

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

(S.I. 1989 No. 339)

The words in bold were added or substituted by: the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. 2000 No. 451); the (Amendment No. 2) Regulations 2002 (S.I. 2002 No. 3033); 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), 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; the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No.3033) with effect from 31 December 2002; the Civil Legal Aid (General)(Amendment) Regulations 2003 (S.I. 2003 No. 1312) with effect from 1 July 2003; the Civil Legal Aid (General) (Amendment) Regulations 2005 (S.I. 2005 No. 591); and the Civil Legal Aid (General) (Amendment No.2) Regulations 2005 (S.I. 2005 No. 1802). Changes made by previous amending instruments have been incorporated but are not shown in bold.

PART I

GENERAL

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.

3. Interpretation (selected definitions only)

1B-155

(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

48. Power to restrict costs allowable to distant solicitor

1B-156

(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.

Part B Regulations/Orders

(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

1B-157 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.

1B-158 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.

1B-159 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

1B-160

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

1B-161

(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

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

1B-162

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 XI

PROPERTY AND COSTS RECOVERED FOR CLIENTS

87. Money recovered to be paid to solicitor or the Commission

- (1) Subject to regulations 89 and 94, all moneys payable to a **client**-
 - (a) by virtue of any agreement or order made in connection with the action, cause or matter to which his certificate relates, whether such agreement was made before or after the proceedings were taken; or

Part B Regulations/Orders

- (b) being moneys payable in respect of the action, cause or matter to which his certificate relates upon the distribution of property of a person who had been adjudicated bankrupt or has entered into a deed of arrangement, or of a company in liquidation; or
- (c) being moneys which were paid into court by him or on his behalf in any proceedings to which his certificate relates and which have been ordered to be repaid to him; or
- (d) being moneys standing in court to the credit of any proceedings to which his certificate relates,

shall be paid or repaid, as the case may be, to the solicitor of the **client** or, if he is no longer represented by a Solicitor, to the **Commission**, and only the solicitor, or, as the case may be, the **Commission**, shall be capable of giving a good discharge for moneys so payable.

(2) Where the **client's** solicitor has reason to believe that an attempt may be made to circumvent the provisions of paragraph (1), he shall inform the **Commission**.

88. Notice to trustee in bankruptcy, etc.

(1) Where moneys become payable under regulation 87(b), the solicitor or the **Commission**, as the case may be, shall send to the trustee in bankruptcy, the trustee or assignee of the deed of arrangement or the liquidator of the company in liquidation, as the case may be; notice that a certificate has been issued to the **client**.

(2) A notice sent under paragraph (1) shall operate as a request by the **client** for payment of the moneys payable under regulation 87(b) to the **client's** solicitor or the **Commission**, as the case may be, and shall be a sufficient authority for that purpose.

89. Exceptions to regulation 87

Notwithstanding the requirements of regulation 87–

- (a) payment of any sum under an order for costs in favour of a **client** in authorised summary proceedings shall be made to the [justices' chief executive]¹, who shall pay it to the **Commission** or as the **Commission** shall direct, and only the [justices' chief executive]¹ shall be able to give a good discharge therefore and
- (b) where any moneys recovered or preserved for a **client** in any proceedings have been paid into or remain in court and invested for the benefit of the **client**, such part of those moneys as is not subject to the charge created by section 16(6) of the Act in accordance with regulation 93 may be paid to the **client**.

NOTES

¹ Amended by the Civil Legal Aid (General) (Amendment) Regulations 2001 (S.I. 2001 No. 617).

90. Solicitor to pay moneys recovered to the Commission

- (1) A **client's** solicitor shall forthwith –
 - (a) inform the **Regional Director** of any property recovered or preserved for the **client** and send to him a copy of the order or agreement by virtue of which the property was recovered or preserved; and
 - (b) subject to paragraphs (2) and (4), pay all moneys received by him under the terms of the order or agreement made in the **client's** favour to the **Commission**.
- (2) Where the Regional Director considers that the rights of the fund will thereby be safeguarded, he may direct the **client's** solicitor to –
 - (a) pay to the **Commission** under paragraph (1)(b) only such sums as, in the opinion of the **Regional Director**, should be retained by the **Commission** in order to safeguard the rights of the fund under any provisions of the Act and these Regulations; and
 - (b) pay any other moneys to the **client**.

