings to which the certificate related.

- (3) Without prejudice to regulation 100, where—
  - (a) the proceedings to which the certificate related have concluded or the solicitor acting for the **client** is otherwise entitled to have his bill of costs **determined by way of detailed assessment**;
  - (b) the solicitor commenced proceedings for **detailed assessment** in accordance with the time limits laid down by rules of court; and
  - (c) the solicitor has not received payment in respect of his costs for at least six months since he submitted his bill for **detailed assessment**,

he may apply to the **Costs Committee** for payment of 75 per cent of the amount claimed on account of his profit costs for work done in connection with the proceedings to which the certificate related.

#### **102. Deferment of solicitor's profit costs**

Where a **client's** solicitor has failed to comply with any provisions of these Regulations **or the Funding Code** and, as a result of his default or omission, the fund incurs loss—

- (a) the **Costs Committee** may defer payment of all or part of the solicitor's profit costs in connection with **any** proceedings until he has complied with such provisions<sup>1</sup>; and
- (b) if the **Commission** refers the conduct of the solicitor to the Solicitors' Disciplinary Tribunal and the solicitor is disciplined, the **Commission** may retain any sum, payment of which has been deferred under sub-paragraph (a), in accordance with the finding of the Tribunal.

#### **102A. Production of documentation and disclosure of information.**

**A solicitor shall promptly produce to the Commission any documentation in his possession or control, and disclose any information, which the Commission may request from time to time in connection with any proceedings in respect of which it has made payment to the solicitor.**

#### **102B. Recoupment of losses and excesses.**

- (1) **Where the fund incurs loss in the circumstances mentioned in regulation 102, the solicitor shall pay to the Commission a sum equivalent to the amount of such loss or such proportion of that amount as the Commission considers appropriate.**
- (2) **Where for whatever reason a solicitor has been paid an amount greater than that to which he is entitled, the Commission may recover the excess either by way of repayment by the solicitor or by way of deduction from any other sum which may be due to him.**<sup>2</sup>

#### **104. Remuneration of legal representatives in magistrates' courts**

- (1) **The sums to be allowed to legal representatives in connection with proceedings in a magistrates' court shall be assessed by the Regional Director.**
- (2) [Omitted]

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<sup>1</sup> Amended by the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No. 3033)

<sup>2</sup> Regulations 102A and 102B were inserted by the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No.3033).

- (3) In the case of **proceedings in a magistrates' court** which are not family proceedings any assessment, review or appeal under this regulation shall be made in accordance with the provisions of **the Legal Aid in Family Proceedings (Remuneration) Regulations 1991** as if the work done was work to which these provisions apply, save that **regulation 3(4)(c)** shall not apply.
- (4) **Paragraphs (3A) to (11) of regulation 105 shall apply and regulation 105A shall apply where costs are assessed by an Area Director under paragraph (1) as they apply to an assessment under that regulation; provided that the references to the time limit in regulation 105(3A) shall be construed as references to:**
  - (a) **the date three months after the termination of the solicitor's retainer, where the retainer is determined before proceedings are begun, or where the assisted person's certificate is revoked or discharged; or**
  - (b) **otherwise, the date three months after the determination of the proceedings, whether in a magistrates' court or another court.**
- (5) **Subject to paragraph (4), regulations 105 to 110 shall not apply to costs in respect of proceedings in a magistrates' court to which this regulation applies.**<sup>3</sup>

#### **105. Assessment of costs**

- (1) In this regulation and in regulation 106A, "assessment" means an assessment of costs with a view to ensuring that, **subject to paragraph (10)**, the amounts of costs to be allowed are those which would be allowed on a **detailed assessment** under regulation 107A(2).
- (2) Subject to regulation 106A where the retainer of a **client's** solicitor or counsel is determined before proceedings are actually begun and there has been no subsequent change of solicitor or counsel under the certificate, the amount of the solicitor's costs and counsel's fees (if any) shall be assessed by the **Regional Director**.
- (2A) Where proceedings have begun and the solicitor is of the opinion that the total amount which he and counsel (if any) would receive after **detailed assessment** under regulation 107A(2) would not be more than £500 he must apply to the **Regional Director** for an assessment of the amount of his costs and counsel's fees (if any) in respect of the work done.
- (3) Subject to paragraph (2A) and regulation 106A where proceedings have begun and—

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<sup>3</sup> Paragraphs (4) and (5) of regulation 104 were inserted by the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No. 3033).

