
STATUTORY INSTRUMENTS

1993 No. 934

**LEGAL AID AND ADVICE,
ENGLAND AND WALES**

**The Legal Aid in Criminal and Care Proceedings
(Costs) (Amendment) Regulations 1993**

<i>Made</i>	- - - -	<i>29th March 1993</i>
<i>Laid before Parliament</i>		<i>31st March 1993</i>
<i>Coming into force</i>		
<i>For the purposes of regulations 5, 6 and 17 of these Regulations</i>		<i>26th April 1993</i>
<i>For all other purposes</i>		<i>1st June 1993</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 25(2), 34 and 43 of the Legal Aid Act 1988(1), having had regard to the matters specified in section 34(9) and consulted the General Council of the Bar and the Law Society, and with the consent of the Treasury, hereby makes the following Regulations:—

Citation and commencement

1.—(1) These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) Regulations 1993.

(2) These Regulations shall come into force for the purposes of regulations 5, 6 and 17 of these Regulations on 26th April 1993 and for all other purposes on 1st June 1993.

Interpretation

2. In these Regulations—

- (a) a regulation or Schedule or Part of a Schedule referred to by number alone means a regulation, Schedule or Part of a Schedule so numbered in the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989(2);

(1) 1988 c. 34; sections 25(2), 34 and 43 were amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18 paragraphs 60 and 63. Section 43 is an interpretation provision and is cited because of the meaning assigned to the word “regulations”.

(2) S.I.1989/343, amended by S.I. 1990/448, 1991/529, 838 and 2037 and 1992/592.

- (b) a reference to the Appendix means the Appendix to these Regulations.

Transitional provisions

3.—(1) Regulations 4A and 4B shall apply to proceedings where the legal aid order for the Crown Court was granted on or after 26th April 1993.

(2) Regulations 4C and 4D shall apply to proceedings in which a claim under regulation 4C becomes eligible for payment, in accordance with regulation 4C(3), on or after 26th April 1993.

(3) As regards regulation 10A (recovery of overpayments), the powers of the appropriate authority shall be exercisable in respect of any excess amount (as defined by regulation 10A(2)(a)), regardless of when it became outstanding.

(4) As regards regulations 7 to 16 of these Regulations and the Appendix (standard fees in magistrates' courts):—

- (a) these Regulations shall apply to proceedings in a case in respect of which the legal aid order was granted (or if there is more than one legal aid order, then all such orders were granted) on or after 1st June 1993;
- (b) costs payable in respect of proceedings to which sub-paragraph (a) does not apply shall be determined as if these Regulations had not been made; and
- (c) in this paragraph “case” has the meaning assigned in paragraph 1 of Schedule 1 Part III.

Amendment of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989

4. In the Arrangement of Regulations the following headings shall be inserted at the appropriate places:—

- 4A.** Interim payment of disbursements;
- 4B.** Interim disbursements and final determination of costs;
- 4C.** Interim payments in cases awaiting determination;
- 4D.** Amount of interim payment in cases awaiting determination;
- 7A.** Costs in proceedings involving counsel not assigned under the legal aid order;
- 10A.** Recovery of overpayments.

Interim payments in Crown Court proceedings

5. After regulation 4, the following regulations shall be inserted:—

“Interim payment of disbursements

4A.—(1) A solicitor may submit a claim to the appropriate authority for payment of a disbursement for which he has incurred liability in criminal proceedings in the Crown Court in accordance with the provisions of this regulation.

(2) A claim for payment may be made where—

- (a) a solicitor has obtained prior authority to incur expenditure of £100 or more under regulation 54(1)(a), (b), (c) or (e) of the General Regulations(3); and
- (b) he has incurred liability for a disbursement under that authority of £100 or more.

(3) S.I. 1989/344; there are no relevant amendments.

(3) Without prejudice to regulation 7(6), a claim under paragraph (1) above shall not exceed the maximum fee authorised under the prior authority.

(4) A claim for payment under paragraph (1) may be made at any time before the solicitor submits a claim for costs under regulation 5(2).

(5) A claim under paragraph (1) shall be submitted to the appropriate authority in such form and manner as it may direct and shall be accompanied by the authority to incur expenditure and any invoices or other documents in support of the claim.

(6) The appropriate authority shall allow the disbursement subject to the limit in paragraph (3) above if it appears to have been reasonably incurred in accordance with the prior authority.

(7) Where the appropriate authority allows the disbursement, it shall notify the solicitor and, where the disbursement includes the fees or charges of any person, that person, of the amount payable and shall authorise payment to the solicitor accordingly.

