STATUTORY INSTRUMENTS

1988 No. 423

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Legal Aid in Criminal Proceedings (Costs) Regulations 1988

Made - - - -	*4th March 1988*
Laid before Parliament	*11th March 1988*
Coming into force	*1st April 1988*

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The Lord Chancellor, in exercise of the powers conferred by section 39 of the Legal Aid Act 1974(a) and now vested in him(b) and all other powers enabling him in that behalf and having had regard to the principle of allowing fair remuneration according to the work actually and reasonably done, hereby makes the following Regulations:–

Citation, commencement, revocations and transitional provisions

1.—(1) These Regulations may be cited as the Legal Aid in Criminal Proceedings (Costs) Regulations 1988 and shall come into force on 1st April 1988.

(2) Subject to paragraph (3), the Legal Aid in Criminal Proceedings (Costs) Regulations 1982(c), as amended(d), shall be revoked.

(3) Subject to paragraph (4), these Regulations shall apply for the determination of costs which are payable in respect of work done on or after 1st April 1988 and costs payable in respect of work done before that date shall be determined as if these Regulations had not been made.

(4) The provisions of these Regulations relating to standard fees for solicitors shall only apply for the determination of costs which are payable in respect of proceedings in which–

(a) a defendant is committed for trial or sentence, or

(b) a notice of appeal is lodged,

on or after 1st April 1988.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires,–

"the Act" means the Legal Aid Act 1974;

"appropriate authority" has the meaning assigned to it by regulation 3;

"collecting court" has the meaning assigned to it by section 32(5) of the Act;

"costs" means, in the case of a solicitor, the fees and disbursements payable under section 37(e) of the Act and, in the case of counsel, the fees payable under that section;

"counsel" means counsel assigned under section 30 or 31(f) of the Act;

"Court of Appeal" means the criminal division of the Court of Appeal or the Courts-Martial Appeal Court as the case may be;

"determining officer" means an officer appointed under regulation 3(3);

"disbursements" means travelling and witness expenses and other out of pocket expenses incurred by a fee-earner in giving legal aid;

"fee-earner" means a solicitor, a legal executive or any clerk who regularly does work for which it is appropriate to make a direct charge to a client;

"legal aid" means legal aid given under a legal aid order;

"legal aid order" means a legal aid order made under section 28(g) of the Act;

"legal executive" means a fellow of the Institute of Legal Executives;

"proceedings in a magistrates' court" includes, for the purposes of these Regulations, proceedings in connection with an application for bail to the Crown Court after the issuing of a certificate under section 5(6A) of the Bail Act 1976(h);

(a) 1974 c. 4.
(b) S.I. 1980/705.
(c) S.I. 1982/1197.
(d) The amending instruments are: S.I. 1983/235, 1049, 1984/112, 264, 1985/333, 1986/273, 444, 1515, 1835 and 1987/369.
(e) Section 37 was amended by the Legal Aid Act 1982 (c. 44), section 11(1).
(f) Section 30 was amended by the Bail Act 1976 (c. 63), section 11(8)(9), by the Administration of Justice Act 1977 (c. 38), Schedule 1, paragraph 3, by the Magistrates' Courts Act 1980 (c. 43), section 154, Schedule 7, paragraph 127, (as from a day to be appointed) by the Contempt of Court Act 1981 (c. 49), sections 13, 21(2), Schedule 2, Part I, paragraph 2, by the Legal Aid Act 1982 (c. 44), section 4, by the Criminal Justice Act 1982 (c. 48), sections 29(3), 60(4), and by the Administration of Justice Act 1985 (c. 61), section 46 and section 31 was amended by the Legal Aid Act 1982 (c. 44), Schedule.
(g) Section 28 was amended by the Children Act 1975 (c. 72), section 65, by the Bail Act 1976 (c. 63), section 11(2)(3), (as from a day to be appointed) by the Contempt of Court Act 1981 (c. 49), sections 13, 21(2), Schedule 2, Part I, paragraph 1, by the Legal Aid Act 1982 (c. 44), section 3, by the Criminal Justice Act 1982 (c. 48), section 25(2)(a) and (as from a day to be appointed) by the Criminal Justice Act 1987 (c. 38), section 16, Schedule 2, paragraphs 7, 8.
(h) 1976 c. 63; section 5(6A) was added by the Criminal Justice Act 1982 (c. 48), section 60(3).

"registrar" means the registrar of criminal appeals or the registrar of the Courts-Martial Appeal Court as the case may be;

"the 1968 Regulations" means the Legal Aid in Criminal Proceedings (General) Regulations 1968(a);

"solicitor" means a solicitor assigned under section 30 or 31 of the Act;

"trial judge" means the judge who presided at the hearing at which the defendant was substantively dealt with and in respect of which the costs are payable;

"taxing master" means a taxing master of the Supreme Court.

(2) Unless the context otherwise requires, any reference in these Regulations to a Schedule by number means the Schedule so numbered to these Regulations and any reference to a paragraph of a Schedule by number means the paragraph so numbered in that Schedule.

The appropriate authority

3.—(1) Subject to paragraphs (2) and (3), the appropriate authority shall be–

(a) the registrar in the case of proceedings in the Court of Appeal;

(b) an officer appointed by the Lord Chancellor in the case of proceedings in the Crown Court;

(c) the Law Society in the case of proceedings in a magistrates' court.

