2001 No. 3633

FINANCIAL SERVICES AND MARKETS

FINANCIAL SERVICES TRIBUNAL

The Financial Services and Markets Tribunal (Legal Assistance Scheme—Costs) Regulations 2001

Made - - - - -	*8th November 2001*
Laid before Parliament	*9th November 2001*
Coming into force - -	*30th November 2001*

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SCHEDULES

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The Lord Chancellor, in exercise of the powers conferred on him by sections 134, 135 and 428(1) and (3) of the Financial Services and Markets Act 2000(**a**), and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Enquiries Act 1992(**b**), makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Services and Markets Tribunal (Legal Assistance Scheme—Costs) Regulations 2001 and shall come into force on 30th November 2001.

(2) These Regulations apply to the whole of the United Kingdom, except that:

(a) regulations 20, 21 and 23(5) do not apply in relation to a Tribunal reference in Scotland; and

(b) regulation 22 only applies in relation to a Tribunal reference in Scotland.

Interpretation

2. In these Regulations:

"the Act" means the Financial Services and Markets Act 2000;

"advocate" means:

(a) a barrister, or a solicitor who has obtained a higher courts advocacy qualification in accordance with regulations and rules of conduct of the Law Society; or

(b) in relation to Scotland, a member of the Faculty of Advocates or a solicitor who holds rights of audience under section 25A of the Solicitors (Scotland) Act 1980(**c**);

"appropriate officer" means a costs officer of the Supreme Court Costs Office;

"assisted person" means a person in receipt of legal assistance;

"the Authority" means the Financial Services Authority;

"costs", in relation to Scotland, means expenses,

"legal assistance" means legal assistance in connection with proceedings which are before the Tribunal pursuant to a reference under section 127(4) of the Act and with regard to which a determination of the Tribunal disposing of the reference has not yet been made, and includes advice, assistance and representation for the purpose of those proceedings;

"legal assistance order" means a document granting a right to legal assistance in respect of proceedings before the Tribunal;

"the main hearing" means the hearing at which a decision of the Tribunal disposing of the reference is made;

"representative" means a solicitor or an advocate;

"the Tribunal" means the Financial Services and Markets Tribunal established under section 132 of the Act, and includes any person authorised by it to act on its behalf in that regard.

Determination of costs

3.—(1) Costs in respect of work done under a legal assistance order shall be determined by the appropriate officer in accordance with these Regulations.

(2) In determining costs, the appropriate officer shall, subject to the provisions of these Regulations:

(a) take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and

(b) allow a reasonable amount in respect of all work actually and reasonably done.

(**a**) 2000 c. 8.

(**b**) 1992 c. 53. By virtue of paragraph 18 of Schedule I, as amended by paragraph 6(2) of Schedule 20 to the Financial Services and Markets Act 2000, the Financial Services and Markets Tribunal is a tribunal under the supervision of the Council on Tribunals.

(**c**) 1980 c. 46. Section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act (c. 40), section 24, and amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 31 and S.I. 1999/1042 and 2000/121.

Authorisation of expenditure

4.—(1) Where it appears to the solicitor necessary for the proper conduct of proceedings before the Tribunal for costs to be incurred under the legal assistance order by taking any of the following steps:

(a) obtaining a written report or opinion of one or more experts;

(b) employing a person to provide a written report or opinion (otherwise than as an expert); or

(c) performing an act which is either unusual in its nature or involves unusually large expenditure

he may apply to the Tribunal for prior authority to do so.

(2) Where the Tribunal authorises the taking of any step specified in paragraph (1), it shall also authorise the maximum to be paid in respect of that step.

Authorisation of travelling and accommodation expenses

5. A representative assigned to an assisted person in any proceedings before the Tribunal may apply to the Tribunal for prior authority for the incurring of travelling and accommodation expenses in order to attend at any hearing in those proceedings.