(8) Regulations 14 to 16 (redetermination etc) shall not apply to a claim for payment under this regulation.

Interim disbursements and final determination of costs

4B.—(1) On a final determination of costs, paragraphs (2) and (3)(e) of regulation 5 and regulation 7 shall apply notwithstanding that a payment has been made under regulation 4A.

(2) Where the amount found to be due under regulation 7 in respect of a disbursement is less than the amount paid under regulation 4A (“the interim disbursement”), the appropriate authority shall deduct the difference from the sum otherwise payable to the solicitor on the determination of costs, and where the amount due under regulation 7 exceeds the interim disbursement, the appropriate authority shall add the difference to the amount otherwise payable to the solicitor.

Interim payments in cases awaiting determination

4C.—(1) The appropriate authority shall make an interim payment in respect of a claim for costs in criminal proceedings in the Crown Court in accordance with the following provisions of this regulation.

(2) Entitlement to a payment arises in respect of a claim for costs—

- (a) in the case of a solicitor, where the total claim for costs is £4000 or more (exclusive of Value Added Tax);
- (b) in the case of a barrister, where the basic fee claimed is £4000 or more (exclusive of Value Added Tax);
- (c) where the claim for costs is for less than the amounts mentioned in (a) or (b) but is related to any claim falling under (a) or (b).

(3) Entitlement to a payment under paragraph (1) of this regulation shall not arise until three months have elapsed from—

- (a) the date on which the bill is ready to tax or, if earlier,
- (b) the date three months after the conclusion of the last of any related proceedings.

(4) A bill shall be regarded as being ready to tax on the date on which it is received by the appropriate authority for determination except that where there are related claims for costs all the bills relating thereto shall be regarded as ready to tax on the date the last bill is received.

(5) A solicitor or barrister may submit a claim for an interim payment under this regulation if no payment has been made under paragraph (1) and six months have elapsed from the conclusion of the proceedings against the defendant whom he represented under the legal aid order.

(6) For the purposes of this regulation, proceedings are related to each other in the circumstances set out in paragraph (7) and claims for costs are related to each other in the circumstances set out in paragraph (8).

(7) Proceedings are related to each other:—

- (a) where different proceedings involving the same defendant are prepared or heard or dealt with together;
- (b) where proceedings involving more than one defendant arose out of the same incident, so that the defendants are charged or tried or disposed of together.

(8) The following claims for costs are related to each other:—

- (a) the claims of a solicitor and counsel acting in the same proceedings for a defendant;
- (b) the claims of any solicitor or counsel acting in any proceedings mentioned in paragraph (7)(a);
- (c) the claims of all the solicitors or counsel acting for the defendants in the circumstances mentioned in paragraph (7)(b).

(9) No payment shall be made under this regulation unless (subject to regulation 17) the solicitor or barrister has submitted his claim in accordance with the provisions of regulations 5(1) and 8(1).

Amount of interim payment in cases awaiting determination

4D.—(1) Where entitlement to a payment arises under regulation 4C, the amount payable shall be—

- (a) 40% of the total claim for costs

less

- (b) any sum already paid.

(2) Regulations 14 to 16 (redetermination etc) shall not apply to a payment under this regulation.”.

6. After regulation 10, the following regulation shall be inserted:—

“Recovery of overpayments

10A.—(1) This regulation applies where a solicitor or barrister is entitled to be paid a certain sum (“the amount due”) by virtue of these Regulations and, for whatever reason, he is paid an amount greater than that sum.

(2) Where the circumstances in paragraph (1) arise, the appropriate authority may—

- (a) require immediate repayment of the amount in excess of the amount due (“the excess amount”) and a solicitor or barrister shall on demand repay the excess amount to the appropriate authority, or
- (b) deduct the excess amount from any other sum which is or becomes payable to the solicitor or barrister by virtue of these Regulations.

(3) The appropriate authority may proceed under paragraph (2)(b) without first proceeding under paragraph 2(a).

(4) Paragraph (2) shall apply notwithstanding that the solicitor or barrister to whom the excess amount was paid is exercising, or may exercise, a right under regulations 12 to 16 (redetermination etc).”.