(2) For costs claimed in respect of advice or assistance given under section 30(5), (6) or (7) of the Act the appropriate authority shall be–

(a) the registrar where the proceedings in respect of which an appeal was considered were conducted in the Crown Court and, on the advice of the counsel or solicitor assigned, notice of appeal or application for leave to appeal to the Court of Appeal is given (whether or not such appeal is later abandoned);

(b) the officer appointed by the Lord Chancellor under paragraph (1)(b) in all other cases where the proceedings were conducted in the Crown Court;

(c) the Law Society in cases where the proceedings were conducted in a magistrates' court.

(3) The appropriate authority may appoint or authorise the appointment of determining officers to act on its behalf under these Regulations in accordance with directions given by it or on its behalf.

General

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

(2) Representation or advice given before the making of a legal aid order under section 28(2), (3) or (4) of the Act shall be deemed to be work done under that order for the purposes of these Regulations, if the appropriate authority is satisfied that–

(a) the interests of justice required that the representation or advice be provided as a matter of urgency;

(b) there was no undue delay in making the application for a legal aid order; and

(c) the representation or advice was given by the solicitor who was subsequently assigned under the legal aid order.

(3) In determining costs the appropriate authority shall, subject to 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 fair remuneration for work actually and reasonably done.

Claims for costs by solicitors

5.—(1) Subject to regulation 15, no claim by a solicitor for costs in respect of work done under a legal aid order shall be entertained unless the solicitor submits it within three months of the conclusion of the proceedings to which the legal aid order relates.

(a) S.I. 1968/1231.

(2) Subject to paragraph (3), a claim for costs shall be submitted to the appropriate authority in such form and manner as it may direct and shall be accompanied by the legal aid order and any receipts or other documents in support of any disbursements claimed.

(3) A claim shall–

(a) summarise the items of work done by a fee-earner in respect of which fees are claimed according to the classes specified in regulation 6(1) or in paragraph 4(2) of Schedule 1 Part II;

(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 assisted person;

(c) in the case of proceedings in the Crown Court or Court of Appeal, 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 more than one indictment or a retrial;

(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–

(a) representation or advice given before the making of the legal aid order should be deemed to be work done under that order, or

(b) paragraph 3 of Schedule 1 Part I should be applied in relation to an item of work,

he shall give full particulars in support of his claim.

(5) Where there are any special circumstances which should be drawn to the attention of the appropriate authority, the solicitor shall specify them.

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

Determination of solicitors' fees

6.—(1) Subject to paragraph (5), the appropriate authority may allow work done by fee-earners in the following classes–

(a) preparation, including taking instructions, interviewing witnesses, ascertaining the prosecution case, advising on plea and mode of trial, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing counsel and expert witnesses, conferences, consultations, views and work done in connection with advice on appeal or case stated;

(b) advocacy, including applications for bail and other applications to the court;

(c) attendance at court where counsel is assigned, including conferences with counsel at court;

(d) travelling and waiting;

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

(2) The appropriate authority shall consider the claim, any further particulars, information or documents submitted by the solicitor under regulation 5 and any other relevant information and shall allow–

(a) such work as appears to it to have been actually and reasonably done under the legal aid order (including any representation or advice which is deemed to be work done under that order) by a fee-earner, classifying such work according to the classes specified in paragraph (1) as it considers appropriate; and

(b) such time in respect of each class of work allowed by it (other than dealing with routine letters written and routine telephone calls) as it considers reasonable

and, 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.

(3) Subject to paragraphs (2) and (4), the appropriate authority shall allow fees for work allowed by it under this regulation in accordance with Schedule 1 Part I; provided that, where any work allowed was done after 30th June 1989, it may allow such fees as appear to it to be fair remuneration for such work having regard to the rates specified in that Part of Schedule 1.

(4) In the case of proceedings in the Crown Court and the Court of Appeal, the fees allowed in accordance with Part I of Schedule 1 shall be those appropriate to such of the following grades of fee-earner as the appropriate authority considers reasonable–

(a) senior solicitor,

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

(c) articled clerk or fee-earner of equivalent experience.

(5) This regulation applies to work in respect of which standard fees are payable under Part II of Schedule 1 only to the extent that that Part specifically so provides.

Determination of solicitors' disbursements

7.—(1) Subject to the provisions of this regulation, the appropriate authority shall allow such disbursements claimed under regulation 5 as appear to it to have been actually and reasonably incurred; provided that:

(a) if they are abnormally large by reason of the distance of the court or the assisted person's residence or both from the solicitor's place of business, reimbursement of the expenses may be limited to what would otherwise, having regard to all the circumstances, be a reasonable amount; and

(b) in the case of an appeal to the Court of Appeal, the cost of a transcript, or any part thereof, of the proceedings in the court from which the appeal lies obtained otherwise than through the registrar shall not be allowed except where the appropriate authority considers that it is reasonable in all the circumstances for such disbursement to be allowed.

(2) Subject to paragraph (3), a solicitor may claim a disbursement in respect of fees of counsel instructed by him in proceedings in a magistrates' court where counsel has not been assigned under section 30 or 31 of the Act.

(3) The appropriate authority shall determine the amount of any disbursement payable under paragraph (2) by estimating the sum which it would have allowed the solicitor under these Regulations by way of costs had he undertaken the case without counsel and shall allow counsel and the solicitor such reasonable costs as do not together exceed that sum.

(4) No question as to the propriety of any step or act in relation to which prior authority has been obtained under regulation 14D of the 1968 Regulations(a) shall be raised on any determination of costs, unless the solicitor 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.