Interim payment of disbursements

6.—(1) A solicitor may submit a claim to the appropriate officer for payment of a disbursement for which he has incurred liability in proceedings before the Tribunal 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 4 or 5; and

(b) he has incurred such a liability.

(3) Without prejudice to regulation 14(2), a claim under paragraph (1) 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 12(2).

(5) A claim under paragraph (1) shall be submitted to the appropriate officer in such form and manner as he 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 officer shall allow the disbursement subject to the limit in paragraph (3) if it appears to have been reasonably incurred in accordance with the prior authority.

(7) Where the appropriate officer allows the disbursement, he 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 19 to 22 (redetermination etc.) shall not apply to a payment under this regulation.

Interim disbursements and final determination of costs

7.—(1) On a final determination of costs, regulations 12(2) and (3)(e) and 14 shall apply notwithstanding that a payment has been made under regulation 6.

(2) Where the amount found to be due under regulation 14 in respect of a disbursement is less than the amount paid under regulation 6 ("the interim disbursement"), the appropriate officer shall deduct the difference from the sum otherwise payable to the solicitor on the determination of costs, and where the amount due under regulation 14 exceeds the interim disbursement, the appropriate officer shall add the difference to the amount otherwise payable to the solicitor.

Staged payments in long cases

8.—(1) A representative may submit a claim to the appropriate officer for a staged payment of his fees in relation to proceedings before the Tribunal.

(2) Where a claim is submitted in accordance with the provisions of this regulation, a staged payment shall be allowed where the appropriate officer is satisfied:

(a) that the claim relates to fees for a period of preparation of 100 hours or more, for which the representative will, subject to final determination of the costs payable, be entitled to be paid in accordance with these Regulations; and

(b) that the period from the date of the legal assistance order to the conclusion of the proceedings before the Tribunal will be likely to exceed 12 months, having regard, amongst other matters, to the number of individuals against whom a decision notice has been issued in the same case, and the weight and complexity of the case.

(3) In this regulation, "preparation" means work done before the main hearing, including:

(a) reading the papers in the case;

(b) attendance at conferences;

(c) contact with the Authority;

(d) providing written or oral advice;

(e) researching the law;

(f) preparation for the examination of witnesses and of oral submissions for the main hearing;

(g) preparation of written submissions, notices or other documents for use at the main hearing;

(h) attendance at any hearing before the main hearing; and

(i) all preparation within the meaning of regulation 13(1)(a) not falling within the preceding sub-paragraphs.

(4) The amount to be allowed for preparation falling within paragraph (3)(a) to (h) shall be computed by reference to the number of hours of preparation which it appears to the appropriate officer, without prejudice to the final determination of the costs payable, has been reasonably done, multiplied by the relevant hourly rate, namely:

(a) in the case of an advocate who is a Queen's Counsel, the hourly rate for subsidiary fees for Queen's Counsel prescribed in Table 2 in Schedule 2;

(b) in the case of any other advocate, the hourly rate for subsidiary fees for junior counsel prescribed in Table 1 in Schedule 2.

(5) The amount to be allowed for preparation falling within paragraph (3)(i) shall be computed by reference to the number of hours of preparation which it appears to the appropriate officer, without prejudice to the final determination of the costs payable, has been reasonably done, multiplied by the relevant hourly rate prescribed in Schedule 1, applicable to the class of work and the grade of fee-earner.

(6) A claim shall be submitted in such form and manner as the appropriate officer may direct, including such case plan as he may require for the purposes of paragraph (2)(a).

(7) A representative may claim further staged payments in accordance with this regulation in respect of further periods of preparation exceeding 100 hours which were not included in an earlier claim.

(8) Regulations 19 to 22 (redetermination etc.) shall not apply to a payment under this regulation.

Interim payments for attendance at hearing and refreshers

9.—(1) A representative may submit a claim to the appropriate officer for an interim payment in respect of attendance at the Tribunal or refreshers where the main hearing lasts for a qualifying period.