- (3) Where:
- (a) in proceedings under any of the enactments referred to in regulation 96(1) the property recovered or preserved for the **client** includes money which by order of the court or under the terms of any agreement reached is to be used for the purpose of purchasing a home for himself or his dependants; or
 - (b) in any proceedings the property recovered or preserved for the **client** includes property which, by order of the court or under the terms of any agreement reached, is to be used as a home for the **client** or his dependants,

the **client's** solicitor shall forthwith so inform the **Regional Director**.

(4) If the **Regional Director** considers and directs that the provisions of regulation 96 apply to any sum of money, paragraph (1)(b) above shall not apply to it and the **client's** solicitor shall release the money only in accordance with the provisions of regulation 96.

(5) Where the **client's** solicitor pays moneys to the **Commission** in accordance with this Regulation, he shall identify what sums relate to costs and what to damages.

91. Enforcement of orders, etc., in favour of client

- (1) Where in any proceedings to which a **client** is a party –
- (a) an order or agreement is made providing for the recovery or preservation of property for the benefit of the **client** and, by virtue of the Act, there is a first charge on the property for the benefit of the **Commission**; or
 - (b) an order or agreement is made for the payment of costs to the **client**,

the **Commission** may take such proceedings in its own name as may be necessary to enforce or give effect to such an order or agreement.

(2) A **client** may, with the consent of the appropriate **Regional Director**, take proceedings (being proceedings for which representation may be granted under the Act) to give effect to an order or agreement referred to in regulation 87(1)(a).

(2A) The **client's** solicitor may take proceedings for the recovery of costs in the circumstances to which regulation 107B applies.

(2B) Where the **Commission** has paid costs to which regulation 92(1)(b) refers, but those costs have not been reimbursed by payment from any other party in favour of the **client**, the solicitor shall require the consent of the **Regional Director** before taking proceedings to which paragraph (2A) refers.

(3) Where the **Commission** takes proceedings, it may authorise any person to swear an affidavit, file a proof, receive a dividend or take any other step in the proceedings in its name and the costs incurred by the **Commission** in any such proceedings shall be a first charge on any property or sum so recovered.

92. Retention and payment out of moneys by the Commission

(1) The costs payable by the **Commission** in respect of any work done under a certificate, after deduction of any sums paid under regulations 100 or 101 (payments on account), shall be–

- (a) the legal aid only costs;
- (b) any other costs determined under regulation 107 A(2);
- (c) where inter partes costs paid in favour of the **client** are received by the **Commission**, a sum equal to the amount by which the costs received exceed the costs referred to in sub-paragraph (b) above;
- (d) where all the inter partes costs as agreed or determined in accordance with any direction or order given or made in the proceedings in favour of the **client** are received by the **Commission** together with interest, a sum equal to the balance of interest after deduction of interest on the costs to which sub-paragraph (b) refers.

(2) Upon receipt of moneys paid to it under this Part of the Regulations the **Commission** shall retain –

- (a) subject to regulation 103 and to paragraph (1)(c) and (d) above, any sum paid under an order or agreement for costs made in favour of the **client** in respect of the period covered by his certificate;
 - (b) a sum equal to the amount (if any) by which any property recovered or preserved is charged for the benefit of the **Commission** by virtue of section 16(6) of the Act;
 - (c) any costs of proceedings taken by the **Commission** under regulation 91 (1),
- and shall pay the balance to the **client**.

92A. Interest on damages

(1) Where the **Commission** receives damages paid in favour of a **client** it shall, subject to the provisions of this regulation, pay to the **client** a sum representing gross interest earned while the damages are being held by the **Commission**.