(5) Where costs are actually and reasonably incurred in accordance with and subject to the limit imposed by a prior authority given under regulation 14D of the 1968 Regulations, no question shall be raised on any determination of costs as to the amount of the payment to be allowed for the step or act in relation to which the authority was given.

(6) Where costs are incurred in taking any step or doing any act for which authority may be given under regulation 14D of the 1968 Regulations, without authority to do so having been given or in excess of any fee authorised under regulation 14D of the 1968 Regulations, payment in respect of those costs may nevertheless be allowed on a determination of costs.

Claims for fees by counsel

8.—(1) Subject to regulation 15, no claim by counsel for fees for work done under a legal aid order shall be entertained unless counsel submits it within three months of the conclusion of the proceedings to which the legal aid order relates.

(2) Subject to paragraph (3), a claim for fees shall be submitted to the appropriate authority in such form and manner as it may direct.

(3) A claim shall–

(a) summarise the items of work in respect of which fees are claimed according to the classes specified in regulation 9(4);

(a) Regulation 14D was inserted by S.I. 1983/1863.

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

(c) give particulars of any work done in relation to more than one indictment or a retrial.

(4) Where counsel claims that–

(a) it would be inappropriate to allow a standard fee under regulation 9(2); or

(b) regulation 9(5)(b) should be applied in relation to an item of work,

he shall give full particulars in support of his claim.

(5) Where there are any special circumstances which should be drawn to the attention of the appropriate authority, counsel shall specify them.

(6) Counsel shall supply such further particulars, information and documents as the appropriate authority may require.

Determination of counsel's fees

9.—(1) The appropriate authority shall consider the claim, any further particulars, information or documents submitted by counsel under regulation 8 and any other relevant information and shall allow such work as appears to it to have been actually and reasonably done.

(2) Where the work allowed has been done by junior counsel in the Crown Court, the appropriate authority shall, subject to paragraph (3), allow such of the standard fees specified in Part I of Schedule 2 as may be applicable to that work, unless it appears to the appropriate authority that the standard fee would be inappropriate taking into account all the relevant circumstances of the case, in which case it shall allow fees in accordance with paragraphs (4) and (5).

(3) The appropriate authority may not allow a standard fee in respect of–

(a) committals for trial in which the indictment includes counts in respect of an offence which is classified as a class 1 or 2 offence in accordance with directions given by the Lord Chief Justice under section 75 of the Supreme Court Act 1981(**a**);

(b) proceedings in any other case–

(i) which lasted more than three days or which at the time of listing were reasonably expected to last more than three days;

(ii) in which the indictment is disposed of by a plea of guilty but which if contested would reasonably have been expected to last more than three days,

unless counsel requests that a standard fee be allowed.

(4) The appropriate authority may, except where standard fees are allowed under paragraph (2), allow any of the following classes of fee to counsel in respect of work allowed by it under this regulation–

(a) a basic fee for preparation including preparation for a pre-trial review and, where appropriate, the first day's hearing including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications), views 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 (including bail applications), views and any other preparation;

(c) subsidiary fees for–

(i) attendance at conferences, consultations and views not covered by sub-paragraph (a) or (b);

(ii) written advice on evidence, plea, appeal, case stated or other written work;

(iii) attendance at pre-trial reviews, applications and appearances (including bail applications and adjournments for sentence) not covered by sub-paragraph (a) or (b).

(5) In the case of proceedings in the Crown Court or a magistrates' court, the appropriate authority shall, except where standard fees are allowed under paragraph (2), allow such fees

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(**a**) 1981 c. 54.

in respect of such work as it considers reasonable in such amounts as it may determine in accordance with Part II of Schedule 2; provided that:

(a) where any work allowed was done after 30th June 1989, the appropriate authority may allow such fees in such amounts as appear to it to be fair remuneration for such work having regard to the amounts specified in Part II of Schedule 2; or

(b) where it appears to the appropriate authority, 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 Part II of Schedule 2 would not provide fair remuneration for some or all of the work it has allowed, it may allow such amount as appears to it to be fair remuneration for the relevant work.

(6) In the case of proceedings in the Court of Appeal, the appropriate authority shall allow such fees in respect of such work as it considers reasonable in such amounts as appear to it to be fair remuneration for such work.

Payment of costs

10.—(1) Having determined the costs payable to a solicitor or counsel in accordance with these Regulations, the appropriate authority shall notify the solicitor or counsel of the costs payable and authorise payment accordingly.

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

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

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

(c) where the payment of any costs of the solicitor or counsel is ordered under regulation 13(14) or 14(8) or under paragraph 8(4) of Schedule 1 Part II, the appropriate authority shall authorise such payment.

(3) Any payment in respect of counsel which is determined under regulation 7(3) shall be paid to counsel direct.

Notification of collecting court

11. Having determined the costs payable to a solicitor or counsel in accordance with these Regulations, the appropriate authority shall notify the collecting court of the amount determined in each case in which a legal aid contribution order under section 7 of the Legal Aid Act 1982(**a**) has been made.

Redetermination of costs by appropriate authority

12.—(1) Where–

(a) a solicitor or counsel is dissatisfied with the costs (other than standard fees allowed under Schedule 1 Part II or under regulation 9(2)) determined under these Regulations by an appropriate authority for proceedings other than proceedings before a magistrates' court; or

(b) counsel is dissatisfied with the decision to allow standard fees,

he may apply to the appropriate authority to redetermine those costs or to review that decision as the case may be.