- (a) the solicitor is of the opinion that the total amount which he and counsel (if any) would receive after **detailed assessment** under regulation 107A(2) would not be more than £1,000; or
- (b) *[Omitted]*
- (c) there are special circumstances where a **detailed assessment** would be against the interest of the **client** or would increase the amount payable from the fund; or
- (d) after a direction or order that the **client's** costs shall be **determined by way of detailed assessment** under regulation 107A(2), the solicitor incurs costs for the purpose of recovering moneys payable to the fund,

the solicitor may apply to the **Regional Director** for an assessment of the amount of his costs and counsel's fees (if any) in respect of the work done.

**(3A) Subject to paragraph (10) an application for an assessment under this regulation shall be made:**

- (a) where paragraph (2) applies, within three months of the determination of the solicitor's retainer;
- (b) where paragraph (2A) or (3) applies:
  - (i) **if the client's certificate is revoked or discharged, within three months of the termination of the solicitor's retainer;**
  - (ii) **otherwise, within the period which would have been the period specified by CPR rule 47.7 for the commencement of detailed assessment proceedings if the costs fell to be determined by way of detailed assessment.**<sup>4</sup>
- (4) If any solicitor or counsel is dissatisfied with any decision on an assessment in accordance with paragraphs (2) or (3), he may, within 21 days of that decision, make written representations to the **Costs Committee**; and that Committee shall review the assessment of the **Regional Director** whether by confirming, increasing or decreasing the amount assessed by the **Regional Director**.
- (5) A solicitor or counsel who is dissatisfied with the decision of a **Costs Committee** on a review under paragraph (4) may, within 21 days of the decision, apply to that Committee to certify a point of principle of general importance.

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<sup>4</sup> Paragraph (3A) of regulation 105 was inserted by the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. 2000 No.451) and amended by the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No.3033).

- (6) Where a **Costs Committee** certifies a point of principle of general importance, the solicitor or counsel may, within 21 days of the certification, appeal in writing to a committee appointed by the **Commission** against the decision of the **Costs Committee** under paragraph (4).
- (7) On an appeal under paragraph (6) the committee appointed by the **Commission** may reverse, affirm or amend the decision of the **Costs Committee** under paragraph (4).
- (8) The **client's** solicitor shall within seven days after an assessment or review under this regulation notify counsel in writing where the fees claimed on his behalf have been reduced or disallowed on assessment or review.
- (9) *[Deleted]*.<sup>5</sup>
- (10) **Where a solicitor or counsel has failed to comply with the time limit in paragraph (3A), the costs shall be assessed and the Area Director shall consider what, if any, reduction is reasonable and proportionate in all the circumstances; provided that costs shall not be reduced unless the solicitor or counsel has been allowed a reasonable opportunity to show cause in writing why the costs should not be reduced.**<sup>6</sup>
- (11) **A solicitor or counsel may appeal to the Costs Committee against a decision made by the Regional Director under paragraph (10) and such an appeal shall be commenced within 21 days of the decision by giving notice in writing to the Costs Committee specifying the grounds of appeal.**<sup>7</sup>

#### **105A. Client having financial interest in assessment**

- (1) Where a **client** has a financial interest in any assessment, review or appeal under regulation 105 he shall have a right to make written representations to the **Regional Director, Costs Committee** or committee appointed by the **Commission** as the case may be within 21 days of being notified of the right to make such representations.
- (2) On an assessment to which paragraph (1) applies it shall be the duty of a **client's** solicitor:
  - (a) to supply him with a copy of his bill;

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<sup>5</sup> Paragraph 9 was inserted by the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. 2000 No.451) then deleted by the Civil Legal Aid (General) (Amendment No.2) Regulations 2002 (S.I. 2002 No. 3033).

<sup>6</sup> Paragraph 10 was inserted by the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. 2000 No. 451) then substituted by the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No. 3033).

<sup>7</sup> Paragraph (11) was inserted by the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. 2000 No.451) and amended by the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No.3033).

- (b) to inform him of the extent of his financial interest and his right to make written representations; and
  - (c) to endorse on the bill that the **client** has a financial interest in the assessment and that he has complied with sub-paragraphs (a) and (b) above.
- (3) Where a legal representative wishes to apply for a review of the assessment of the **Regional Director** or appeal against a decision of the **Costs Committee** under regulation 105 and the **client** has exercised his right to make representations prior to the assessment, the legal representative shall notify the **client** of the decision to be reviewed or appealed, the grounds of appeal and his right to make further representations.