(2) Without prejudice to its other powers to invest money, the **Commission** shall maintain and may deposit in one general account at a bank or building society damages to which this regulation refers.

(3) The rate of interest payable to the **client** by virtue of this regulation shall be 1/2 per cent. per annum less than the rate payable on damages deposited in the general account.

(4) The **Commission** shall not be required to pay interest where the damages received do not exceed £500 or where the period during which they are held by the **Commission** is less than 28 days

(5) Interest shall be payable for the period beginning on the third business day after the date on which the damages are received by the **Commission** down to (and including) the date on which the **Commission** determines the amount to be retained under regulation 92(2).

(6) In this regulation –

“bank” means the Bank of England, or the branch, situated in England or Wales, of any institution authorised under the Banking Act 1987;

“building society” means the branch, situated in England or Wales, of a building society within the meaning of the Building Societies Act 1986;

“business day” means a day other than a Saturday, a Sunday/Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971;

“general account” means an interest bearing account opened in the name of the **Commission**, the title of which account does not identify any **client**.

93. Operation of statutory charge on moneys in court

Where any moneys recovered or preserved for a **client** in any proceedings are ordered to be paid into or remain in court and invested for the benefit of the **client**, the charge created by section 16(6) of the Act shall attach only to such parts of those moneys as, in the opinion of the **Regional Director**, will be sufficient to safeguard the rights of the **Commission** under any provisions of the Act or these Regulations and the **Regional Director** shall notify the court in writing of the amount so attached.

94. Exemptions from the statutory charge

The charge created by section 16(6) of the Act shall not apply to –

- (a) any interim payment made in accordance with an order made under Order 29, rule 11 or 12 of the Rules of the Supreme Court 1965, or Order 13, rule 12 of the County Court Rules 1981, or in accordance with an agreement having the same effect as such an order;
- (b) any sum or sums ordered to be paid under section 5 of the Inheritance (Provision for Family and Dependents) Act 1975;

- (c) any periodical payment of maintenance which, for this purpose, means money or money's worth paid towards the support of a spouse, former spouse, child or any other person for whose support the payer has previously been responsible or has made payments;
- (d) the first £2,500 of any money, or of the value of any property, recovered or preserved by virtue of –
 - (i) an order made, or deemed to be made, under the provisions of section 23(1)(c) or (f), 23(2), 24, 27(6)(c) or (f), or 35 of the Matrimonial Causes Act 1973; or
 - (ii) an order made, or deemed to be made, under the provisions of section 2 or 6 of the Inheritance (Provision for Family and Dependents) Act 1975 or any provision repealed by that Act; or
 - (iii) an order made, or deemed to be made, after September 30, 1977, under section 17 of the Married Women's Property Act 1882; or
 - (iv) [Omitted by the Civil Legal Aid (General) (Amendment) (No.2) Regulations 1991];
 - (v) an order for the payment of a lump sum made, or deemed to be made, under the provisions of section 60 of the Magistrates' Courts Act 1980; or
 - (vi) an order made, or deemed to be made, under the provisions of section 2(1)(b) or (d), 6(1) or (5) or 20(2) of the Domestic Proceedings and Magistrates' Courts Act 1978; or
 - (vii) [Omitted by the Civil Legal Aid (General) (Amendment) (No.2) Regulations 1991];
 - (viii) an order made, or deemed to be made, under the provisions of Schedule 1 to the Children Act 1989; or
 - (ix) an agreement made after March 1, 1981 which has the same effect as an order made, or deemed to be made under any of the provisions specified in sub-paragraph (d)(i) to (viii);
- (dd) any tools of the **client's** trade;
- (e) where the certificate was issued before May 3, 1976, any money or property, of whatever amount or value, recovered or preserved by the virtue of an order made, or deemed to be made, under any of the provisions specified in sub-paragraph (d)(i) or (ii) before August 1, 1976 or which, if made on or after that date, gives effect to a settlement entered into before that date;
- (f) any payment made in accordance with an order made by the Employment Appeal Tribunal, or in accordance with a settlement entered into after November 1, 1983 which has the same effect as such an order;
- (ff) any payment made by the Secretary of State under the Earnings Top-up Scheme 1996; or
- (g) any sum, payment or benefit which, by virtue of any provision of, or made under, an Act of Parliament, cannot be assigned or charged.