(2) Subject to regulation 15, the application shall be made, within 21 days of the receipt of notification of the costs payable under regulation 10(1), by giving notice in writing to the appropriate authority specifying the matters in respect of which the application is made and the grounds of objection and shall be made in such form and manner as the appropriate authority may direct.

(3) The notice of application shall be accompanied by–

(a) in the case of a solicitor, the particulars, information and documents supplied under regulation 5; and

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(**a**) 1982 c. 44.

(b) in the case of counsel, the particulars, information and documents supplied under regulation 8.

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

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

(6) The appropriate authority shall–

(a) redetermine the costs, whether by way of increase, decrease or in the amounts previously determined; or

(b) review the decision to allow standard fees under regulation 9(2) and confirm it or allow fees in accordance with regulation 9(4) and (5),

in the light of the objections made by the applicant or on his behalf and shall notify the applicant of its decision.

(7) The applicant may request the appropriate authority to give reasons in writing for its decision and, if so requested, the appropriate authority shall comply with the request.

(8) Subject to regulation 15, any request under paragraph (7) shall be made within 21 days of receiving notification of the decision.

Appeals to a taxing master

13.—(1) Where the appropriate authority has given its reasons for its decision under regulation 12, a solicitor or counsel who is dissatisfied with that decision may appeal to a taxing master.

(2) Subject to regulation 15, an appeal shall be instituted, within 21 days of the receipt of the appropriate authority's reasons, by giving notice in writing to the Chief Taxing Master.

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

(4) The notice of appeal shall be accompanied by–

(a) a copy of the written representations given under regulation 12(2);

(b) the appropriate authority's reasons for its decision given under regulation 12(7); and

(c) the particulars, information and documents supplied to the appropriate authority under regulation 12.

(5) The notice of appeal shall–

(a) be in such form as the Chief Taxing Master 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 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.

(6) The Chief Taxing Master 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) With a view to ensuring that the public interest is taken into account, 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 Chief Taxing Master and the appellant.

(8) Any written representations made on behalf of the Lord Chancellor under paragraph (7) shall be sent to the Chief Taxing Master and to the appellant and, in the case of oral representations, the Chief Taxing Master 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 taxing master 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 taxing master may consult the trial judge, the appropriate authority or the determining officer and may require the appellant to provide any further information which he requires for the purpose of the appeal and, unless the taxing master 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 12.

(12) The taxing master shall have the same powers as the appropriate authority under these Regulations and, in the exercise of such powers, may–

(a) alter the redetermination of the appropriate authority in respect of any sum allowed, whether by increase or decrease as he thinks fit;

(b) confirm the decision to allow standard fees under regulation 9(2) or allow fees in accordance with regulation 9(4) and (5).

(13) The taxing master shall communicate his decision and the reasons for it in writing to the appellant, the Lord Chancellor and the appropriate authority.

(14) Save where he confirms or decreases the sums redetermined under regulation 12 or confirms a decision to allow standard fees, the taxing master 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

14.—(1) A solicitor or counsel who is dissatisfied with the decision of a taxing master on an appeal under regulation 13 may apply to a taxing master to certify a point of principle of general importance.

(2) Subject to regulation 15, an application under paragraph (1) shall be made within 21 days of notification of a taxing master's decision under regulation 13(13).

(3) Where a taxing master certifies a point of principle of general importance, the solicitor or counsel may appeal to the High Court against the decision of a taxing master on an appeal under regulation 13, and the Lord Chancellor shall be a respondent to such an appeal.

(4) Subject to regulation 15, an appeal under paragraph (3) shall be instituted within 21 days of receiving a taxing master's certificate under paragraph (1).

(5) Where the Lord Chancellor is dissatisfied with the decision of a taxing master on an appeal under regulation 13, he may, if no appeal has been made by the solicitor or counsel under paragraph (3), appeal to the High Court against that decision, and the solicitor or counsel shall be a respondent to the appeal.

(6) Subject to regulation 15, an appeal under paragraph (5) shall be instituted within 21 days of receiving notification of the taxing master's decision under regulation 13(13).

(7) An appeal under paragraphs (3) and (5) shall be instituted by originating summons in the Queen's Bench Division and shall be heard and determined by a single judge whose decision shall be final.

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

Time limits

15.—(1) Subject to paragraph (2), the period of time within which any act is required or authorised to be done under these Regulations by a solicitor or counsel may, for good reason, be extended by the appropriate authority; provided that where any such act is required or authorised to be done under regulation 13 or 14, the period of time thereby allowed may be extended, for good reason, only by a taxing master or the High Court as the case may be.

(2) Where a solicitor or counsel without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the appropriate authority, the Chief Taxing Master or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the costs; provided that costs shall not be reduced unless the solicitor or counsel has been

allowed a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.

(3) A solicitor or counsel may appeal to the Chief Taxing Master against a decision made under this regulation by an appropriate authority in respect of proceedings other than proceedings before a magistrates' court and such an appeal shall be instituted within 21 days of the decision being given by giving notice in writing to the Chief Taxing Master specifying the grounds of appeal.

House of Lords

16.—(1) In the case of proceedings in the House of Lords, the costs payable to a solicitor or counsel under section 37 of the Act shall be determined by such officer as may be prescribed by order of the House of Lords.

(2) Subject to paragraph (1), these Regulations shall not apply to proceedings in the House of Lords.

Dated 4th March 1988. *Mackay of Clashfern,* C.

