1969 No. 176

LEGAL AID AND ADVICE, ENGLAND
COURTS-MARTIAL (APPEALS)
The Courts-Martial Appeal Legal Aid (Fees and Expenses) Regulations 1969

Made - - -	*17th February* 1969
Laid before Parliament	*24th February* 1969
Coming into Operation	*25th February* 1969

ARRANGEMENT OF REGULATIONS

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In pursuance of the powers conferred upon me by section 83 of the Criminal Justice Act 1967(a), I hereby make the following Regulations :—

General

1.—(1) Fees and expenses payable to a solicitor or counsel assigned to a legally assisted person shall be taxed by the Registrar who shall, subject to the provisions of these Regulations, allow such fees and expenses as appear to him to be fair remuneration for work actually and reasonably done.

(2) In these Regulations any reference to "taxing" shall include the determining of fees or expenses by assessment or other means.

(a) 1967 c.80.

Basic, refresher and daily fees

2.—(1) Where a person is granted legal aid under the provisions of section 73 of the Criminal Justice Act 1967, hereinafter referred to as "the Act", his solicitor and counsel shall (subject to the following provisions of these Regulations) be allowed basic fees in accordance with the provisions of the Schedule to these Regulations.

(2) Where a hearing has not been concluded at the end of the first relevant period (as defined in paragraph (8) of this Regulation) thereof, there shall be allowed to counsel in respect of each relevant period or, in the case of an incomplete relevant period, part thereof, after the first, a refresher fee in accordance with the provisions of the Schedule to these Regulations.

(3) Where a hearing has not been concluded on the day on which it started, there shall be allowed to the solicitor, in respect of the second or every subsequent day or part thereof, a daily fee in accordance with the provisions of the Schedule to these Regulations.

(4) The Registrar may take into consideration in assessing the fees to be paid in accordance with paragraph (1) above any work done in the preparation of a written application for bail or in the making of an oral application for bail, except an oral application to a judge in chambers (which expression shall not include a single judge exercising his powers under Courts-Martial (Appeals) Act 1968(a)).

(5) In all cases where legal aid provides for the services of two counsel, the solicitor and counsel shall each be allowed such fees as appear to be reasonable and proper in all the circumstances of the case and such fees may exceed those prescribed in Regulation 4 of, and the Schedule to, these Regulations.

(6) In addition to the fees payable under the foregoing provisions of this Regulation, a solicitor shall be allowed—

(*a*) expenses actually and reasonably incurred by himself or his clerk in travelling to and from the court and to and from any place visited for the purpose of preparing or conducting the case;

(*b*) any other out of pocket expenses actually and reasonably incurred:

Provided that—

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

(*b*) in the case of an appeal to the Courts-Martial Appeal Court, the cost of a transcript of the proceedings in the court from which the appeal lies, or any part thereof, shall not be allowed except where such transcript was supplied by the Registrar or the Registrar considers that it is reasonable in all the circumstances for such expense to be allowed.

(7) There shall be allowed to counsel, in addition to any fees allowed under the foregoing paragraphs of this Regulation—

(*a*) In respect of any conference or consultation lasting not more than half-an-hour, a fee of £2 7s. 0d. or, in the case of a conference or consultation with two counsel, where two counsel are assigned, such fees as appear to be proper in all the circumstances of the case;

(a) 1968 c.20.

(*b*) in respect of any conference or consultation lasting more than half-an-hour, such fee as appears to be proper in all the circumstances of the case ;

(*c*) in respect of any application to a court that a case which is in a list of cases to be heard on any particular day be heard on any other day or stand out of the list, such fees as appears to be proper in all the circumstances of the case ;

(*d*) for advice in writing, a fee not exceeding £11 0s. 0d., or, where two counsel are assigned and the advice is given by both counsel, such fees as appear to be proper in all the circumstances of the case.

(8) In this Regulation "relevant period" means, as the Registrar may determine, any day on any part of which the hearing is going on, or any period of five hours, whether continuous or not, during which the hearing is going on.

Assignment to more than one legally assisted person

3.—(1) Where a solicitor or counsel represents two or more persons in respect of whom the court has ordered under section 73 of the Act that they shall be given legal aid and whose cases are heard together, the total fee to be allowed to solicitor or counsel, as the case may be, in respect of all such persons, shall be increased above the amount which would have been allowed to him if he had been representing only one such person (which amount is hereafter referred to in this Regulation as the "normal amount") by such amount as appears to be proper in all the circumstances of the case :

Provided that any increase allowed by virtue of this Regulation shall not exceed, in any case where the number of persons is two, 40% of the normal amount and, where the number of persons exceeds two, a further 20% of the normal amount in respect of each person in excess of two.

(2) In assessing the normal amount the Registrar shall do so by reference to that person in respect of whom the highest fee would have been allowed if the cases of all the persons had been disposed of separately.

(3) In addition to the increased amount referred to in paragraph (1) above, counsel or solicitor may be allowed the fees or expenses, as the case may be, in respect of each legally assisted person, referred to in paragraphs (6) and (7) of Regulation 2 and in Regulation 4.