**106A. Assessment under regulation 105 and detailed assessment where agreed costs have been paid**

- (1) In the circumstances described in paragraph (2) below, there shall be no **detailed assessment** or assessment **under regulation 105** except in accordance with this regulation.
- (2) The circumstances are—
  - (a) where proceedings to which a **client** has been a party are, as regards a **client** (other than a person referred to in **CPR rule 48.5**), settled without any direction of the court as to costs on terms including a provision for the payment of agreed costs in favour of the **client**;
  - (b) where proceedings to which a **client** has been a party are brought to an end by a judgment, decree or final order and there has been agreement as to the costs to be paid in favour of the **client**; or
  - (c) where the retainer of a **client's** solicitor or counsel is determined in circumstances to which regulation 105(2) refers and there is an agreement for the payment of agreed costs in favour of the **client**,and the agreed costs have been paid.
- (3) The **client's** solicitor may apply to the **Regional Director** for an assessment limited to **costs payable from the Community Legal Service Fund only** if the solicitor is of the opinion that the amount of those costs, when determined, including counsel's fees (if any) would not be more than £1,000.
- (4) The **client's** solicitor may apply for a **detailed assessment** under regulation 107A(2) limited to **costs payable from the Community Legal Service Fund only** if the solicitor is of the opinion that the amount of those costs, when determined, including counsel's fees (if any) would be more than £500.

- (5) Before any assessment **under regulation 105** or **detailed assessment** under paragraphs (3) or (4), the client's solicitor shall confirm in writing to the relevant authority that the agreed costs have been paid.
- (6) The relevant authority may require the production of any information which it considers relevant for the purposes of discharging its functions with respect to a determination under this regulation.
- (7) Paragraphs (4) to (8) of regulation 105 shall apply where costs are assessed by a **Regional Director** under paragraph (3) above as they apply under that regulation.

#### **107. Detailed assessment of costs**

- (1) The costs of proceedings to which a **client** is a party shall be **determined by way of detailed assessment** in accordance with any direction or order given or made in the proceedings irrespective of the interest (if any) of the **client** in the **detailed assessment**.
- (2) Any certificate or notice of revocation or discharge, or a copy of any such certificate or notice, shall be made available on the **detailed assessment**.
- (3) Where in any proceedings to which a **client** is a party—
  - (a) judgment is signed in default, the judgment shall include a direction that the costs of any **client** shall be **determined by way of detailed assessment**.
  - (b) the court gives judgment or makes a final decree or order in the proceedings, the judgment, decree or order shall include a direction (in addition to any other direction as to **detailed assessment**) that the costs of any **client** shall be **determined by way of detailed assessment** under regulation 107A(2).
  - (c) the plaintiff accepts money paid into court, the costs of any **client** shall be **determined by way of detailed assessment** under regulation 107A(2).
- (4) Where in any proceedings to which a **client** or a former **client** is a party and—
  - (a) the proceedings are, or have been, brought to an end without any direction having been given, whether under paragraph (3) or otherwise, as to the **client's** costs being **determined by way of detailed assessment** under regulation 107A(2); or
  - (b) a judgment or order in favour of an opposing party, which includes a direction that the **client's** costs be so **determined by way of detailed assessment**, has not been drawn up or, as the case may be, entered by him; or

- (c) a retainer is determined under **regulation 3 of the Community Legal Service (Costs) Regulations 2000** in such circumstances as to require a **detailed assessment** in accordance with the provisions of these Regulations;

the costs of that person shall be **determined by way of detailed assessment** under regulation 107A(2) on production of a copy of the notice of discharge or revocation of the certificate at the appropriate **court office**.

**107A. Basis of detailed assessment**

- (1) This regulation applies on any **assessment under regulation 105 or detailed assessment** of the costs of a **client** in proceedings where the costs are, or may be, paid out of the fund.
- (2) Costs to which this regulation applies shall be determined on the standard basis subject to—
  - (a) the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 in proceedings to which those Regulations apply;
  - (b) the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 in proceedings to which those Regulations apply.
- (3) Any assessment under regulation 105 or detailed assessment under this Regulation shall—
  - (a) subject to the provisions of sub-paragraphs (a) and (b) of paragraph (2), be in accordance with Part XII of these Regulations;
  - (b) be conducted together with any determination of the costs of the proceedings required in accordance with any direction or order given or made in the proceedings.
  - (c) be conducted in accordance with any conditions or limitations on the relevant certificate, whether as to the work authorised under the certificate, the maximum costs payable or otherwise;
  - (d) ensure that any limitation as to costs on the relevant certificate will not reduce any sums payable in respect of counsel's fees except where counsel's fees alone exceed such limitation, when paragraph (4) below will apply.
- (4) Where counsel's fees alone exceed any limitation as to costs on the relevant certificate, the excess shall be borne by the assisted person's solicitor except where he has sent counsel a copy of the certificate and any amendments in accordance with regulation 59(2)(a).