95. Vesting and enforcement of charges

(1) Any charge on property recovered or preserved for a **client** arising under section 16(6) of the Act or created by virtue of regulation 96, 97 or 98 shall vest in the **Commission**.

(2) The **Commission** may enforce any such charge in any manner which would be available to a chargee in respect of a charge given inter partes, but the **Commission** shall not agree to the release or postponement of the enforcement of any such charge except where regulation 96, 97 or 98 applies and then only in accordance with the provisions of those regulations.

(3) Any such charge shall according to its nature –

- (a) in the case of unregistered land, be a Class B land charge within the meaning of section 2 of the Land Charges Act 1972;

(b) in the case of registered land, be a registrable substantive charge...¹

[(3ZA) The Legal Services **Commission** shall, as soon as it is possible to do so, register the charge under the Land Registration Act 2002, or, as appropriate, take equivalent steps (whether in England and Wales or in any other jurisdiction) to protect its interest in the property, and references to registration in regulations 96 to 98 shall be construed as references to registration or protection in accordance with this regulation.]¹

(3A) Where, in any of the circumstances described in regulation 96, 97 or 98, the property charged or to be charged is land to which the Conveyancing and Feudal Reform (Scotland) Act 1970 applies –

(a) references in those regulations to a charge executed in favour of the **Commission** shall be construed as references to a standard security in favour of the **Commission** within the meaning of Part II of that Act; and

(b) references in those regulations to registration shall be construed as references to the recording of a standard security in the Register of Sasines.

(4) Without prejudice to the provisions of the [Land Registration Act 2002]¹ and the Land Charges Act 1972, all conveyances and acts done to defeat, or operating to defeat, any such charge shall, except in the case of a bona fide purchaser for value without notice, be void as against the **Commission**.

NOTES

¹ Amended by the Civil Legal Aid (General) (Amendment) Regulations 2005 (S.I. 2005 No. 591).

96. Postponement of enforcement of charges over money

(1) This regulation applies where in proceedings under –

- (a) the Married Women's Property Act 1882;
- (b) the Matrimonial Causes Act 1973;
- (c) the Inheritance (Provision for Family and Dependents) Act 1975; or
- (d) Schedule 1 to the Children Act 1989;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984; or
- (f) section 30 of the Law of Property Act 1925,

there is recovered or preserved for the client a sum of money which by order of the court or under the terms of any agreement reached is to be used for the purpose of purchasing a home for himself or his dependants.

(2) Where the **client** –

- (a) wishes to purchase a home in accordance with the order or agreement; and
- (b) agrees in writing on a form approved by the **Commission** to comply with the conditions set out in paragraph (3),

the **Commission** may, if the **Regional Director** is satisfied that the property to be purchased will provide adequate security for the amount of the charge created by section 16(6) of the Act [and the condition in regulation 96A is satisfied]³, agree to defer enforcing any charge over that sum.

(3) The conditions referred to in paragraph (2) are that –

- (a) the property to be purchased shall be subject to a charge executed in favour of the **Commission** and registered in accordance with regulation 95; and
- (b) interest shall accrue for the benefit of the **Commission** in accordance with regulation 99(4).

(4) Where the **Commission** has agreed to defer enforcement under paragraph (2), the **client's** solicitor may release any money received by him under regulation 87 and which is the subject of the order or agreement, to the vendor or the vendor's representative on completion of the purchase of the property purchased in accordance with the order or agreement.