(2) Where a claim is submitted in accordance with the provisions of this regulation, an interim payment shall, without prejudice to the final determination of the costs payable, be allowed:

(a) to a solicitor where he or a fee-earner representing him has attended at the hearing on each day of the qualifying period;

(b) to an advocate where he has undertaken advocacy on the first day of the main hearing or carried out preparation or advocacy on any other day.

(3) The qualifying period for the purposes of this regulation shall be 20 days (which need not be continuous), and a day shall qualify as part of that period if the hearing begins at any time on that day.

(4) The amount payable in respect of each day which qualifies as part of the qualifying period shall be:

(a) in the case of a solicitor:

(i) where the hearing begins before and ends after the luncheon adjournment, five times the hourly rate for a trainee or fee-earner of equivalent experience attending court where more than one representative is assigned as prescribed in Schedule 1;

(ii) where the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, two and a half times the hourly rate referred to in (i) above;

(b) in the case of an advocate who is a Queen's Counsel, the maximum amount of the full day refresher fee for Queen's Counsel prescribed in Table 2 in Schedule 2;

(c) in the case of an advocate retained solely for the purpose of making a note of any hearing, one-half of the maximum amount of the full day refresher fee for junior counsel prescribed in Table 1 in Schedule 2;

(d) in the case of any other advocate, the maximum amount of the full day refresher fee for junior counsel prescribed in Table 1 in Schedule 2.

(5) A claim for an interim payment may be made in respect of a qualifying period and shall be submitted in such form and manner as the appropriate officer may direct.

(6) Further interim payments under this regulation may be claimed if the hearing lasts for further qualifying periods.

(7) A representative who has obtained prior approval under regulation 5 for the incurring of travelling or accommodation expenses may, at the same time as he submits a claim for an interim payment under this regulation, submit a claim for an interim payment of all such expenses incurred to date (less any expenses previously recovered by him by way of interim payment under this regulation).

(8) A claim under paragraph (7) shall be submitted in such form and manner as the appropriate officer may direct, and shall be supported by such evidence of the expense claimed as he may require.

(9) Regulations 19 to 22 (redetermination etc.) shall not apply to a payment under this regulation.

Hardship payments

10.—(1) The appropriate officer may allow a hardship payment to a representative in the circumstances set out in paragraph (2), subject to the provisions of this regulation.

(2) Those circumstances are that the representative:

(a) represents the assisted person in proceedings before the Tribunal;

(b) applies for such payment, in such form and manner as the appropriate officer may direct, not less than six months after he was first instructed in those proceedings;

(c) is not, at the date of the application, entitled to any payment under regulation 8 (staged payments) or 9 (interim payments);

(d) is unlikely to receive final payment in respect of the proceedings, as determined under regulation 13 or 16, within the three months following the application for the hardship payment; and

(e) satisfies the appropriate officer that, by reason of the circumstance in sub-paragraph (d), he is likely to suffer financial hardship.

(3) Every application for a hardship payment shall be accompanied by such information and documents as the appropriate officer may require as evidence of:

(a) the work done by the representative in relation to the proceedings up to the date of the application; and

(b) the likelihood of financial hardship.

(4) The amount of any hardship payment shall be in the discretion of the appropriate officer, but shall not exceed such sum as would be reasonable remuneration for the work done by the representative in the proceedings up to the date of the application.

(5) No hardship payment shall be made if it appears to the appropriate officer that the sum which would be reasonable remuneration for the representative, or the sum required to relieve his financial hardship, is less than £5,000 (excluding any VAT).

(6) Any hardship payment shall be set off against the remuneration finally payable to the representative under regulation 13 or 16.

Computation of final claim

11.—(1) At the conclusion of a case in which one or more payments have been made to a representative under regulation 8, 9 or 10 he shall submit a claim under regulation 12 or 15 for the determination of his overall remuneration, whether or not such a claim will result in any payment additional to those already made.

