

## The Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 (as amended)

(S.I. 1994 No. 228)

*The words in bold were added or substituted by the Legal Aid in Civil Proceedings (Remuneration) (Amendment) Regulations 1999 (S.I. 1999 No.3098) and the Access to Justice Act 1999 (Commencement No. 3, and Transitional Provisions and Savings) Order 2000 (S.I. 2000 No.774 c.16). References to the Legal Aid Board are replaced by references to the Legal Services Commission by virtue of the 1999 Act.*

*By virtue of regulation 6 of the Legal Aid in Civil Proceedings (Remuneration) (Amendment) Regulations 1999 (S.I. 1999 No.3098), the words in italic shall continue to have effect in respect of costs that fall to be determined under Order 62 of the Rules of the Supreme Court or Order 38 of the County Court Rules 1981.*

### 1. Citation, commencement and transitional provisions

- (1) These Regulations may be cited as the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 and shall come into force on 25th February 1994.
- (2) Subject to paragraph (3) below, these Regulations apply to proceedings in respect of which a certificate is granted on or after 25th February, 1994.
- (3) Where a certificate was granted before 25th February, 1994 to an assisted person whose solicitor represents any other assisted person in the same proceedings under a certificate granted on or after 25th February, 1994, the provisions of these Regulations shall not apply as regards the costs payable under the later certificate.
- (4) Proceedings in respect of which a certificate was granted before 25th February, 1994 shall be treated as if these Regulations had not been made notwithstanding any amendment issued under Part VII of the General Regulations on or after that date.

### 2. Interpretation

- (1) In these Regulations -

“CCR Order 38” means Order 38 of the County Court Rules 1981;

“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;

“General Regulations” means the Civil Legal Aid (General) Regulations 1989;

“Legal Services Commission Region” means an area specified by the **Legal Services Commission** under regulation 4(1) of the General Regulations and “Legal Services Commission Region 1” means the area so numbered by the **Commission**;

“prescribed rate” means the fee or hourly rate specified in the Schedules to these Regulations corresponding to the relevant item or class of work, the level of court and the location of the solicitor's office;

“relevant authority” means the **Regional Director** in the case of an assessment and the **costs officer** in the case of a **detailed assessment**;

“RSC Order 62” means Order 62 of the Rules of the Supreme Court 1965.

- (2) Unless the context otherwise requires, expressions used in **CPR Parts 43 to 48 RSC Order 62, CCR Order 38** or in the General Regulations shall have the same meanings as those Rules or Regulations.

### 3. Scope

These Regulations apply to proceedings to which Part IV of the Legal Aid Act 1988 applies except—

- (a) proceedings in the House of Lords;
- (b) proceedings in the Court of Appeal;
- (c) proceedings in magistrates' courts;
- (d) proceedings to which regulation 3(2)(a) or 3(2)(b) of the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 applies;
- (e) proceedings to which section 29 of the Legal Aid Act 1988 applies;
- (f) proceedings to which Part XV of the General Regulations (Particular Courts and Tribunals) applies.

### 4. Remuneration

- (1) **Subject to paragraphs (3A) to (3D), the amounts** to be allowed to solicitors on a determination of the costs of an assisted person under regulation 107A of the General Regulations shall be—

- (a) in accordance with Schedule 1 to these Regulations or, where the work done was by a person or body (other than the **Legal Services Commission**) acting under the terms of a franchising contract which was entered into by the **Commission** pursuant to its powers under section 4 of the Legal Aid Act 1988, in accordance with Schedule 2;

*[By virtue of Article 5(2)(d) of the Commencement Order, this shall be construed to include work under a contract entered into by the Commission pursuant to its powers under section 6 of the Access to Justice Act, where the work was done within the scope of a Franchise Certificate designated as such by the Commission.]*