(5) Where –

- (a) the **Regional Director** has directed (under regulation 90(4)) that this regulation applies; and
- (b) an agreement to defer enforcement under paragraph (2) above has been made,

the **client's** solicitor may release any money received by him under regulation 87 and which is the subject of the order or agreement to another solicitor or to a person providing conveyancing services to whom section 22(1) of the Solicitors Act 1974 does not apply, who has given an undertaking to, and on a form approved by, the **Commission** that he will fulfil the obligations imposed by this regulation on the **client's** solicitor.

(6) Where the **client's** solicitor releases any money under paragraph (4) or (5), he shall so inform the **Regional Director** as soon as practicable and either –

- (a) provide the **Regional Director** with sufficient information to enable him to register a charge on the property purchased in accordance with the order or agreement; or
- (b) send to the **Regional Director** a copy of any undertaking given under paragraph (5).

(7) Where any sum of money retained by the **client's** solicitor by virtue of this regulation has not been used for the purchase of a home after a period of one year from the date of the order or agreement under which it was recovered or preserved for the **client**, the **client's** solicitor shall pay that sum to the **Commission**.

[96A. The Board may only defer enforcement of the charge created by section 16(6) of the Act if it appears to the Board that it would be unreasonable for the assisted person to repay the amount of the charge.

96B.—(1) The Board may review any decision to defer enforcement of the charge created by section 16(6) of the Act at any time and, unless it appears to the Board that it would be unreasonable for the assisted person to repay the amount of the charge, it shall either—

- (i) proceed to enforce the charge; or
- (ii) where the conditions in regulations 96(1), 96(2) and (3) or 97(1) and (3) (as the case may be) are satisfied continue to defer enforcement of the charge, in which case the provisions of regulations 96(3)(b), or 97(4) relating to interest shall also continue to apply as appropriate.

(2) If the Board continues to defer enforcement under paragraph (1)(ii) it may also do so on such terms or conditions as to repayment of the amount of the charge by way of interim payments of either capital or interest or both, or otherwise, as appear to the Board to be appropriate.]⁵

97. Postponement of enforcement of charges over land

(1) This regulation applies where, in any proceedings, there is recovered or preserved for the **client** property which, by order of the court or under the terms of any agreement reached, is to be used as a home for the **client** or his dependants.

(2) Where the **Regional Director** considers that the provisions of this regulation apply to any property, he shall so direct.

(3) Where the **Regional Director** has directed that this regulation applies to property and the **client** –

- (a) wishes to use the property as a home for himself or his dependants;
- (b) agrees in writing on a form approved by the **Commission** to comply with the condition set out in paragraph (4),

the **Commission** may, if the **Regional Director** is satisfied that the property will provide adequate security for the sum referred to in paragraph (4) [and the condition in regulation 96A is satisfied]⁵ agree to defer enforcing any charge over that property.

(4) The condition referred to in paragraph (3) is that interest shall accrue for the benefit of the **Commission** in accordance with regulation 99(4).

(5) Where, in a case to which this regulation applies, the charge in favour of the **Commission** has not yet been registered in accordance with regulation 95(3) and the **client** –

Part B Regulations/Orders

- (a) wishes to purchase a different property in substitution for the property which is the subject of the order or agreement referred to in paragraph (1); and
- (b) agrees in writing on a form approved by the **Commission** to comply with the conditions set out in paragraph (6),

the **Commission** may, if the **Regional Director** is satisfied that the property to be purchased will provide adequate security for the amount of the charge created by section 16(6) of the Act [and the condition in regulation 96A is satisfied]⁶, agree to defer enforcing any charge over that property.

- (6) The conditions referred to in paragraph 15) are that –
 - (a) the property to be purchased shall be subject to a charge executed in favour of the **Commission** and registered in accordance with regulation 95; and
 - (b) interest shall accrue for the benefit of the **Commission** in accordance with regulation 99(4).

98. Substitution of charged property

(1) This regulation applies where the **Commission** has agreed under regulation 96 or 97 to defer enforcing a charge created by section 16(6) of the Act and a charge over any property (whether created by the said section 16(6) or in pursuance of regulation 96 or 97 or this regulation) has been registered in favour of the **Commission** in accordance with regulation 95(3).

