

# **I LEGAL AID IN DISCIPLINARY PROCEEDINGS REGULATIONS (REGS I 2018)**

*Edinburgh, 19 May 2018, Session 3*

## **Definitions**

1. In these Regulations, the following definitions apply:

- (1) "Applicant" shall mean a person (1) who is subject to discipline in terms of the Discipline of Ministry Act (Act III 2001) ("the 2001 Act"), or the Discipline Act (Act I 2019) ("the 2019 Act"), (2) against whom disciplinary proceedings have been initiated in terms of Part 4 of the 2001 Act or Part 8 of the 2019 Act, or who wishes to accept a Censure with consent in terms of the 2019 Act, and (3) who is an applicant for legal aid;
- (2) "Assisted Person" shall mean a person in respect of whom a Certificate is in force and, with reference to Rule 9 of Part One of the Schedule, and in respect of costs incurred before notice of the discharge or revocation of a Certificate is received by his or her solicitor, includes the person in respect of whom that Certificate was issued;
- (3) "Certificate" shall mean a certificate issued by the Sub Committee in terms of Regulation 6 below;
- (4) "Committee" shall mean the General Assembly's Legal Questions Committee;
- (5) "costs" shall mean the legal fees charged and outlays incurred (including any fees and expenses reasonably and necessarily incurred in relation to potential or actual witnesses) by the solicitor referred to in Rule 3(2) or 8(5);
- (6) "Counsel" includes a solicitor advocate;
- (7) "Fund" shall mean the Legal Aid Fund maintained by the Committee in accordance with Regulation 2 below;
- (8) "legal aid" shall mean representation by the said solicitor and, where appropriate, by counsel or by a solicitor or counsel referred to in Rule 19(b) in any proceedings mentioned at subsection (1) above, on the terms provided for in these Regulations, and includes all such assistance as is usually given by a solicitor or by counsel in the steps incidental to such proceedings;
- (9) "Minister" shall have the meaning ascribed to it in the Registration of Ministries Act (Act II 2017);
- (10) "partner" means someone with whom an Applicant or Assisted Person lives as a couple, whether or not they are married and whether of the same or different sex;
- (11) "Schedule" shall mean the schedule in three parts attached to these Regulations;
- (12) "Secretary" shall mean the Secretary to the Sub Committee;
- (13) "Sub Committee" shall mean a Legal Aid Sub Committee consisting of the Convener, Vice-Convener and one other member of the Committee. At least one member of the Sub Committee shall require to be legally qualified. The Depute Solicitor of the Church shall normally act as Secretary to the Sub Committee but shall not be a member thereof.

2. The Committee shall maintain the Fund, which shall be administered on behalf of the Committee by the Sub Committee. Subject to and in accordance with the provisions of these Regulations, including the Rules of Procedure set out in Part One of the Schedule and any supplementary rules made by the Committee in terms of Regulation 11, the Sub Committee may make such payments of costs out of the Fund as it may authorise by Certificate.
3. An Applicant shall be entitled to apply to the Sub Committee for legal aid in respect of legal costs incurred by him or her in one or other of the following situations: (1) in relation to disciplinary proceedings initiated in terms of Part 4 of the 2001 Act or Part 8 of the 2019 Act, and any appeal following thereon, in which case any award shall be restricted to the cost of work undertaken after the initiation of such disciplinary proceedings, or (2) or where the Applicant wishes to accept a Censure with consent in terms of the 2019 Act, in which case any award shall be restricted to the cost of work required to enable the Censure with consent to be accepted.
4. Before deciding whether to grant any legal aid and, if so, to what extent, the Sub Committee shall have regard to all the circumstances of the case including:-
  - (a) the nature of any right or interest of the Applicant which is at stake in the proceedings and whether such right or interest is of the nature of a civil right; and
  - (b) if so, whether, in the whole circumstances of the case, legal representation is necessary to enable the Applicant to receive a fair hearing; and
  - (c) having regard to financial resources available to the Applicant (including, as appropriate, the financial resources of the Applicant's partner and whether help is available or likely to become available from another source such as a trade union or insurance company), whether the Applicant could, without financial hardship, afford such representation

and legal aid shall not be granted if it appears to the Sub Committee that the Applicant could, without undue financial hardship to him or her or his or her dependants, afford to proceed without such assistance.

