

Practice Direction B – Fixed Costs in the Court of Protection

This practice direction supplements Part 19 of the Court of Protection Rules 2007

General

1. This Practice Direction sets out the fixed costs that may be claimed by solicitors and public authorities acting in Court of Protection proceedings and the fixed amounts of remuneration that may be claimed by solicitors and office holders in public authorities appointed to act as a deputy for P. Rule 167 enables a practice direction to set out a schedule of fees to determine the amount of remuneration payable to deputies. Rule 168 enables a practice direction to make provision in respect of costs in proceedings.

2. The Practice Direction applies principally to solicitors or office holders in public authorities appointed to act as deputy. However, the court may direct that its provisions shall also apply to other professionals acting as deputy including accountants, case managers and not-for-profit organisations. Not for profit organisations are also referred to the following judgment

The Friendly Trust's Bulk Application 29 July 2016 <http://www.bailii.org/ew/cases/EWCOP/2016/40>.

3. This Practice Direction applies where the period covered by the category of fixed costs or remuneration ends on or after 1 April 2017 relating to fixed costs issued by the Court of Protection. However solicitors and office holders in public authorities should continue to claim the rates applicable in the previous Practice Directions and Practice Notes, where the period covered by the category of fixed costs or remuneration ended before 1 April 2017.

When does this practice direction apply?

4. Rule 156 provides that, where the proceedings concern P's property and affairs, the general rule is that costs of the proceedings shall be paid by P or charged to his estate. The provisions of this practice direction apply where the professional or deputy is entitled to be paid costs out of P's estate. They do not apply where the court order provides for one party to receive costs from another.

Claims generally

5. The court order or direction will state whether fixed costs or remuneration applies, or whether there is to be a detailed assessment by a costs officer. Where a court order or

direction provides for a detailed assessment of costs, professionals may elect to take fixed costs or remuneration in lieu of a detailed assessment.

Payments on account

6. Where professional deputies elect for detailed assessment of annual management charges, they may take payments on account for the first three quarters of the year, which are proportionate and reasonable taking into account the size of the estate and the functions they have performed. Interim quarterly bills must not exceed 25% of the estimated annual management charges - that is up to 75% for the whole year.

Interim bills of account must not be submitted to the SCCO. At the end of the annual management year, the deputy must submit their annual bill to the SCCO for detailed assessment and adjust the final total due to reflect payments on account already received.

The Office of the Public Guardian

7. As part of its supervisory procedure, the Office of the Public Guardian (OPG) will ask professional deputies to estimate the amount of activity they anticipate being required on a case in the coming period, and the costs attendant on that. The professional deputy will share this estimate with the Senior Courts Costs Office (SCCO) at the same time as they submit their costs for assessment.

Solicitors' costs in court proceedings

8. The fixed costs are as follows:

Category I

Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs.

An amount not exceeding £950 (plus VAT)

Category II

Applications under sections 36 (9) or 54 of the Trustee Act 1925 or section 20 of the Trusts of Land and Appointment of Trustees Act 1996 for the appointment of a new trustee in the place of 'P' and applications under section 18(1)(j) of the Mental Capacity Act 2005 for authority to exercise any power vested in P, whether beneficially, or as trustee, or otherwise

An amount not exceeding £500 (plus VAT)

9. The categories of fixed costs, above will apply as follows:

- Category I to all orders appointing a deputy for property and affairs made on or after 1 April 2017.

- Category II to all applications for the appointment of a new trustee made on or after 1 April 2017.

Remuneration of solicitors appointed as deputy for P

10. The following fixed rates of remuneration will apply where the court appoints a solicitor to act as deputy (but not where an office holder of a public authority is appointed and employs a solicitor, or a solicitor employed by a public authority is appointed as an office holder of a public authority):

Category III –Maximum Amounts

Annual management fee where the court appoints a professional deputy for property and affairs, payable on the anniversary of the court order

- a) For the first year: An amount not exceeding £1670 (plus VAT)
- b) For the second and subsequent years: An amount not exceeding £1320 (plus VAT)
- c) Where the net assets of P are below £16,000, the professional deputy for property and affairs may take an annual management fee not exceeding 4.5% of P's net assets on the anniversary of the court order appointing the professional as deputy.

Category IV

Where the court appoints a professional deputy for health and welfare, the deputy may take an annual management fee not exceeding 2.5% of P's net assets on the anniversary of the court order appointing the professional as deputy for health and welfare up to a maximum of £555.