- (2) Where, in a case to which this regulation applies –
 - (a) the **client** wishes to purchase a different property in substitution for that over which a charge already exists;
 - (b) the **client** agrees in writing on a form approved by the **Commission** to comply with the conditions set out in paragraph (3); and
 - (c) the **Regional Director** is satisfied that the property to be purchased will provide adequate security for the amount of the charge created by section 16(6) of the Act

the **Commission** may agree to release that charge.

- (3) The conditions referred to in paragraph 2 are that –
 - (a) the property to be purchased shall be subject to a charge executed in favour of the **Commission** and registered in accordance with regulation 95; and
 - (b) simple interest shall accrue or continue to accrue for the benefit of the **Commission** from the same date, on the same amounts and at the same rate as would apply if the **client** were to retain the property over which the charge exists and the charge were not to be released.

99. Payment and recovery of interest

(1) [Subject to regulation 96B(2), where]⁷ interest is payable by the **client** pursuant to the provisions of regulations 96,97 or 98, such interest shall continue to accrue until the amount of the charge created by section 16(6) of the Act, as the case may be, is paid and the **Commission** shall not seek to recover interest until such payment is made.

(2) The **Commission** may take such steps as may be necessary to enforce, give effect to or terminate any agreement made under regulation 96, 97 or 98.

(3) Nothing in regulations 96 to 99 shall prevent the **client** from making interim payments of interest or capital in respect of the amount outstanding on the charge, whether such payments are made at regular intervals or not, and any such payment of capital shall reduce that amount accordingly except that no interim payment shall be used to reduce any such sum while interest on that sum remains outstanding.

[(4) Where interest is payable by the **client** pursuant to the provisions of regulation 96 or 97:

- (a) it shall run from the date when the charge is first registered;
- [(b) the applicable rate shall be –
 - (i) 8% per annum until 31st March 2002;

(ii) 5% per annum from 1st April 2002 until 30th September 2005;

(iii) 8% per annum from 1st October 2005;]²

(c) ...2

(d)...2]¹

(5) In paragraphs (3) and (4), the amount outstanding on the charge at any given time means the amount of the charge created by section 16(6) of the Act, calculated so as to take into account only those sums which up to that time have been either-

- (a) paid by the **Commission** in accordance with an assessment or taxation of costs, or
- (b) recouped by the **Commission** in the circumstances described in section 16(9) of the Act or in accordance with paragraph (3) of this regulation.

(6) In regulations 96 to 99 references to the amount of any charge created by section 16(6) of the Act shall be construed as references to the amount determined in accordance with sections 16(6) and (9) of the Act or to the value of the property to which it applies at the time when it was recovered or preserved, whichever is the less.

NOTES

¹ Amended by the Civil Legal Aid (General) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 3735).

² Amended by the Civil Legal Aid (General) (Amendment) Regulations 2005 (S.I. 2005 No. 591).

³ Words added by the Civil Legal Aid (General) (Amendment No.2) Regulations (S.I. 2005 No 1802).

⁴ Inserted by the Civil Legal Aid (General) (Amendment No.2) Regulations (S.I. 2005 No 1802).

⁵ Words added by the Civil Legal Aid (General) (Amendment No.2) Regulations (S.I. 2005 No 1802).

⁶ Words added by the Civil Legal Aid (General) (Amendment No.2) Regulations (S.I. 2005 No 1802).

⁷ Substituted by the Civil Legal Aid (General) (Amendment No.2) Regulations (S.I. 2005 No 1802).

PART XII

COSTS OF CLIENTS

100. Payment on account

1B-163

(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.

1B-164 101. 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

1B-165

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 provisions¹; 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.

NOTES

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

102A. Production of documentation and disclosure of information

1B-166

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.

NOTES

¹ Inserted by the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No.3033).

102B. Recoupment of losses and excesses

1B-167

(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.