Fees for advising on appeal

4.—(1) Where any advice or assistance is given by a solicitor under subsection (8) of section 74 of the Act, there shall, in addition to the fees which may be allowed under the foregoing Regulations, be allowed sums in respect of such expenses as are referred to in paragraph (6) of Regulation 2 and a fee not exceeding £10 10s. 0d.

(2) Where any advice or assistance as aforesaid is given by counsel in a case where counsel is assigned, there shall, in addition to the fees which may be allowed under the foregoing Regulations, be allowed to counsel a fee not exceeding £11 in respect of the work done.

(3) Fees not exceeding those aforesaid may also be allowed to a solicitor or counsel, as the case may be, where advice or assistance is given under section 74(9) of the Act.

Abandonment of appeals

5. In the case of an appeal which is abandoned there shall be allowed to the solicitor and to counsel assigned to the appellant such fees as the Registrar may direct, but not exceeding the sums mentioned in these Regulations.

Amendment or revocation of legal aid order

6. Where a legal aid order is amended or revoked, there shall be allowed to the solicitor and to counsel previously assigned to the legally assisted person such fees as the Registrar may direct, but not exceeding the sums mentioned in these Regulations.

Assessment by Registrar

7.—(1) Subject to the provisions of these Regulations, the Registrar in taxing the sums payable to a solicitor or counsel under any of the provisions of these Regulations shall take into account all the relevant circumstances, including the nature, importance, complexity or difficulty of the work and the time involved, including time spent at the court on any day waiting for the case to be heard if the case was in that day's list.

(2) The Registrar shall take into consideration any bill of costs submitted by a solicitor or counsel and may require a solicitor or counsel to submit a bill of costs together with any supporting documents.

(3) If the work done by a solicitor or counsel includes work done in relation to more than one charge sheet or in relation to a retrial, the Registrar shall take account thereof in his taxation.

(4) In taxing as aforesaid, the Registrar shall not allow any sum in respect of any conference, consultation, view, attendance or visit unless he is satisfied that such conference, consultation, view, attendance or visit was reasonably necessary.

(5) If it appears to the Registrar having taken into account all the relevant circumstances referred to in paragraph (1) of this Regulation that nevertheless owing to exceptional circumstances the sums payable by virtue of these Regulations or any of them would not provided fair remuneration for the work actually and reasonably done by the solicitor or counsel, as the case may be (whether in respect of the whole work or a particular item of work, including work done in respect of advice on appeal or giving notice of appeal or application for leave to appeal), he shall certify accordingly ; and, where he so certifies, any limitation contained in these Regulations on the amount of any fee payable shall not apply.

Reviews by Registrar

8.—(1) Any solicitor or counsel assigned to a person under a legal aid order who is dissatisfied with the assessment by the Registrar of the fees or disbursements to be allowed to him under these Regulations or with the refusal of the Registrar to grant a certificate under Regulation 7(5) of these Regulations, may apply to the Registrar for a review of his decision, by making to the Registrar written representations within 14 days of the receipt by him of the Registrar's assessment.

(2) Such written representations shall be accompanied by a bill of costs and full supporting documents, including counsel's brief and fee note (if any), if these have not already been furnished.

(3) The Registrar shall consider the representations made to him and make such alterations, if any, in his assessment as may seem to him proper in the light of such representations and shall notify the solicitor or counsel, as the case may be, of the result of his review.

(4) The Registrar shall permit oral representations to be made by or on behalf of counsel or solicitor and shall notify counsel or solicitor of the time at which he is prepared to hear such representations.

Appeals to Taxing Master

9.—(1) If a solicitor or counsel is dissatisfied with a review by the Registrar, he may, within 14 days of receiving notification of the result of the review, request the Registrar to furnish him in writing with the reasons for his decision and, if so requested, the Registrar shall furnish the reasons for his decision in writing to the solicitor or counsel, as the case may be, and where the Registrar has disallowed any items or has reduced the amount claimed in respect of any items, he shall give separate reasons for such decision in respect of each item.

(2) Where a solicitor or counsel is dissatisfied with the reasons given by the Registrar he may within 14 days of receipt of such reasons apply to the Chief Master of the Supreme Court Taxing Office for a review of the decision of the Registrar in respect of the bill of costs or of specific items in such bill and shall inform the Registrar of his application.

(3) Such application shall be accompanied by a copy of the representations made under Regulation 8(1) and of the Registrar's reasons given under paragraph (1) of this Regulation, a bill of costs together with full supporting documents, a copy of the legal aid order and a fee of £2 for the review.

(4) Such review shall be by a Taxing Master and the solicitor may appear in person or be represented by an agent, and counsel may appear in person or be represented by the solicitor or the solicitor's agent, and any application under paragraph (2) shall state whether the counsel or solicitor wishes to appear or be represented, or whether he will accept a decision given in his absence.

(5) If the solicitor or counsel gives notice in his application of his intention to appear in person or be represented by an agent, the Taxing Master shall inform him or the agent (as the case may be) of the date on which the review will take place.