Standard fees in magistrates' courts

7. Regulation 5 shall be amended as follows:—

- (a) in paragraph (1) after “regulation 17” there shall be inserted “and paragraph (1A)”;
- (b) after paragraph (1) the following paragraph shall be inserted:—

“(1A) Where proceedings in a magistrates' court have not been concluded but a warrant of arrest has been issued, a claim by a solicitor for costs in respect of work done under a legal aid order shall be made not earlier than 6 weeks and not later than 19 weeks from the date of issue of the warrant and the provisions of Schedule 1 Part III shall apply.”;
- (c) in paragraph (3)(a) for the words from “regulation 6(1)” to “Part II” there shall be substituted “regulation 6(1), paragraph 4(2) of Schedule 1 Part II or paragraph 4(2) of Schedule 1 Part III”;
- (d) after paragraph (3)(e) the following sub-paragraph shall be inserted:—

“(f) state the amount agreed in respect of counsel’s fee (including the time spent in preparation, advocacy and waiting) in proceedings where counsel has been instructed by the solicitor although not assigned under the legal aid order.”.

8. In regulation 6—

- (a) In paragraph (2) the words from “and, in any proceedings” to the end of the paragraph shall be omitted;
- (b) after paragraph (2) the following paragraphs shall be inserted:—

“(2A) In any proceedings which are specified in paragraph 1(2) of Schedule 1 Part II, the appropriate authority shall proceed in accordance with the provisions of paragraph 3 of that Part of that Schedule.

(2B) In any proceedings in a magistrates' court which are specified in the Table in paragraph 2(2) of Schedule 1 Part III, the provisions of that Part of that Schedule shall apply.”;
- (c) in paragraph (3) after “(2)” there shall be inserted “(2A), (2B)”;
- (d) in paragraph (6) for the words from “Part II” to the end of the paragraph there shall be substituted “Part II or Part III of Schedule 1 only to the extent that those Parts specifically so provide”.

9. In regulation 7 paragraphs (2) and (3) shall be omitted.

10. After regulation 7 the following regulation shall be inserted:—

“Costs in proceedings involving counsel not assigned under the legal aid order

7A.—(1) Where counsel has not been assigned under the legal aid order but has been instructed by the solicitor in proceedings in a magistrates' court, the appropriate authority shall, subject to paragraph (4), pay counsel the fees agreed between him and the solicitor.

(2) The solicitor shall claim his costs (including the time spent by counsel in preparation, advocacy and waiting) at the rates applicable to solicitors' fees in magistrates' courts proceedings in accordance with the provisions of Schedule 1 Part I.

(3) Where costs are determined in circumstances to which this regulation applies, the appropriate authority shall determine the costs which would have been payable to the

solicitor had he undertaken the case without counsel, but as regards the costs payable in respect of travelling shall allow only such costs as have actually been incurred by the solicitor.

(4) The costs payable in respect of counsel's agreed fee shall be reduced only where, and to the extent that, they would exceed—

(a) the costs determined in accordance with paragraph (3);

or

(b) where a standard fee is payable, the total of the relevant standard fee plus the other costs referred to in paragraph 6(a) of Schedule 1 Part III.

(5) The costs payable by the appropriate authority shall be applied as follows:

(a) payment in respect of counsel shall be paid to counsel direct;

(b) the balance of the costs payable shall be paid to the solicitor.”.

11. Regulation 10(3) shall be omitted.

12. Regulation 12 shall be amended:—

(a) by inserting in paragraph (1) after “determination” the words “(including a decision concerning the application of the provisions for standard fees under Schedule 1 Part III)”;

(b) by inserting in paragraph (2) after “the amount of it” the words “or in the case of a decision of the type referred to in paragraph (1), by confirming or amending the decision”.

13. Regulation 14 shall be amended by inserting in paragraph (1)(b) after “standard fees” the words “under regulation 9(2)”.

14. The heading to Part II of Schedule 1 shall be amended by inserting after “STANDARD FEES” the words “IN THE CROWN COURT”.

15. After Part II of Schedule 1 there shall be inserted the new Part III set out in the Appendix to these Regulations.

16. The heading to Part I of Schedule 2 shall be amended by inserting after “STANDARD FEES” the words “IN THE CROWN COURT”.

Date on which prescribed rates fall

17. In regulations 6(3) and 9(5)(a) for the date “30th June 1993” there shall be substituted “30th June 1994”.

Dated 24th March 1993

Mackay of Clashfern, C.

We consent,

Dated 29th March 1993

Irvine Patnick
Tim Kirkhope
Two of the Lords Commissioners of Her
Majesty's Treasury

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APPENDIX

Regulation 15

PART III

STANDARD FEES IN MAGISTRATES' COURTS

Interpretation

1. In this Part of this Schedule—

a “case” (except where the context otherwise requires) comprises proceedings relating to one or more charges or informations which are preferred or laid at the same time or which are founded on the same facts or which form or are part of a series of offences;

“Category 1 proceedings” means proceedings of the types referred to in column 1 of the Table in paragraph 2(2), and in paragraph 2(6) and (7);

“Category 2 proceedings” means proceedings of the type referred to in column 2 of the Table in paragraph 2(2);

“Category 3 proceedings” means proceedings of the type referred to in column 3 of the Table in paragraph 2(2),

and references to a category or to a category by number shall be construed accordingly;

“core costs” mean the costs relating to the classes of work specified in paragraph 4(2);

“lower limit” and “higher limit” mean the lower and higher limits specified in the Table in paragraph 8;

“relevant standard fee” means the fee shown in the Table in paragraph 8 which corresponds to the type of proceedings, the location and the limit within which the core costs have been allowed under this Part;

“unassigned counsel” means counsel who is not assigned under the legal aid order but who is instructed by the solicitor.