Category V

Preparation and lodgement of a report or an account to the Public Guardian

An amount not exceeding £265 (plus VAT)

Category VI

- a) Preparation of a Basic HMRC income tax return (bank or NS&I interest and taxable benefits, discretionary trust or estate income) on behalf of P. An amount not exceeding £250 (plus VAT)
- b) Preparation of a Complex HMRC income tax return (bank or NS&I interest, multiple investment portfolios, taxable benefits, one or more rental properties) on behalf of P. An amount not exceeding £600 (plus VAT)

11. The categories of remuneration, above will apply as follows:

- Category III and IV to all annual management fees for anniversaries falling on or after 1 January 2017
- Category V to reports or accounts lodged on or after 1 April 2017
- Category VI to all HMRC returns made on or after 1 April 2017

12. In cases where fixed costs are not appropriate, professionals may, if preferred, apply to the SCCO for a detailed assessment of costs. However, this does not apply if P's net assets are below £16,000 where the option for detailed assessment will only arise if the court makes a specific order for detailed assessment in relation to an estate with net assets of a value of less than £16,000.

13. Where the period for which an annual management fee claimed is less than one year, for example where the deputyship comes to an end before the anniversary of appointment, then the amount claimed must be the same proportion of the applicable fee as the period bears to one year.

Conveyancing costs

14. Where a deputy or other person authorised by the court is selling or purchasing a property on behalf of P, the following fixed rates will apply for the legal cost of conveying the property except where the sale or purchase is by trustees in which case, the costs should be agreed with the trustees:

Category VII

A value element of 0.15% of the consideration with a minimum sum of £400 and a maximum sum of £1,670 plus disbursements.

15. Category VII applies to any conveyancing transaction where contracts are exchanged on or after 1 April 2017.

Remuneration of public authority deputies

16. The following fixed rates of remuneration will apply where the court appoints a holder of an office in a public authority to act as deputy. These rates should be applied **regardless** of who carries out the function within the public authority.

Category I

Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs.

An amount not exceeding £745

Category II

Annual management fee where the court appoints a local authority deputy for property and affairs, payable on the anniversary of the court order. Management costs are assumed to

cover any incidental costs incurred in management of P's affairs with the exception of those mentioned under paragraph 20 below

- a) For the first year: An amount not exceeding £775
- b) For the second and subsequent years: An amount not exceeding £650
- c) Where the net assets of P are below £16,000, the local authority deputy for property and affairs may take an annual management fee not exceeding 3.5% of P's net assets on the anniversary of the court order appointing the local authority as deputy
- d) Where the court appoints a local authority deputy for health and welfare, the local authority may take an annual management fee not exceeding 2.5% of P's net assets on the anniversary of the court order appointing the local authority as deputy for health and welfare up to a maximum of £555

Category III

Annual property management fee to include work involved in preparing property for sale, instructing agents, conveyancers, etc or the ongoing maintenance of property including management and letting of a rental property or properties where 'P' is a tenant.

An amount not exceeding £300

Category IV

Preparation and lodgement of a report or account to the Public Guardian

An amount not exceeding £216

Category V

Preparation of a Basic HMRC income tax return (bank or NS&I interest and taxable benefits) on behalf of P

An amount not exceeding £70

Preparation of a Complex HMRC income tax return (bank or NS&I interest, taxable benefits, small investment portfolio) on behalf of P

An amount not exceeding £140

17. The categories of remuneration, above will apply as follows:

- Category I to all orders appointing a deputy for property and affairs made on or after 1 April 2017.
- Category II to all annual management fees for anniversaries falling on or after 1 April 2017.
- Category III on the anniversary of appointment as deputy where the anniversary falls on or after or upon completion of the sale of a property, where the transaction was concluded on or after 1 April 2017.

- Category V to reports or accounts lodged on or after 1 April 2017.

18. Where the period for which the annual management fee ends before an anniversary, for example where the deputyship comes to an end before the anniversary of appointment, then the amount claimed must be the same proportion of the applicable fee as the period bears to one year.

Outsourcing of work by public authorities.

19. Where public authorities outsource deputyship work, it is expected that the rates charged will be no more than that which would have been charged to the client if the public authority had remained as deputy.

Disbursements

20. Public Authorities are allowed to use P's funds to pay for specialist services that P would have normally be expected to pay if he had retained capacity such as conveyancing, obtaining expert valuations and obtaining investment advice.

Travel Rates

21. Public authority and other third sector deputies are allowed the fixed rate of £40 per hour for travel costs

This Practice Direction was made by the President with the agreement of the Lord Chancellor, and came into effect on 1 April 2017.

This Practice Direction is made by the President with the agreement of the Lord Chancellor, and will come into effect on 1 APRIL 2017.

Date

Sir James Munby
President

Date

Lord Chancellor