(6) In reaching his decision the Taxing Master may consult the presiding judge and the Registrar, and may require the solicitor or counsel to provide any further information which he may require for the purpose of his review, and, unless the Taxing Master otherwise directs, no further evidence shall be received on the hearing of the review; and no ground of objection shall be valid which was not raised on the review under Regulation 8 of these Regulations.

(7) In making his review, the Taxing Master shall have the same powers as the Registrar under these Regulations and, in the exercise of such powers, may alter the assessment of the Registrar in respect of any sum allowed, whether by increase or decrease.

(8) The Taxing Master shall communicate the result of his review to the solicitor or counsel and to the Registrar.

Appeals to the High Court

10.—(1) If a solicitor or counsel is dissatisfied with the review of the decision of the Registrar by the Taxing Master, he may, within 14 days of receiving notification of the result of the review, appeal to the High Court:

Provided that such appeal shall lie only where the Taxing Master certifies that the question to be decided involves a point of principle of general importance.

(2) The appeal shall be heard and determined by a single judge of the Queen's Bench Division, whose decision shall be final.

(3) An appeal shall be instituted by an originating summons to the Queen's Bench Division.

(4) Upon the hearing of an appeal the court shall have the same power as the Registrar under these Regulations and may reverse, affirm or amend the decision appealed against or make such other order as it thinks fit.

Payment and repayment of fees and expenses

11.—(1) On making an assessment, the Registrar shall make out and deliver to the solicitor or counsel, as the case may be, an order for payment by the Secretary of State of the fees and expenses allowed.

(2) Where an assessment is increased, the Registrar shall arrange for payment of the amount of the increase in the manner aforesaid.

(3) Where an assessment is decreased, the counsel or solicitor, as the case may be, shall repay any excess paid to him to the Secretary of State.

(4) Where the Taxing Master or the judge of the High Court increases an assessment, the £2 referred to in Regulation 9(3) shall be included in the fees and expenses allowed.

(5) A solicitor or counsel who incurs expense in connection with a review of an assessment by the Taxing Master or an appeal to the High Court shall, except where the decision of the Registrar or Taxing Master, as the case may be, is affirmed or his assessment is decreased, be allowed a reasonable sum in respect of those expenses.

Bills of costs

12. Any bill of costs referred to in these Regulations shall contain a summary of the work done and, when appropriate, details of the following matters and the time involved in each :—

(*a*) instructions to counsel ;

(*b*) attendances at court ;

(*c*) work done in connection with advice on appeal, assistance in giving notice of appeal or making application for leave to appeal and with settling the notice and grounds of appeal or application for leave to appeal or for a case to be stated ;

(*d*) any extra work done in the same case on behalf of any other legally assisted person ;

(*e*) travelling expenses and other disbursements ;

(*f*) applications to the court (including applications for bail) ;

(*g*) conferences, consultations, views, attendances, visits, advice given in writing or documents settled or perused ;

(*h*) any special circumstances which should be drawn to the attention of the Registrar ;

and may include against each item the amount which counsel or solicitor considers to be the proper fee in respect of that item.

Interpretation

13.—(1) In these Regulations—

"legal aid order" has the same meaning as in section 73(9) of the Act ;

"presiding judge" means the judge who presided at the hearing of the case in respect of which the fees in question are claimed ;

"Registrar" means the Registrar of the Courts-Martial Appeal Court.

"Taxing Master" means a Master of the Supreme Court (Taxing Office).

(2) The Interpretation Act 1889(a) shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Taxation in the House of Lords

14.—(1) In the case of proceedings in the House of Lords, fees and expenses payable to a solicitor or counsel assigned to a legally assisted person shall be taxed by such officer as may be prescribed by order of the House of Lords.

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

Citation and commencement

15. These Regulations may be cited as the Courts-Martial Appeal Legal Aid (Fees and Expenses) Regulations 1969 and shall come into operation on 25th February 1969.

Denis Healey,
One of Her Majesty's Principal Secretaries of State.

Ministry of Defence,
Whitehall.
17th February 1969.

(a) 1889 c.63.

Regulation 2.

SCHEDULE

SOLICITOR		COUNSEL	
Basic fee for hearing and preparation therefor	Daily Fee	Basic fee on hearing	Refresher fee
Not less than £8 8 0d. Not exceeding £78 15 0d.	Not exceeding £15 15 0d.	Not less than £11 0 0d. Not exceeding £64 10 0d.	Such fee as represents fair remuneration for work actually and reasonably done but not exceeding one half of the basic fee unless the proportion borne by any refresher fee payable to counsel for the prosecution in the case to the fee payable to such counsel in the actual conduct of the prosecution in court at the hearing (exclusive of refresher fee) exceeds one half in which case the refresher fee allowed shall not exceed such amount as bears the like proportion to the basic fee.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

Part IV of the Criminal Justice Act 1967 makes fresh provision for the granting of legal aid in criminal proceedings. These Regulations prescribe fees and expenses which may be paid to the legal representatives of a legally assisted person and provide for their taxation in the case of hearings before the Courts-Martial Appeal Court. Provision is made for appeals from the Registrar.