(2) In the determination of the amount payable to a representative under regulation 13 or 16, the appropriate officer shall deduct the amount of any advance payment made under regulation 8, 9 or 10 in respect of the same case from the amount that would otherwise be payable; and, if the amount of the advance payment is greater than the amount that would otherwise be payable, the appropriate officer shall be entitled to recover the amount of the difference, either by way of repayment by the representative or by way of deduction from any other amount that may be due to him.

Claims for costs by solicitors

12.—(1) Subject to regulation 23, no claim by a solicitor for costs in respect of work done under a legal assistance order shall be considered unless he submits it within three months of the conclusion of the proceedings to which it relates.

(2) A claim for costs shall be submitted to the appropriate officer in such form and manner as he may direct and shall be accompanied by the legal assistance order and any receipts or other documents in support of any disbursement claimed.

(3) A claim shall:

(a) summarise the items of work in respect of which fees are claimed according to the classes of work specified in regulation 13(1);

(b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one individual;

(c) specify, where appropriate, the fee-earner who undertook each of the items of work claimed;

(d) give particulars of any work done in relation to a rehearing; and

(e) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.

(4) Where the solicitor claims that paragraph 3 of Schedule 1 (enhanced rates) should be applied in relation to an item of work, he shall give full particulars in support of his claim.

(5) The solicitor shall supply such further particulars, information and documents as the appropriate officer may require.

Determination of solicitors' fees

13.—(1) The appropriate officer may allow work done by fee-earners in the following classes:

(a) preparation, including taking instructions, advising, interviewing witnesses, ascertaining the Authority's case, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing an advocate and expert witnesses, conferences and consultations;

(b) advocacy;

(c) attending at court where an advocate is assigned, including conferences with the advocate at court;

(d) travelling and waiting; and

(e) dealing with routine letters written and routine telephone calls.

(2) The appropriate officer shall consider the claim, any further particulars, information or documents submitted by the solicitor under regulation 12 and any other relevant information and shall allow:

(a) such work as appears to him to have been reasonably done under the legal assistance order by a fee-earner, classifying such work according to the classes specified in paragraph (1) as he considers appropriate; and

(b) such time in each class of work allowed by him (other than routine letters written and routine telephone calls) as he considers reasonable.

(3) In respect of all cases where the solicitor acts as advocate before the Tribunal, the appropriate officer shall proceed in accordance with the provisions of regulation 16 as if the fee-earner who did the work had been an advocate.

(4) In respect of all other classes of work, the provisions of this regulation shall apply.

(5) Subject to paragraph (2), (3), (4) and (6), the appropriate officer shall allow fees for work allowed by him under this regulation in accordance with Schedule 1.

(6) The fees allowed in accordance with Schedule 1 shall be those appropriate to such of the following grades of fee-earner as the appropriate officer considers reasonable:

(a) senior solicitor;

(b) solicitor, legal executive or fee-earner of equivalent experience;

(c) trainee or fee-earner of equivalent experience.

Determination of solicitors' disbursements

14.—(1) Subject to the provisions of this regulation, the appropriate officer shall allow such disbursements claimed under regulation 12 as appear to him to have been reasonably incurred.

(2) No question as to the propriety of any step, or as to the amount of the payment within the maximum authorised, with regard to which prior authority has been given under regulation 4 or 5, shall be raised on any determination of costs unless the representative knew or should reasonably have known that the purpose for which it was given had become unnecessary.

(3) Payment may be allowed on a determination of costs in respect of any step with regard to which prior authority may be given, notwithstanding that no such authority was given or that the maximum authorised was exceeded.

Claims for fees by an advocate

15.—(1) Subject to regulation 23, no claim by an advocate for fees in respect of work done under a legal assistance order shall be considered unless he submits it within three months of the conclusion of the proceedings to which it relates.

(2) A claim for fees shall be submitted to the appropriate officer in such form and manner as he may direct.

