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STATUTORY INSTRUMENTS

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**1994 No. 3046**

**THE COURT OF PROTECTION RULES 1994**

**PART XVIII**

**FEES**

**Appendix of fees**

**78.**—(1) The Appendix to these Rules, in this Part of these Rules described as “the Appendix”, shall apply so as to fix the fees payable pursuant to the following provisions of this part of these Rules.

(2) Subject to paragraph (3), the fee specified in the Appendix shall be taken in respect of proceedings governed by these Rules.

(3) The fee prescribed by rule 80 and contained in the corresponding provisions of the Appendix shall not be payable where the Public Trustee has been appointed and is acting as receiver for the patient.

(4) Subject to paragraph (5) below, the person by whom any fee (other than a fee payable under rule 82) is payable shall, unless the Public Trustee otherwise directs, make the payment out of the income of the patient or, if he is dead, out of his estate.

(5) Where the payment of a fee is to be made by the Accountant General then, unless the Public Trustee directs that payment is to be made out of the income arising from the fund, the Accountant General shall meet the fee from any cash sums held in court to the account of the patient.

**Commencement fee**

**79.** A commencement fee shall be payable on any first application for the appointment of a receiver or other originating process in respect of any patient.

**Administration fee**

**80.**—(1) An annual administration fee shall be payable in respect of the clear annual income at the disposal of the patient from the date of issue of the first application for the appointment of a receiver or other originating process until the termination of the proceedings.

(2) The Public Trustee shall annually, or at such other intervals as may be convenient, issue a certificate in respect of each patient in which there shall be stated—

- (a) the amount of the administration fee payable in respect of the patient at the date of the certificate;
- (b) the period in respect of which the administration fee is payable; and
- (c) the name of the person by whom the payment is to be made.

(3) The Public Trustee may, if he thinks fit, issue a certificate for the payment of an estimated administration fee.

(4) Upon the issue of a certificate under this rule the amount of the fee shall be charged upon the patient's estate, and the payment shall be made within such time (not exceeding one month from the date of the certificate) as the Public Trustee may allow.

(5) In any case in which it appears to the Public Trustee that the amount of the fee certified under this rule has been wrongly assessed, he may direct that the fee is to be adjusted upon the passing of the receiver's accounts or at such other time as appears to him to be convenient.

(6) Without prejudice to the generality of rule 86—

- (a) no administration fee may be taken where the proceedings are terminated before any order is made, and
- (b) the clear annual income at the patient's disposal for the purposes of this rule does not include income which accrued and became payable to him more than six months prior to the date of the first application for the appointment of a receiver or other originating process but which was received after that date.

### **Transaction fee**

**81.**—(1) A transaction fee shall be payable in respect of any order or direction made in exercise of the specific powers conferred by—

- (a) paragraphs (d), (e), (h) or (k) of section 96(1) of the Act;
- (b) section 100 of the Act;
- (c) sections 36(9) and 54 of the Trustee Act 1925; and
- (d) section 1(3) of the Variation of Trusts Act 1958(1).

(2) In a special case, the standard fee payable in accordance with the Appendix shall be increased in accordance with the Appendix where there is readily ascertainable pecuniary consideration in the nature of capital arising to or provided by the patient (otherwise than by way of loan to, or repayment of a loan by, the patient), no account being taken of the possible capitalisation of the value of rents or interests or other income payments.

(3) Where a transaction is to be approved under an order mentioned in paragraph (1) above, the fee shall be taken on the approval of the transaction and the Public Trustee shall issue a certificate stating the amount payable.

(4) Except where the Public Trustee otherwise directs, no fee shall be payable under this rule upon the sale or purchase of personal chattels or any investment for the time being authorised by law for the investment of trust property or in securities quoted on any stock exchange in the United Kingdom.

(5) In this rule, "special case" means an order made by the court—

- (a) under paragraphs (d) or (h) of section 96(1) of the Act; or
- (b) under section 1(3) of the Variation of Trusts Act 1958.