SCHEDULE 1

Regulation 6

SOLICITORS' FEES

PART I

FEES DETERMINED UNDER REGULATION 6

1.—(1) Subject to paragraphs 2 and 3, the appropriate authority shall allow fees for work allowed by it under regulation 6 at the following basic rates:

(a) Magistrates' court proceedings

Class of work	*Rate*
Preparation	£34.50 per hour—(£36.50 per hour for a fee-earner whose office is situated within legal aid area 1, 13 or 14)
Advocacy	£43.00 per hour—(£43.50 per hour for a fee-earner whose office is situated within legal aid area 1, 13 or 14)
Attendance at court where counsel assigned	£23.00 per hour
Travelling and waiting	£19.50 per hour
Routine letters written and routine telephone calls	£2.65 per item—(£2.75 per item for a fee-earner whose office is situated within legal aid area 1, 13 or 14)

(b) Crown Court and Court of Appeal proceedings

Class of work	*Grade of fee-earner*	*Rate*
Preparation	Senior solicitor	£40.00 per hour—(£42.50 per hour for a fee-earner whose office is situated within legal aid area 1, 13 or 14)
	Solicitor, legal executive or fee-earner of equivalent experience	£34.50 per hour—(£36.50 per hour for a fee-earner whose office is situated within legal aid area 1, 13 or 14)
	Articled clerk or fee-earner of equivalent experience	£22.50 per hour—(£26.50 per hour for a fee-earner whose office is situated within legal aid area 1, 13 or 14)
Advocacy	Senior solicitor	£50.00 per hour
	Solicitor	£43.00 per hour—(£43.50 per hour for a fee-earner whose office is situated within legal aid area 1, 13 or 14)
Attendance at court where counsel assigned	Senior solicitor	£33.00 per hour
	Solicitor, legal executive or fee-earner of equivalent experience	£26.00 per hour
	Articled clerk or fee-earner of equivalent experience	£16.00 per hour
Travelling and waiting	Senior solicitor	£19.50 per hour
	Solicitor, legal executive or fee-earner of equivalent experience	£19.50 per hour
	Articled clerk or fee-earner of equivalent experience	£9.75 per hour
Routine letters written and routine telephone calls		£2.65 per item—(£2.75 per item for a fee-earner whose office is situated within legal aid area 1, 13 or 14)

(2) In paragraph (1), "legal aid area 1, 13 or 14" means the area so numbered in the Schedule to the Legal Aid Scheme 1985 (which is made under section 15 of the Act and which provides for England and Wales to be divided into areas for the purposes of the Scheme).

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

3. In respect of any item of work, the appropriate authority may allow fees at more than the relevant basic rate specified in paragraph 1 where it appears to the appropriate authority that, taking into account all the relevant circumstances of the case, the amount of fees payable at such specified rate would not reasonably reflect–

(a) the exceptional competence and dispatch with which the work was done, or

(b) the exceptional circumstances of the case.

PART II

STANDARD FEES

Application

1.—(1) Subject to sub-paragraphs (3) and (4), this Part of this Schedule applies to the fees for work done by a fee-earner regardless of his grade in relation to the proceedings in the Crown Court specified in sub-paragraph (2).

(2) The following proceedings are specified for the purposes of sub-paragraph (1)–

(a) committals for trial in which the indictment consisted of counts in respect of an offence which is classified as a class 3 or 4 offence in accordance with directions given by the Lord Chief Justice under section 75 of the Supreme Court Act 1981 and

(i) where the trial (including any case prepared for trial in which no jury was sworn) lasted 2 days or less or at the time of listing was reasonably expected to last 2 days or less; or

(ii) where the case was listed and disposed of as a plea of guilty;

(b) appeals against conviction;

(c) appeals against sentence, and

(d) committals for sentence (including proceedings which arose out of a breach of an order of the Crown Court, proceedings in which sentence was deferred and other similar matters).

(3) Where in any proceedings specified in sub-paragraph (2), the trial judge–

(a) is dissatisfied with the solicitor's conduct of the case; or

(b) considers that, for exceptional reasons, the fees should be determined under regulation 6,

he may direct that the fees should be determined under regulation 6 and in that event this Part of this Schedule shall not apply.

(4) If a solicitor so elects, he may claim standard fees under this Part of this Schedule in respect of work done by him notwithstanding that the proceedings in relation to which the work was done are not specified in sub-paragraph (2), and the provisions of this Part of this Schedule shall apply to such a claim with the necessary modifications, save that, where a solicitor elects to claim the principal standard fee for preparation in respect of a trial which lasted more than 2 days, he shall be paid that fee (together with the appropriate standard fees for the other classes of work specified in paragraph 4(2)) and paragraph 2 shall not apply.

(5) For the purposes of this Part of this Schedule, the standard fees which are payable and the classes of work for which such fees may be paid are specified in paragraph 4 and the "lower fee limit" and the "upper fee limit" have the meanings given by paragraph 4(3).

Allowance of standard fees

2.—(1) The appropriate authority shall allow the standard fee for preparation which has been claimed by a solicitor (together with the appropriate standard fees for the other classes of work specified in paragraph 4(2)) unless, where the principal standard fee for preparation has been claimed, such a fee is considered to be excessive in which case the lower standard fee shall be allowed.

(2) A solicitor who has been allowed the lower standard fee instead of the principal fee claimed may–

(a) accept that lower fee;

(b) request the appropriate authority in writing to review its decision, or

(c) provide the appropriate authority with a detailed claim in the form directed by the appropriate authority requesting in writing that the fees for preparation be determined under regulation 6.