(3) A claim shall:

(a) summarise the items of work in respect of which fees are claimed according to the classes of fee specified in regulation 16(2);

(b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one individual; and

(c) give particulars of any work done in relation to a rehearing.

(4) Where an advocate claims that the provision for enhanced rates in regulation 16(3) should be applied in relation to an item of work, he shall give full particulars in support of his claim.

(5) The advocate shall supply such further particulars, information and documents as the appropriate officer may require.

Determination of advocates' fees

16.—(1) The appropriate officer shall consider the claim, any further particulars and information submitted by an advocate under regulation 15 and any other relevant information and shall allow such work as appears to him to have been reasonably done.

(2) The appropriate officer may allow any of the following classes of fee to an advocate in respect of work allowed by him under this regulation:

(a) a basic fee for preparation including preparation for any hearing before the main hearing and, where appropriate, the first day of the main hearing including, where they took place on that day, short conferences, consultations, applications and appearances, and any other preparation;

(b) a refresher fee for any day or part of a day during which a hearing continued, including, where they took place on that day, short conferences, consultations, applications and appearances, and any other preparation;

(c) subsidiary fees for:

(i) attendance at conferences and consultations not covered by (a) or (b) above;

(ii) written advices or other written work; and

(iii) attendance at hearings before the main hearing, applications and appearances not covered by (a) or (b) above.

(3) The appropriate officer shall allow such fees in respect of such work as he considers reasonable in such amounts as he may determine in accordance with Schedule 2, provided that where it appears to the appropriate officer, taking into account all the relevant circumstances of the case, that owing to the exceptional circumstances of the case the amount payable by way of fees in accordance with Schedule 2 would not provide reasonable remuneration for some or all of the work he has allowed, he may allow such amounts as appear to him to be reasonable remuneration for the relevant work.

Payment of costs

17.—(1) Having determined the costs payable to a representative in accordance with these Regulations, the appropriate officer shall notify the representative of the costs payable and authorise payment accordingly.

(2) Where the costs payable under paragraph (1) are varied as a result of any redetermination or appeal made or brought pursuant to these Regulations:

(a) where the costs are increased, the appropriate officer shall authorise payment of the increase;

(b) where the costs are decreased, the representative shall repay the amount of such decrease; and

(c) where the payment of any costs of the representative is ordered under regulation 20(14) or 21(8), the appropriate officer shall authorise payment.

Recovery of overpayments

18.—(1) This regulation applies where a representative is entitled to be paid a certain sum ("the amount due") by virtue of the provisions 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 officer may:

(a) require immediate repayment of the amount in excess of the amount due ("the excess amount") and the representative shall on demand repay the excess amount to the appropriate officer; or

(b) deduct the excess amount from any other sum which is or becomes payable to the representative by virtue of the provisions of these Regulations.

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

(4) Paragraph (2) shall apply notwithstanding that the representative to whom the excess amount was paid is exercising, or may exercise, a right under regulations 19 to 22.

Redetermination of costs by appropriate officer

19.—(1) Where a representative is dissatisfied with the costs determined in accordance with the provisions of these Regulations by the appropriate officer, he may apply to the appropriate officer to redetermine those costs.

(2) Subject to regulation 23, the application shall be made within 21 days of the receipt of notification of the costs payable under regulation 17.

(3) The application shall be made by giving notice to the appropriate officer in such form as he may direct specifying the matters in respect of which the application is made and the grounds of objection.

(4) The notice of application shall be accompanied by the particulars, information and documents supplied under regulation 12 or 15, as appropriate.

(5) The notice of application shall state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the appropriate officer shall notify the applicant of the time at which he is prepared to hear him or his representative.

(6) The applicant shall supply such further particulars, information and documents as the appropriate officer may require.

(7) The appropriate officer shall redetermine the costs, whether by way of increase or decrease in the amount previously determined, in the light of the objections made by the applicant or on his behalf, and shall notify the applicant of his decision.