**107B. Recovery of costs**

- (1) Where an agreement or order provides for costs to be paid by any other party (in this regulation referred to as "the paying party") in favour of the assisted person, the assisted person's solicitor may recover a sum in respect of costs from the paying party subject to the provisions of this regulation and regulation 91(2B).
- (2) The costs which the assisted person's solicitor may recover by virtue of this regulation shall not exceed the total of the sums referred to in subparagraphs (c) and (d) of regulation 92(1).
- (3) The assisted person's legal representatives shall not be prevented from recovering from the paying party the sums in respect of costs to which this regulation refers by
  - (a) any rule of law which limits the costs recoverable by a party to proceedings to the amount which he is liable to pay his legal representatives, including, without limitation, with respect to the rates for the basis of taxation set out in regulation 107A or any limitation as to costs on the relevant certificate or contract; or
  - (b) regulation 64 (restriction on payment otherwise than from the fund).
- (4) Subject to reimbursement of the Board in respect of costs to which regulation 92(1)(b) refers and any interest thereon, any costs recovered from the paying party by virtue of this Regulation shall belong to the solicitor.

**108. Failure to apply for detailed assessment**

Where, in any proceedings to which a former **client** was a party, an order or agreement was made for the payment to him of costs and he has failed to ask for the costs to be **determined by way of detailed assessment** or his certificate is discharged before **detailed assessment**, the Commission may authorise the making of the application for **detailed assessment** on his behalf and the costs of the application and of **detailed assessment** shall be deemed to be costs in the proceedings to which the certificate related.

**109. Disallowance or reduction of costs**

- (1) Without prejudice to section 51(6) of the Supreme Court Act 1981 or **CPR rules 44.14 and 48.7** on any **detailed assessment** of a **client's** costs in connection with proceedings (which are not **proceedings in a magistrates' court**) any wasted costs shall be disallowed or reduced, and where the solicitor has without good reason delayed putting in his bill for **detailed assessment** the whole of the costs may be disallowed or reduced.

- (2) No costs shall be disallowed or reduced under paragraph (1) until notice has been served by the **costs officer** on the solicitor whose name appears on the **client's** certificate and, in a case where those costs relate to counsel's fees, on the **client's** counsel, 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.
- (3) In this regulation "wasted costs" has the same meaning as in section 51(7) of the Supreme Court Act 1981.

#### **110. Solicitor's duty to safeguard the interests of the fund**

It shall be the duty of a **client's** solicitor to safeguard the interests of the fund on any inter partes **detailed assessment** pursuant to an order for costs made in favour of the **client** where that person may himself have no interest in the result of the **detailed assessment**, and for this purpose to take such steps as may appear to the solicitor to be necessary to **appeal against the detailed assessment**.

#### **112. Duty to inform counsel**

- (1) The **client's** solicitor shall within seven days after the **detailed assessment** (or provisional **detailed assessment**) notify counsel in writing where the fees claimed on his behalf have been reduced or disallowed on **detailed assessment**, and shall endorse the bill of costs with the date on which such notice was given or that no such notice is necessary.
- (2) Where the bill of costs is endorsed that no notice under paragraph (1) is necessary, the **costs officer** may issue the certificate or allocatur but, where such a notice has been given, the **costs officers** shall not issue the certificate or allocatur until 14 days have elapsed from the date so endorsed.

#### **113. Application to carry in objections to the detailed assessment**

- (1) Subject to paragraph (2), **detailed assessment proceedings shall be deemed to be proceedings to which the client's certificate relates, whether or not it has been discharged or revoked, and the costs of such proceedings shall be paid out of the fund unless the court otherwise orders.**
- (2) Subject to the following paragraphs of this regulation, a **client's** solicitor may **appeal against a decision in detailed assessment proceedings in accordance with rules of court, and, if counsel acting for the client notifies the solicitor that he is dissatisfied with the decision, shall do so, but the costs of any such appeal shall be deemed to be costs to which the client's certificate relates only to the extent that the court hearing the appeal so orders.**