- (b) in accordance with **CPR rule 44.4(6) paragraph (2) of RSC Order 62, rule 17** where the costs incurred relate to the kind of work to which that paragraph applies;
  - (c) in accordance with **CPR rules 44.3 to 44.5 paragraph 1(1) of Appendix 2, Part I to RSC Order 62, or CCR Order 38 rule 3(3A) or (3B), whichever is applicable**, where no provision is made in the Schedules to these Regulations for the kind of work to which the costs relate.
- (2) The relevant authority, in determining costs referred to at 3. in the Schedules to these Regulations, shall allow costs at the higher rate specified where the office of the solicitor for the assisted person where the work was done is situated within Legal Services Commission Region 1.
  - (3) **Subject to paragraphs (3A) to (3D), the relevant authority shall determine disbursements (including counsel's fees) in accordance with CPR Parts 43 to 48 RSC Order 62 or CCR Order 38, whichever is applicable.**
  - (3A) **Paragraphs (3B) to (3D) apply where proceedings are allocated to the fast track, and in those paragraphs “advocate's costs” means the costs of an advocate for preparing for the trial and, if the claim proceeds to trial, for appearing at the trial, and “fixed fast track trial costs” means the amount of fast track trial costs which could be awarded under CPR rule 46.2(1) in respect of a claim.**
  - (3B) **Where, but for this paragraph, the amount to be allowed in respect of advocate's costs would have exceeded the fixed fast track trial costs, the amount to be allowed in respect of advocate's costs shall be equal to the fixed fast track trial costs.**
  - (3C) **Where, but for this paragraph, the amount to be allowed in respect of the costs of a legal representative's attendance at the trial to assist the advocate would have exceeded the amount prescribed by CPR rule 46.3(2), the amount to be allowed in respect of those costs shall be equal to the amount prescribed by CPR rule 46.3(2).**
  - (3D) **Paragraphs (3B) and (3C) shall have effect regardless of the awards actually made by the court under CPR Part 46.**
  - (4) Subject to these regulations, the sums to be allowed to legal representatives in connection with the representation of an assisted person in proceedings to which these Regulations apply, shall be determined in accordance with **Part XII of the General Regulations and CPR Parts 43 to 48 Part XII of the General Regulations, RSC Order 62 and CCR Order 38.**

## **5. Enhancement**

- (1) Upon a determination the relevant authority may allow fees at more than the prescribed rate subject to the provisions of this regulation where it appears to the relevant authority, taking into account all the relevant circumstances, that
  - (a) the work was done with exceptional competence, skill or expertise;
  - (b) the work was done with exceptional dispatch;
  - (c) the case involved exceptional circumstances or complexity.
- (2) Where the relevant authority considers that any item or class of work should be allowed at more than the prescribed rate, it shall apply to that item or class of work a percentage enhancement in accordance with the following provisions of this regulation.
- (3) In determining the enhancement by which fees should be enhanced above the prescribed rate the relevant authority shall have regard to—
  - (a) the degree of responsibility accepted by the solicitor;
  - (b) the care, speed and economy with which the case was prepared;
  - (c) the novelty, weight and complexity of the case.
- (4) Except in proceedings to which paragraph (5) applies, the percentage above the prescribed rate by which fees for work may be enhanced shall not exceed 100%.
- (5) In proceedings in the High Court, the relevant authority may allow an enhancement exceeding 100% where it considers that, in comparison with work in other High Court proceedings which would merit 100% enhancement, the item or class of work relates to exceptionally complex matters which have been handled with exceptional competence or dispatch.
- (6) In proceedings to which paragraph (5) applies, the percentage above the prescribed rate by which fees for work may be enhanced may exceed 100% but shall not exceed 200%.
- (7) The relevant authority may have regard to the generality of proceedings to which these Regulations apply in determining what is exceptional within the meaning of this regulation.

## **6. Reduction of costs**

- (1) Upon a determination the relevant authority may allow costs in respect of any item or class of work at less than the prescribed rate where it appears reasonable to do so having regard to the competence or dispatch with which the item or class of work was done.

- (2) Paragraph (1) is without prejudice to regulation 109 of the General Regulations.

## Schedule 1

<i>Column 1</i>	<i>Column 2 High Court</i>	<i>Column 3 County Court or Magistrates' Court</i>
1. Routine letters out	£7.40 per item	£6.50 per item
2. Routine telephone calls	£4.10 per item	£3.60 per item
3. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine	£74.00 per hour (£78.50 per hour where solicitor's office situated within Legal Services Commission Region 1)	£65.00 per hour (£69.00 per hour)
4. Attending counsel in conference or at the trial or hearing of any summons or other application at court, or other appointment.	£36.40 per hour	£32.00 per hour
5. Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment.	£74.00 per hour	£65.00 per hour
6. Travelling and waiting in connection with the above matters	£32.70 per hour	£28.75 per hour

## Schedule 2

<i>Column 1</i>	<i>Column 2</i> <i>High Court</i>	<i>Column 3</i> <i>County Court or</i> <i>Magistrates' Court</i>
1. Routine letters out	£7.50 per item	£6.60 per item
2. Routine telephone calls	£4.15 per item	£3.65 per item
3. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine.	£75.00 per hour (£79.50 per hour where solicitor's office situated within Legal Services Commission Region 1)	£66.00 per hour (£70.00 per hour)
4. Attending counsel in conference or at the trial or hearing of any summons or application at court, or other appointment	£37.00 per hour	£32.50 per hour
5. Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment	£75.00 per hour	£66.00 per hour
6. Travelling and waiting in connection with the above matters	£33.25 per hour	£29.20 per hour