(8) The applicant may request the appropriate officer to give reasons in writing for his decision and the appropriate officer shall comply with any such request.

(9) Subject to regulation 23, any request under paragraph (8) shall be made within 21 days of the receipt of notification of the decision.

Appeals to a Costs Judge

20.—(1) Where the appropriate officer has given his reasons for his decisions under regulation 19, a representative who is dissatisfied with that decision may appeal to a Costs Judge.

(2) Subject to regulation 23, an appeal shall be brought within 21 days of the receipt of the appropriate officer's reasons, by giving notice of appeal in writing to the Senior Costs Judge.

(3) The appellant shall send a copy of any notice given under paragraph (2) to the appropriate officer.

(4) The notice of appeal shall:

(a) be in such form as the Senior Costs Judge may direct;

(b) specify separately each item appealed against, showing (where appropriate) the amount claimed for the item, the amount determined and the grounds of the objection to the determination; and

(c) state whether the appellant wishes to appear or to be represented or whether he will accept a decision given in his absence.

(5) The notice of appeal shall be accompanied by:

(a) a copy of the written representations given under regulation 19(3);

(b) the appropriate officer's reasons for his decision given under regulation 19(8); and

(c) the particulars, information and documents supplied to the appropriate officer under regulation 19.

(6) The Senior Costs Judge may, and if so directed by the Lord Chancellor either generally or in a particular case shall, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.

(7) The Lord Chancellor may arrange for written or oral representations to be made on his behalf and, if he intends to do so, he shall inform the Senior Costs Judge and the appellant.

(8) Any written representations made on behalf of the Lord Chancellor under paragraph (7) shall be sent to the Senior Costs Judge and the appellant and, in the case of oral representations, the Senior Costs Judge and the appellant shall be informed of the grounds on which such representations will be made.

(9) The appellant shall be permitted a reasonable opportunity to make representations in reply.

(10) The Costs Judge shall inform the appellant (or his representative) and the Lord Chancellor, where representations have been or are to be made on his behalf, of the date of any hearing and, subject to the provisions of this regulation, may give directions as to the conduct of the appeal.

(11) The Costs Judge may consult the Tribunal or the appropriate officer and may require the appellant to provide any further information which he requires for the purpose of the appeal and, unless the Costs Judge otherwise directs, no further evidence shall be received on the hearing of the appeal and no ground of objection shall be valid which was not raised under regulation 19.

(12) The Costs Judge shall have the same powers as the appropriate officer under these Regulations and, in the exercise of such powers, may alter the redetermination of the appropriate officer in respect of any sum allowed, whether by increase or decrease as he thinks fit.

(13) The Costs Judge shall inform the appellant, the Lord Chancellor and the appropriate officer of his decision and the reasons for it in writing.

(14) Except where he confirms or decreases the sums redetermined under regulation 19, the Costs Judge may allow the appellant a sum in respect of part or all of any reasonable costs (including any fee payable in respect of an appeal) incurred by him in connection with the appeal.

Appeals to the High Court

21.—(1) A representative who is dissatisfied with the decision of the Costs Judge on an appeal under regulation 20 may apply to a Costs Judge to certify a point of principle of general importance.

(2) Subject to regulation 23, an application under paragraph (1) shall be made within 21 days of notification of the Costs Judge's decision under regulation 20(13).

(3) Where a Costs Judge certifies a point of principle of general importance, the representative may appeal to the High Court against the decision of the Costs Judge on an appeal under regulation 20, and the Lord Chancellor shall be a respondent to such an appeal.

(4) Subject to regulation 23, an appeal under paragraph (3) shall be brought within 21 days of receipt of the Costs Judge's certificate under paragraph (1).

(5) Where the Lord Chancellor is dissatisfied with the decision of the Costs Judge on an appeal under regulation 20, he may, if no appeal has been made by the representative under paragraph (3) appeal to the High Court against that decision, and the representative shall be a respondent to the appeal.