Proceedings to which standard fees apply

2.—(1) Subject to paragraph 3, standard fees under this Part of this Schedule shall apply to work done in proceedings in a magistrates' court as specified in sub-paragraph (2).

(2) The proceedings (which include any proceedings preliminary or incidental thereto whether before that or another court, including bail applications made either in a magistrates' court or the Crown Court) are the proceedings specified in the following Table:—

TABLE: CATEGORIES AND TYPES OF PROCEEDINGS

Column 1 Category 1	Column 2 Category 2	Column 3 Category 3
1.1 guilty pleas	2.1 contested trials	3.1 committal proceedings under section 6(2) of the Magistrates' Courts Act 1980(5) including those which are discontinued or withdrawn
1.2 uncontested proceedings arising out of a breach of an order of a magistrates' court (including proceedings in a	2.2 proceedings which were listed and fully prepared for trial in a magistrates' court but disposed of by a guilty plea on the day	

(5) 1980 c. 43; section 6(2) was amended by the Criminal Justice Act 1982, section 61 and the Courts and Legal Services Act 1990, Schedule 18 paragraph 25.

Column 1 Category 1	Column 2 Category 2	Column 3 Category 3
magistrates' court relating to a breach of a Crown Court probation order, community service order or suspended sentence)	of trial before the opening of the prosecution case	3.2 committal proceedings which are discontinued or withdrawn before the court has fixed the date for a section 6(1) committal hearing
1.3 proceedings (other than committal proceedings) which are discontinued or withdrawn	2.3 proceedings which were listed and fully prepared for trial in a magistrates' court but are discontinued or withdrawn or where the prosecution offers no evidence or which result in a bind over on the day of trial before the opening of the prosecution case	3.3 proceedings transferred under section 4 of the Criminal Justice Act 1987 ⁽⁶⁾ or section 53 of the Criminal Justice Act 1991 ⁽⁷⁾
1.4 proceedings (other than committal proceedings) relating to summary or either way offences which result in a bind over	2.4 contested proceedings relating to a breach of an order of a magistrates' court (including proceedings relating to a breach of a Crown Court probation order, community service order or suspended sentence)	
1.5 proceedings arising out of a deferment of sentence (including any subsequent sentencing hearing) under section 1 of the Powers of Criminal Courts Act 1973 ⁽⁴⁾	2.5 proceedings where mixed pleas are entered	

(3) Proceedings shall be treated for the purposes of this Part of this Schedule as forming part of one case where they relate to one or more charges or informations which are preferred or laid at the same time or which are founded on the same facts or which form or are part of a series of offences.

(4) Subject to sub-paragraph (5), where proceedings forming one case fall within more than one category, the proceedings shall be treated as forming part of the higher or highest in value of the categories concerned.

(5) Where a case includes proceedings referred to in the Table in sub-paragraph (2) above at items 3.1 and 3.2, the case shall be treated as if all the proceedings were Category 3 proceedings.

(6) Subject to sub-paragraph (5), where there is a change of solicitor assigned under a legal aid order in proceedings to which sub-paragraph (2) applies, the proceedings shall be treated as Category I proceedings for the purposes of a claim for costs in respect of work done under the legal aid order by the solicitor formerly assigned.

(7) Subject to sub-paragraph (5), where proceedings have not been concluded but a warrant of arrest has been issued, the proceedings shall be treated as Category 1 proceedings.

Proceedings to which standard fees do not apply

3. Standard fees shall not apply to proceedings—

- (a) in which counsel has been assigned under a legal aid order; or
- (b) in which costs are allowed at an enhanced rate in accordance with paragraph 3 of Schedule 1 Part I.

⁽⁶⁾ 1987 c. 38; section 4 was amended by the Criminal Justice Act 1988 (c. 33), section 144 and the Legal Aid Act 1988, Schedule 5 paragraph 22.

⁽⁷⁾ 1991 c. 53.