(3) Where the appropriate authority is requested to review its decision under sub-paragraph (2)(b), the authority shall either–

(a) allow the principal fee; or

(b) request the solicitor to provide a detailed claim in the form directed by the appropriate authority.

(4) Where a solicitor fails to make a request under sub-paragraph (2)(b) or to supply a detailed claim for the purposes of sub-paragraph (2)(c) or (3)(b) within 6 weeks of the decision to allow the lower fee or the request to supply a detailed claim, whichever is the later, the decision to allow the lower standard fee shall be deemed to be confirmed.

3.—(1) Where a solicitor–

(a) submits a claim for determination under regulation 6 in a case to which paragraph 1(2) applies; or

(b) disputes the allowance of the lower standard fee and provides a detailed claim under paragraph 2(2)(c) or (3)(b),

the appropriate authority shall first determine the fees for preparation work within the meaning of paragraph 4(2)(a) of this Part of this Schedule.

(2) If the fees so determined are–

(a) less than the lower fee limit, the appropriate authority shall allow and pay the lower standard fee together with the standard fees for all other classes of work specified in paragraph 4(2);

(b) not less than the lower fee limit and not more than the upper fee limit, the appropriate authority shall allow and pay the principal standard fee together with the standard fees for all other classes of work specified in paragraph 4(2);

(c) more than the upper fee limit, no standard fees shall be payable and all fees shall be determined in accordance with regulation 6.

Standard fees

4.—(1) The classes of work for which standard fees shall be payable are those specified in sub-paragraph (2) and the fees for classes of work which are not so specified shall be determined in accordance with regulation 6.

(2) The classes of work specified for the purposes of sub-paragraph (1) are–

(a) preparation within the meaning of regulation 6(1)(a) but including routine letters written and routine telephone calls, within the meaning of regulation 6(1)(e);

(b) advocacy in respect of applications for bail;

(c) attendance at court (including waiting) where counsel is assigned;

(d) travelling except–

(i) to undertake work for which standard fees are not payable, or

(ii) where sub-paragraph (2)(b) applies,

and, for the purpose of this paragraph, "travelling" shall be deemed to include waiting in connection with preparation work, within the meaning of sub-paragraph (2)(a) above.

(3) The standard fees payable under this Part of this Schedule are the fees specified in the Table below and in this Part of this Schedule the "lower fee limit" and the "upper fee limit" mean the lower and upper fee limits specified in the Table.

TABLE

PREPARATION

Type of Proceedings		*Lower standard fee*	*Lower fee limit*	*Principal standard fee*	*Upper fee limit*
Jury trials (including any case prepared for trial in which no jury was sworn)		£100.00	£140	£192.00	£243
	London rate	£106.00	£146	£201.00	£255
Guilty pleas		£ 63.00	£ 85	£134.00	£175
	London rate	£ 67.00	£ 89	£140.00	£184
Appeals against conviction		£ 39.00	£ 54	£118.00	£183
	London rate	£ 41.00	£ 56	£122.50	£191
Appeals against sentence		£ 28.50	£ 41	£ 71.50	£102
	London rate	£ 30.00	£ 43	£ 75.00	£106
Committals for sentence		£ 32.50	£ 40	£ 75.50	£110
	London rate	£ 34.50	£ 42	£ 79.50	£114
ADVOCACY IN RESPECT OF BAIL APPLICATIONS		£ 20.00			
	London rate	£ 21.00			
ATTENDANCE AT COURT (INCLUDING WAITING) WHERE COUNSEL ASSIGNED		£ 16.75 per hour			
TRAVELLING		£ 14.25 per hour			

(4) A solicitor shall be entitled to the "London rate" of the standard fees specified in the Table where his office is situated within legal aid area 1, 13 or 14 within the meaning of paragraph 1(2) of Schedule 1, Part I.

(5) The hourly rate specified in the Table for attendance at court shall, subject to sub-paragraph (6), be paid in respect of the period of time beginning 30 minutes before the case was listed and ending

(a) where the client was present at court, 15 minutes after the hearing ended on that day, or

(b) where the client was not present at court, when the hearing ended on that day,

and, save in exceptional circumstances, shall not be payable during the luncheon adjournment.

(6) Where a fee earner attends a court centre for the purposes of more than one case, the solicitor may claim the attendance fee in respect of the second or subsequent case only for the time actually spent in attendance in addition to the time for which payment is made under sub-paragraph (5).

(7) The hourly rate specified in the Table shall be paid for time spent travelling (within the meaning of sub-paragraph (2)(d)) and, where a fee-earner travels to appear as an advocate in respect of a bail application, the rate payable shall be the rate appropriate to the grade of fee-earner for travelling and waiting under paragraph 1(1)(b) of Schedule 1, Part I.

(8) Where a solicitor acts for more than one defendant, the appropriate authority shall–

(a) allow whichever of the appropriate standard preparation fees is the greater and increase that fee by 20% for each additional defendant;

(b) increase the standard advocacy fee by 20% for each additional defendant who is represented on a bail application,

but no percentage increase shall be made to the standard fees for attendance at court or for travelling.

(9) Where a solicitor acts for a defendant in respect of more than one–

(a) indictment,

(b) appeal against conviction,

(c) appeal against sentence, or

(d) committal for sentence

or in respect of any combination of (a) to (d) above, the appropriate authority shall allow whichever of the appropriate standard preparation fees is the greater and increase that fee by 20% for each additional indictment, appeal or committal for sentence as the case may be.