- (3) **The client shall not be required to make any contribution to the fund on account of the costs of any appeal against a decision in detailed assessment proceedings and the charge created by section 10(7) of the Access to Justice Act 1999 shall not apply in relation to any resulting increase in the net liability of the fund in consequence of any order made in such an appeal.**
- (4) **Where permission to appeal is obtained under CPR rule 52.3, the client's solicitor shall give written notice to that effect to the Lord Chancellor.**
- (5) **The client's solicitor shall send to the Lord Chancellor, together with the notice given under paragraph (4), copies of:**
  - (a) **the bill of costs; and**
  - (b) **the request for permission to appeal.**
- (6) **When filing an appeal notice, the client's solicitor shall file with the court a copy of the notice given under paragraph (4).**
- (7) **After filing an appeal notice the client's solicitor shall without delay send a copy of it to the Lord Chancellor<sup>8</sup>.**

**114–118.** [Omitted]

**119. Client having financial interest in detailed assessment**

- (1) Where the **client** has a financial interest in the **detailed assessment** it shall be the duty of his solicitor:
  - (a) to supply him with a copy of his bill;
  - (b) to inform him of the extent of his financial interest and the steps which can be taken to safeguard that interest and, if the **client** so requests, to give notice in accordance with rules of court to the **costs officer** that the **client** has such an interest; and
  - (c) to endorse on the bill that the **client** has a financial interest in the **detailed assessment** and that he has complied with sub-paragraphs (a) and (b) above.

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<sup>8</sup> Regulation 113 was substituted by the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. 2000 No.451) and amended by the Civil Legal Aid (General) (Amendment No.2) Regulations 2001 (S.I. 2001 No.3735).

- (2) Where the **client** has a financial interest in the **detailed assessment** he shall not be required to make any contribution to the fund on account of the costs of the **detailed assessment** proceedings and the charge created by section 16(6) of the Legal Aid Act 1988 shall not apply to any resulting increase in the net liability of the fund arising out of the costs of the **detailed assessment** proceedings.
- (3) **For the purposes of paragraph (2), the costs of drawing up a bill of costs shall not be included as part of the costs of the detailed assessment proceedings<sup>9</sup>.**

120–121. [Omitted]

**122. Appointment of solicitor to intervene**

- (1) The Lord Chancellor may appoint a solicitor to intervene in any **appeal against a detailed assessment under CPR rule 47.22(2) or (3)** of the costs of proceedings to which a client is a party, and any such appointment may be made in respect of a **particular such appeal** or may extend to any **such appeal** during the period for which the solicitor is appointed.
- (2) [Omitted]
- (3) If, in proceedings to which a client is a party, any other party appeals against a detailed assessment of costs payable by one party to another or the client's solicitor appeals against a detailed assessment in accordance with regulation 113, the client's solicitor shall so inform the Commission and the Commission shall notify the Lord Chancellor and inform him of the name and address of the client's solicitor and, where the subject of the appeal is a detailed assessment of costs payable by one party to another, the name and address of the solicitor acting for the other party.
- (4) The solicitor appointed by the Lord Chancellor to **intervene in an appeal against a detailed assessment** shall be entitled to the production of all documents relevant to the matters in issue before the **costs officer** and to delivery of copies thereof and to appear by counsel and be heard **on the appeal**, with a view to ensuring that all considerations which are proper to be taken into account are placed before the court, whether they relate to the interests of the fund or of the **client** or to the remuneration of solicitors and counsel acting for **clients**.

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<sup>9</sup> Paragraph (3) was inserted by the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. No.451).

- (5) On any **appeal** in which a solicitor appointed by the Lord Chancellor has intervened, the judge may make such order as may be just for the payment to or by that solicitor of the costs incurred by him or any other party, and any sum due to the solicitor by virtue of such order shall be paid by him to the **Commission** and any sum so payable by the solicitor shall be paid out of the fund, and the solicitor shall be entitled to receive from the fund the costs he has incurred on the intervention.
- (6) **Where rules of court provide for a further appeal from a decision on appeal from a detailed assessment (“the original appeal”), a solicitor appointed by the Lord Chancellor under paragraph (1) may appeal from the original appeal and paragraphs (2) to (5) shall apply to such a further appeal as it applies to the original appeal<sup>10</sup>.**
- 149** (7) The costs of **a client** in respect of proceedings in the Appeal Tribunal shall be assessed in accordance with regulation 105 or **determined by way of detailed assessment** by a **costs judge** of the Supreme Court and the provisions of **CPR Parts 43 to 48** shall apply, with the necessary modifications, to the **detailed assessment** of those costs as if the proceedings in the Appeal Tribunal were a cause or matter in the Supreme Court.

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<sup>10</sup> Paragraph (6) was substituted by the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. 2000 No.451).