⁽⁴⁾ 1973 c. 62; section 1 has been amended by the Criminal Law Act 1977 (c. 45), Schedule 12, the Magistrates' Courts Act 1980 (c. 43), Schedule 7 paragraph 119 and the Criminal Justice Act 1982 (c. 48), section 63.

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Classes of work covered by the standard fee

- 4.—(1) The classes of work covered by the standard fee are specified in sub-paragraph (2).
- (2) The classes of work are:—
- (a) any preparation within the meaning of regulation 6(1)(a), including listening to, or viewing, any tape or video recording of interviews or evidence;
 - (b) routine letters written and routine telephone calls within the meaning of regulation 6(1)(e);
 - (c) advocacy, including bail and other applications made in either a magistrates' court or the Crown Court;
 - (d) work done by a fee-earner acting as agent for the solicitor assigned under the legal aid order;
 - (e) unassigned counsel's preparation, advocacy and waiting time.

Standard fees: further provisions

- 5.—(1) Where the solicitor acts for more than one defendant in the proceedings, the claim for payment of a standard fee shall cover all the legally aided defendants whom he represents.
- (2) Where a legal aid order is granted to a defendant in respect of more than one charge or information, the claim for payment of a standard fee shall cover all the charges or informations which form part of one case.

Costs additional to the standard fee

6. The following costs shall be payable in addition to the standard fee, and shall be determined in accordance with regulations 6 and 7:—
- (a) travelling and waiting time of fee-earners, which shall be payable at the rate provided in paragraph 1(1)(a) of Schedule 1 Part I; and
 - (b) disbursements.

Allowance of standard fees

- 7.—(1) The appropriate authority shall allow a lower standard fee where the core costs would not, if they had been determined, have exceeded the lower limit.
- (2) Where the core costs claimed by the solicitor exceed the lower limit, the appropriate authority shall determine the core costs in accordance with regulation 6(2) and, if the core costs so determined—
- (a) do not exceed the lower limit, allow the lower standard fee;
 - (b) exceed the lower limit but do not exceed the higher limit, allow the higher standard fee;
 - (c) exceed the higher limit, allow the core costs as determined.
- (3) The rates specified in paragraph 1(1)(a) of Schedule 1 Part I shall apply to the costs claimed, subject to the provisions of paragraph 2 of that Part of that Schedule.

Fees payable

- 8.—(1) Standard fees are payable in accordance with the Table below:—

TABLE

Type of proceedings	Lower standard fee	Lower limit	Higher standard fee	Higher limit
Category 1	£140	£261	£336	£451
London rate	£180	£335	£427	£565
Category 2	£247	£447	£566	£745
London rate	£317	£567	£711	£908
Category 3	£223	£395	£505	£689
London rate	£282	£479	£593	£733

(2) A solicitor shall be entitled to the relevant standard fee at the “London rate” specified in the Table where his office is situated within legal aid area 1, within the meaning of paragraph 1(2) of Schedule 1 Part I.

(3) The costs payable in proceedings to which this Part applies shall (subject to any deductions or reductions made pursuant to regulations 9A or 17(2)) be:—

- (a) the relevant standard fee together with the costs determined in accordance with the provisions of paragraph 6; or
- (b) where the core costs allowed exceed the higher limit of the relevant standard fee, the costs as determined in accordance with regulations 6 and 7.

(4) Where, in circumstances to which regulation 5(1A) or paragraph 2(7) of this Part applies, a solicitor has been paid prior to the final disposal of the proceedings, any costs which would have been payable to that solicitor upon the final disposal of the proceedings shall be reduced to the extent that they formed part of the costs previously claimed.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989. Regulations 5 and 6 introduce new regulations 4A to 4D and 10A in the 1989 Regulations—

- (a) allowing a solicitor to seek interim payment of any disbursement of £100 or more in Crown Court cases for which he has obtained prior authority from an area committee;
- (b) enabling a solicitor or barrister to be paid an interim payment of 40% of the total claim for costs pending determination of the bill where the claim is of a prescribed amount or more or is related to other claims of such amounts; and
- (c) enabling the appropriate authority under the Regulations to demand repayment of an overpayment immediately from a solicitor or barrister or to deduct the overpayment from any other payment due under those Regulations.

Regulations 7 to 16 and the Appendix to these Regulations introduce standard fees for criminal proceedings in magistrates' courts. They specify the proceedings to which standard fees apply, the

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amounts of the standard fees payable for different categories of proceedings and the classes of work included in the core costs which determine the appropriate standard fee. Provision is also made for other costs which are payable in addition to the standard fee.

Regulation 17 moves the date on which the prescribed rates relating to fees fall, from 30th June 1993 to 30th June 1994.