(6) Subject to regulation 23, an appeal under paragraph (5) shall be brought within 21 days of receipt of notification of the Costs Judge's decision under regulation 20(13).

(7) An appeal under paragraph (3) or (5) shall:

(a) be brought in the Queen's Bench Division of the High Court;

(b) follow the procedure set out in Part 8 of the Civil Procedure Rules 1998(**a**); and

(c) be heard and determined by a single judge, whose decision shall be final.

(8) The judge shall have the same powers as the appropriate officer and the Costs Judge under these Regulations and may reverse, affirm or amend the decision appealed against or make such other order as he thinks fit.

(**a**) S.I. 1998/3132. Part 8 was amended by S.I. 2000/221 and 1317; and 2001/256.

Reference to the Auditor in Scottish cases

22.—(1) Where the appropriate officer has given his reasons for his decisions under regulation 19, a representative who is dissatisfied with that decision may refer the matter for taxation by the auditor.

(2) The auditor shall give reasonable notice of the diet of taxation to the representative and the appropriate officer, and shall issue a report of the taxation.

(3) The appropriate officer and any other party to a reference to the auditor under paragraph (1) may make written representations to the Court of Session in relation to the auditor's report within 14 days of the issue of that report, and may be heard thereon, and rule 42.4 of the Act of Sederunt (Rules of the Court of Session 1994) 1994(**a**) shall apply to the determination of any such representations.

(4) In this regulation, "auditor" means the Auditor of the Court of Session.

Time limits

23.—(1) Subject to paragraph (2), the time limit within which any act is required or authorised to be done may, for good reason, be extended:

(a) In the case of acts required or authorised to be done under regulations 20 to 22, by a Costs Judge, the High Court or the Court of Session, as the case may be; and

(b) in the case of acts required or authorised to be done by a representative under any other regulation, by the appropriate officer.

(2) Where a representative without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the appropriate officer, a Costs Judge, the High Court, or the Court of Session, as the case may be:

(a) may, in exceptional circumstances, extend the time limit; and

(b) shall consider whether it is reasonable in the circumstances to reduce the costs.

(3) Costs shall not be reduced under paragraph (2)(b) unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why they should not be reduced.

(4) A representative may appeal to a Costs Judge, or, in Scotland, to the Court of Session, against a decision made under this regulation by an appropriate officer.

(5) An appeal against a decision made under this regulation shall be brought within 21 days of receipt of the decision by giving notice in writing to the Senior Costs Judge specifying the grounds of appeal.

Signed by the authority of the Lord Chancellor

Rosie Winterton
Parliamentary Secretary,
Lord Chancellor's Department

8th November 2001

(**a**) S.I. 1994/1443; as amended by S.I. 1996/1756.

SCHEDULE 1

SOLICITORS' FEES

FEES DETERMINED UNDER REGULATION 13

1. Subject to paragraph 2, the appropriate officer shall allow fees for work allowed by him under regulation 13 at the following prescribed rates:

Class of work	*Grade of fee-earner*	*Rate*
Preparation	Senior solicitor	£55.75 per hour
	Solicitor, legal executive or fee-earner of equivalent experience	£47.25 per hour
	Trainee or fee-earner of equivalent experience	£34.00 per hour
Attendance at the Tribunal where more than one representative assigned	Senior solicitor	£42.25 per hour
	Solicitor, legal executive or fee-earner of equivalent experience	£34.00 per hour
	Trainee or fee-earner of equivalent experience	£20.50 per hour
Travelling and waiting	Senior solicitor, solicitor, legal executive or fee-earner of equivalent experience	£24.75 per hour
	Trainee or fee-earner of equivalent experience	£12.50 per hour
Routine letters written and routine telephone calls		£3.60 per item

2. In respect of any item of work, the appropriate officer may allow fees at less than the relevant prescribed rate specified in paragraph 1 where it appears to him reasonable to do so having regard to the competence and despatch with which the work was done.