### **Fee on taxation**

**82.**—(1) A fee shall be payable in respect of the taxation of a bill of costs.

(2) On the withdrawal of a bill of costs which has been lodged for taxation there shall be payable such a fee (not exceeding the amount which would have been payable under paragraph (1) above if the bill had been allowed in full) as appears to the taxing officer to be fair and reasonable.

### **Receivership fees**

**83.**—(1) An appointment fee shall be payable, as set out at paragraph 5 of the Appendix, upon the appointment of the Public Trustee as receiver for a patient.

(2) In cases where the Public Trustee is receiver an annual fee shall be payable in respect of the clear annual income at the disposal of the patient.

(3) The said fee shall be payable—

(a) upon the passing of an account by the Public Trustee or at such other time as he shall consider to be convenient; and

(b) on the scale set out a paragraph 6 of the Appendix.

(4) The clear annual income at the patient's disposal for the purpose of this rule does not include income which accrued and became payable to him more than six months prior to the date when the court's jurisdiction was first exercised in relation to him.

(5) No annual fee shall be taken where the proceedings are terminated less than four weeks from the date of issue of the first application for the appointment of a receiver.

### **Winding up fee**

**84.** A winding up fee shall be payable on the death of a patient in cases where the Public Trustee had been appointed receiver.

### **Treatment of structured payments, annuities etc.**

**85.**—(1) Where—

(a) any structured payment of damages, or

(b) any payment which is intended as part of a series of payments which arise from an annuity, insurance bond or similar arrangement,

is made for the benefit of a patient, one half, and only one half, of any such payment shall be treated as income of the patient for the purposes of calculating any fee payable under these Rules which requires ascertainment of the clear annual income at the patient's disposal.

(2) In paragraph (1), a structured payment of damages means a payment which—

(a) arises from—

(i) the judgement or award of any court, arbitrator or other competent body in England and Wales or elsewhere, or

(ii) the settlement of any claim or potential claim under the law of England and Wales or any other place, whether before or after the commencement of any proceedings in respect of such a claim;

(b) is made as part of a series of payments that are to be made from time to time until the death of the patient or some later date; and

(c) is not the first payment to be made in the series.

(3) For the purposes of paragraphs (1)(b) and (2)(b), payments may form part of a series notwithstanding that they—

(a) consist of differing amounts; or

(b) are payable at differing intervals.

### **Remission, postponement and exemption**

**86.**—(1) The Public Trustee may remit or postpone the payment of the whole or part of any fee where in his opinion hardship might otherwise be caused to the patient or his dependants or the circumstances are otherwise exceptional.

(2) The Public Trustee may remit the payment of the whole or part of any fee where the cost of calculation and collection would be disproportionate to the amount involved.

(3) No fee shall be payable pursuant to rules 80 and 83 on any income by way of non-taxable social security benefits or a war pension or war injuries (civilian) pension in respect of—

- (a) service in the armed forces of the Crown to which section 2 of the War Pensions Act 1920<sup>(2)</sup> applies; or
- (b) service in the armed forces of the Crown after 2nd September 1939; or
- (c) service before 15th August 1945 to which the Pensions (Polish Forces) Scheme 1964<sup>(3)</sup> applies; or
- (d) detention, capture, war injury or war risk injury within the meaning of any scheme (other than that mentioned in paragraph (c) above) made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939<sup>(4)</sup>, or under that Act as amended and applied by the Pensions (Mercantile Marine) Act 1942<sup>(5)</sup>; or
- (e) war service injury within the meaning of the Personal Injuries (Civilians) Scheme 1983<sup>(6)</sup> as amended in the case of a civil defence volunteer to whom that Scheme applied.

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(2) 1920 c. 23.  
(3) S.I. 1964/2007.  
(4) 1939 c. 83.  
(5) 1942 c. 26.  
(6) S.I. 1983/686.