NOTES

¹ Inserted by the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No.3033).

104. Remuneration of legal representatives in magistrates' courts

1B-168

(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]

(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.**¹

(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.**¹

NOTES

¹ Inserted by the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 (S.I. 2002 No.3033).

1B-169 105. Assessment of costs

(1) In this regulation and in regulation 106A, "assessment" means an assessment of costs **by the Area Director and payable under a certificate in accordance with this regulation and regulation⁴ 107A.**

(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) **Subject to paragraph (12)⁴ where proceedings have begun and the total claim for costs⁴ does not exceed £2,500⁴ the solicitor shall apply to the Regional Director for an assessment of those⁴ costs.**

(3) Subject to paragraph (12) where proceedings have begun and—

- (a) **the total claim for costs exceeds £2,500, the solicitor may apply to the Regional Director for an assessment of those costs if⁴—**
- (b) [Omitted]

(i) 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

(ii) 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.

(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, but there has been no order for assessment or determination of costs by the court⁴ 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.**¹

(4) If any solicitor or counsel is dissatisfied with any decision on an assessment in accordance with paragraphs (2), (2A)⁴ 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 in writing⁴ to certify a point of principle of general importance.

(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) . . .²

(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.**³

(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.**

(12) In any proceedings where it is or may be necessary for the court to carry out a detailed assessment of costs payable to the assisted person by another party to the proceedings, the solicitor shall not apply to the Area Director for an assessment and the total claim for costs shall be subject to that detailed assessment by the court.

(13) In this regulation, "total claim for costs" means the claim consisting of the solicitor's profit costs (including those of any solicitor who has acted under the certificate), counsel's fees and disbursements (if any), but excluding any element of Value Added Tax.

(14) Any costs incurred in connection with an appeal against the decision of the Area Director under this regulation shall not be deemed to be costs to which the assisted person's certificate relates.⁴

NOTES

¹ Paragraphs (3A) and (11) were 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).

² 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).

³ 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).

⁴ Substituted by the Civil Legal Aid (General) (Amendment) Regulations 2003 (S.I. 2003 No.1312).

105A. Client having financial interest in assessment

1B-170

(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**,

Part B Regulations/Orders

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;
 - (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.

1B-171 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 shall apply to the **Regional Director** for an assessment limited to **costs payable from the Community Legal Service Fund only** if the amount of those costs including counsel's fees (if any) **does not exceed £2,500**.¹

(4) The **client's** solicitor shall apply for a **detailed assessment** under regulation 107A(2) limited to **costs payable from the Community Legal Service Fund only** if the amount of those costs including counsel's fees (if any) **exceeds £2,500**.¹

(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.

NOTES

¹ Substituted by the Civil Legal Aid (General) (Amendment) Regulations 2003 (S.I. 2003 No. 1312).

107. Detailed assessment of costs

1B-172

(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

1B-173

(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.

Part B Regulations/Orders

(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).

1B-174 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 sub-paragraphs (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.

1B-175 108. 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.

1B-176 109. 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.

1B-177 110. 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

1B-178

(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 officer** 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

1B-179

(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) [Omitted]²

(5) [Omitted]²

(6) [Omitted]²

(7) [Omitted]²

NOTES

¹ 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 Omitted by the Civil Legal Aid (General) (Amendment) Regulations 2003 (S.I.2003 No. 1312).

114–118. [Omitted]

119. Client having financial interest in detailed assessment

1B-180

(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.

(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**

Part B Regulations/Orders

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.¹

NOTES

¹ Paragraph (3) was inserted by the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. 2000 No.451).

120–121. [Omitted]

1B-181 122. 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**.

(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.**¹

149.—(7) The costs of a **client** in respect of proceedings in the [Employment] 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 [Employment] Appeal Tribunal were a cause or matter in the Supreme Court.

NOTES

¹ Paragraph (6) was substituted by the Civil Legal Aid (General) (Amendment) Regulations 2000 (S.I. 2000 No.451).