3.—(1) Upon a determination in respect of any case the appropriate officer may allow fees at more than the relevant prescribed rate specified in paragraph 1, subject to the provisions of this paragraph, where it appears to him, taking into account all the relevant circumstances of the case, that:

(a) the work was done with exceptional competence, skill or expertise;

(b) the work was done with exceptional despatch; or

(c) the case involved exceptional circumstances or complexity.

(2) Where the appropriate officer considers that any item or class of work should be allowed at more than the prescribed rate, he shall apply to that item or class of work a percentage enhancement in accordance with the following provisions of this paragraph.

(3) In determining the percentage by which fees should be enhanced above the prescribed rate the appropriate officer should have regard to:

(a) the degree of responsibility accepted by the solicitor and his staff;

(b) the care, speed and economy with which the case was prepared; and

(c) the novelty, weight and complexity of the case.

(4) The percentage above the relevant prescribed rate by which fees for work may be enhanced shall not exceed 200 per cent.

SCHEDULE 2

ADVOCATES' FEES

1. The appropriate officer shall allow such fee in respect of an item of work allowed under regulation 16(3), not exceeding the maximum amount specified in respect of that item of work, as appears to him to provide reasonable remuneration.

2. Where an hourly rate is specified in a Table in this Schedule in respect of an item of work allowed under regulation 16(3), the appropriate officer shall determine any fee for such work in accordance with that hourly rate, provided that the fee determined shall not be less than the minimum amount specified.

3. Where a refresher fee is claimed in respect of less than a full day, the appropriate officer shall allow such fee as appears to him reasonable having regard to the fee which would be allowable for a full day.

TABLE 1:
JUNIOR COUNSEL/SOLICITOR ADVOCATE

Basic fee	*Full day refresher*	*Subsidiary fees*		
		Attendance at consultations and conferences	*Written work*	*Attendance at hearings before the main hearing*
Maximum amount: £545.50	Maximum amount: £178.75	£33.50 per hour Minimum amount: £16.75	Maximum amount: £58.25	Maximum amount: £110

TABLE 2:
QUEEN'S COUNSEL

Basic fee	Full day refresher	Subsidiary fees		
		Attendance at consultations and conferences	Written work	Attendance at hearings before the main hearing
Maximum amount: £5,400.00	Maximum amount: £330.50	£62.50 per hour Minimum amount: £32.00	Maximum amount: £119.50	Maximum amount: £257.50

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the remuneration of work done under a legal assistance order in respect of cases which are before the Financial Services and Markets Tribunal. The Tribunal was established under section 132 of the Financial Services and Markets Act 2000, an Act passed to provide for the regulation of financial services and markets.

The Regulations include specific provisions dealing with disbursements (regulations 4 to 7); interim payments and staged payments in long cases (regulations 8 and 9); hardship payments (regulation 10); and how claims are to be made, determined and paid (regulations 11 to 18). There are also provisions dealing with the redetermination of costs by an appropriate officer, appeals from the appropriate officer to a Costs Judge, and appeals from the Costs Judge to the High Court (regulations 19 to 21). In relation to Scottish cases, redetermination of costs by an appropriate officer may be referred to the Auditor of the Court of Session, and thereafter to the Court of Session (regulation 22).

Schedule 1 details the rates in respect of solicitors' fees which are to be paid under the Regulations, and Schedule 2 details those for advocates.

STATUTORY INSTRUMENTS

2001 No. 3633

FINANCIAL SERVICES AND MARKETS

FINANCIAL SERVICES TRIBUNAL

The Financial Services and Markets Tribunal (Legal Assistance Scheme—Costs) Regulations 2001

ISBN 0-11-038863-1

9 780110 388632

£3.00

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under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1907 11/2001 673231 19585