(10) Where the standard fee payable is increased by virtue of sub-paragraph (8) or (9), then for the purposes of paragraphs 3, 6 and 8–

(a) the upper fee limit shall be increased by the same amount by which the principal standard fee has been increased, and

(b) the lower fee limit shall be increased by the same amount by which the lower standard fee has been increased.

Disbursements

5. Nothing in this Part of this Schedule applies to disbursements which shall be determined in accordance with regulation 7.

Re-determinations and appeals

6.—(1) A solicitor who is dissatisfied with a decision on a determination under paragraph 3 may apply for the costs to be re-determined and, subject to sub-paragraph (2), the provisions of regulation 12(2) to (8) shall apply with the necessary modifications to an application under this paragraph as they apply to an application under regulation 12.

(2) On a re-determination under this paragraph, the appropriate authority shall determine the fees for preparation work within the meaning of paragraph 4(2)(a) and if the fees so determined are–

(a) less than the lower fee limit, the lower standard fee shall be allowed together with the standard fees for all other classes of work specified in paragraph 4(2);

(b) not less than the lower fee limit and not more than the upper fee limit, the principal standard fee shall be allowed together with the standard fees for all other classes of work specified in paragraph 4(2);

(c) more than the upper fee limit, the fees for all classes of work shall be determined in accordance with regulation 6.

7. Irrespective of any dispute under paragraph 2 as to whether the principal standard fee should have been allowed instead of the lower standard fee, where a solicitor is satisfied with a decision to allow a standard fee but contends that–

(a) a standard fee which is not apt for the type of work done has been allowed; or

(b) the provisions of paragraph 4(4) to (10) have been incorrectly applied,

he may make a written request setting out his reasons why the decision should be reviewed and, if the appropriate authority confirms its decision, written reasons shall be given.

8.—(1) A solicitor may appeal to a taxing master where he is dissatisfied with–

(a) a decision on a re-determination under paragraph 6, or

(b) a decision on a review under paragraph 7.

(2) Where a solicitor appeals to a taxing master in respect of a decision under paragraph 6, the taxing master shall determine the fees for preparation within the meaning of paragraph 4(2)(a) and if the fees so determined are–

(a) less than the lower fee limit, the lower standard fee shall be allowed by the taxing master together with the standard fees for all other classes of work specified in paragraph 4(2);

(b) not less than the lower fee limit and not more than the upper fee limit, the principal standard fee shall be allowed by the taxing master together with the standard fees for all other classes of work specified in paragraph 4(2);

(c) more than the upper fee limit, the fees for all classes of work shall be determined by the taxing master in accordance with regulation 6.

(3) Where a solicitor appeals to a taxing master in respect of a decision made on a review under paragraph 7, the taxing master shall allow whichever standard fee he considers to be apt for the type of work done or, as the case may be, re-apply the provisions of paragraph 4(4) to (10).

(4) Where a taxing master allows an appeal in whole or in part, he may allow the solicitor a sum in respect of part or all of any reasonable costs (including any fee payable in respect of the appeal) incurred by him in connection with the appeal.

(5) This paragraph only applies to appeals in proceedings for which standard fees are payable and the provisions of regulation 13 shall apply to appeals in proceedings for which standard fees are not payable.

(6) Subject to the foregoing provisions of this paragraph, the provisions of regulations 13 to 15 relating to appeals by solicitors shall apply with the necessary modifications to appeals in proceedings for which standard fees are payable under this Part of this Schedule as they apply to appeals in proceedings for which standard fees are not payable.

SCHEDULE 2

Regulation 9

COUNSEL'S FEES

PART I

STANDARD FEES

1. The appropriate authority shall allow the fees specified in the Table and

(a) a standard fee shall cover preparation and the first day's hearing including, where they took place on that day, short conferences, applications and appearances (including bail applications), views and any other preparation;

(b) a standard refresher fee shall cover any day during which a hearing continued, including, where they took place on that day, short conferences, applications and appearances (including bail applications), views and any other preparation;

(c) a standard appearance fee shall cover attendance at applications and appearances (including bail applications and adjournments for sentence) not covered by (a) or (b) but shall not cover attendance at a pre-trial review.

2. For the purpose of determining which of the standard refresher fees specified in the Table should be allowed–

(a) a half day refresher fee shall be allowed where

(i) a hearing begins and ends before the luncheon adjournment, or

(ii) a hearing begins after the luncheon adjournment and ends before 5.30 pm; and

(b) a full day refresher fee shall be allowed where

(i) a hearing begins before and ends after the luncheon adjournment but before 5.30 pm, or

(ii) a hearing begins after the luncheon adjournment and ends after 5.30 pm; and

(c) a more than a full day refresher fee shall be allowed where a hearing begins before the luncheon adjournment and ends after 5.30 pm.

3. The standard fee specified for "committals for sentence" shall be allowed to junior counsel in respect of proceedings arising out of a breach of an order of the Crown Court or other similar matters.

4. Where a case listed for jury trial does not proceed on the day for which it is listed the appropriate authority shall allow a sum equal to half of the standard fee for a jury trial.

5. Where counsel attends in respect of–

(a) a case listed for plea which is adjourned for trial; or

(b) a case listed for hearing which is not opened due to the failure of the defendant or a witness to attend or the non-availability of a social enquiry report or for some good reason,

the appropriate authority shall allow the standard appearance fee, unless counsel has no other effective case on that day and the standard appearance fee would be less than a sum equal to half of the standard fee for the case, in which case that sum shall be allowed.

6. Where counsel attends in respect of a case which is listed for plea and on which a guilty plea was taken, and which was adjourned part-heard, the appropriate authority shall allow–

(a) the standard fee for the first hearing; and

(b) a sum equal to half the standard fee for the hearing at which the case is disposed of, provided that counsel has no other effective case on that day, or the standard appearance fee if he does have such a case.

7. Where counsel represents more than one defendant the appropriate authority shall

(a) increase the standard fee by 20% for each additional defendant who is substantively dealt with at the hearing in respect of which that standard fee is to be paid; or

(b) where paragraph 4, 5 or 6 applies, increase the sum payable by 20% for each additional defendant.

8. Where counsel appears on behalf of a defendant on the same day in respect of more than one

(a) indictment,

(b) appeal against conviction,

(c) appeal against sentence, or

(d) committal for sentence,

or in respect of any combination of (a) to (d) above, the appropriate authority shall allow whichever of the standard fees is the greater and shall increase it by 20% for each additional indictment, appeal or committal for sentence, as the case may be.

9. Where counsel is instructed to appear in a court which is not within 25 miles of his chambers, the appropriate authority may allow an amount in respect of counsel's attendance at that court to cover any travelling and hotel expenses actually and reasonably incurred and necessarily and exclusively attributable to counsel's attendance at that court; provided that the amount allowed shall not be greater than the amount, if any, which would be payable to counsel practising from the nearest local Bar unless counsel can justify his attendance having regard to all the relevant circumstances of the case.

TABLE

Type of proceedings	*Standard fee*
Jury trials (including any case prepared for trial in which no jury is sworn)	£170
Guilty pleas	£ 90
Appeals against conviction	£ 90
Appeals against sentence	£ 57
Committals for sentence	£ 57
Standard appearance fee	£ 35
Standard refresher fee	
(1) Half day	£ 62
(2) Full day	£120
(3) More than a full day	£182

PART II

DETERMINATION OF OTHER FEES

1. The appropriate authority shall allow such fee in respect of an item of work allowed under regulation 9(5), not exceeding the maximum amount specified in respect of that item of work, as appears to it to provide fair remuneration.

2. Where an hourly rate is specified in a Table in this Part of this Schedule in respect of an item of work allowed under regulation 9(5), the appropriate authority 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 authority shall allow such fee as appears to it reasonable having regard to the fee which would be allowable for a full day.

4. The fees allowed to junior counsel for proceedings in the Crown Court arising out of a breach of an order of the Crown Court or other similar matters shall not exceed the maximum amounts specified for "committals for sentence".

5. Paragraph 9 of Part I of this Schedule shall apply where counsel's fees are determined in accordance with this Part of the Schedule as it applies where standard fees are allowed in accordance with Part I of the Schedule.

TABLE 1: JUNIOR COUNSEL

Court	*Type of proceedings*	*Basic fee*	*Full day refresher fee*	*Subsidiary fees*		
				Attendance at consultations, conferences & views	*Written work*	*Attendance at pre-trial reviews, applications and other appearances*
Magistrates' Court	All cases	Maximum amount: £395	Maximum amount: £137	£23 per hour Minimum amount: £12	Maximum amount: £43	Maximum amount: £79
Crown Court	Jury trials	Maximum amount: £460				
	Cases prepared for trial in which no jury is sworn	Maximum amount: £268				
	Guilty pleas	Maximum amount: £162				
	Appeals against conviction	Maximum amount: £177	Maximum amount: £151	£26 per hour Minimum amount: £13	Maximum amount: £49	Maximum amount: £84
	Appeals against sentence	Maximum amount: £ 91				
	Committals for sentence	Maximum amount: £ 91				

TABLE 2: QUEEN'S COUNSEL

Court	*Type of proceedings*	*Basic fee*	*Full day refresher fee*	*Subsidiary fees*		
				Attendance at consultations, conferences & views	*Written work*	*Attendance at pre-trial reviews, applications and other appearances*
Magistrates' Court	All cases	Maximum amount: £3,806	Maximum amount: £255	£44 per hour Minimum amount: £22	Maximum amount: £ 90	Maximum amount: £175
Crown Court	All cases	Maximum amount: £4,620	Maximum amount: £284	£50 per hour Minimum amount: £25	Maximum amount: £102	Maximum amount: £221

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations consolidate the Legal Aid in Criminal Proceedings (Costs) Regulations 1982, as amended, (which are revoked subject to the provisions of regulation 1(3)) and provide for the determination of the costs which may be paid to the legal representatives of a person given legal aid under Part II of the Legal Aid Act 1974 (legal aid in criminal proceedings and proceedings relating to children and young persons).

Regulations 5 and 6 provide for the determination of solicitors' fees and hourly rates are prescribed together with (in Schedule 1 Part II) a system of standard fees. Regulations 8 and 9 provide for the determination of counsel's fees and scales of payment are prescribed together with a system of standard fees for certain items of work done by junior counsel in the Crown Court. Regulations 12 to 14 and paragraphs 6 to 8 of Schedule 1 Part II provide for the redetermination of fees and for appeals.

These Regulations increase the rates of remuneration previously payable under the 1982 Regulations with an overall increase of 5.2 per cent for work done by counsel and 5.4 per cent for work done by solicitors. An additional 2 per cent overall increase is made to the London rates prescribed in respect of some items of work done by solicitors whose offices are situated within a London borough.