5.
  - (a) Legal aid shall not be granted to an Applicant who does not satisfy the capital and income eligibility criteria set out in Parts Two and Three of the Schedule<sup>1</sup>.
  - (b) Legal aid shall be granted in accordance with the sliding scale of disposable income and capital and subject to the contributions by the Assisted Person set out in Part Two of the Schedule.
  - (c) The legal aid payable from the Fund shall be limited to costs, or a contribution towards costs, up to the maximum levels of authorised expenditure agreed by the Sub Committee from time to time. Financial assistance with legal fees shall be limited to the costs or part of the costs of legal advice or representation by a solicitor or counsel and shall be paid direct to the solicitor referred to in Rule 3(2) of Part One.
  - (d) The Committee shall from time to time review (i) the capital and income eligibility criteria (ii) the sliding scale of disposable income and capital (iii) the level of contributions by the Assisted Person and shall be entitled to adjust each of these

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<sup>1</sup> A quick guide to disposable capital and income is available from the Secretary to the Sub Committee

as it deems appropriate and shall report any adjustments made to the following General Assembly.

6. The Sub Committee may issue a Certificate for the payment of the costs, or part of the costs, incurred by the Assisted Person subject to such conditions specified in the Certificate as the Sub Committee thinks fit. Without prejudice to the foregoing generality, the Sub Committee may issue a Certificate for:-
  - (a) The payment of a contribution towards costs of an amount specified in the Certificate; or
  - (b) The payment of costs subject to a contribution from the Applicant of an amount so specified; or
  - (c) The payment of such proportion of costs as may be so specified; or
  - (d) The payment of the costs of, or a specified proportion of the costs of, such part of the proceedings as may be so specified, whether by reference to issues in or stages of those proceedings.
7. Where on any application the Sub Committee considers that legal aid should not be granted, the Sub Committee before making a final decision shall afford the Applicant an opportunity of making representations, whether in writing or orally and whether in person or by his or her solicitor or counsel with respect to the application. For the avoidance of doubt, no payment from the Fund shall be made in respect of the making of such application.
8. The Secretary shall notify the Applicant and his or her solicitor in writing of the Sub Committee's decision on his or her application for legal aid, and of the grounds for that decision.
9. Where an application for legal aid is refused, no further application for legal aid may be made by the same Applicant in relation to the same proceedings unless it contains or is accompanied by further information showing a material change of circumstances.
10.
  - (a) A decision made in terms of these Regulations by the Sub Committee to refuse an application for legal aid shall not be subject to appeal or dissent and complaint or any other form of review, other than a procedural review carried out by another sub-committee of the Committee (the "Review Committee"), established for that purpose, consisting of three of its members, one of whom shall act as Convener and at least one of whom shall be qualified to practice as a lawyer.
  - (b) Such a review must be requested by the Applicant within fourteen days of the date on which the Sub Committee intimated its decision to the Applicant and can be sought only on one or more of the following grounds:
    - (i) that there was an irregularity or breach of procedure or of the principles of natural justice in the process followed by the Sub Committee which materially influenced its decision; and/or
    - (ii) that its decision was materially influenced by some incorrect material fact.
  - (c) Such a request shall be made by sending or delivering a written request to the Principal Clerk and such request shall also state, in brief, specific numbered propositions, the grounds which the Applicant considers justify a procedural review taking place.

- (d) In the event that the Review Committee determines that one or both of the foregoing grounds have been established, it shall remit the matter back to the Sub Committee with an instruction to reconsider its original decision in the light of the findings of the Review Committee.
  - (e) In the event that the Review Committee determines that neither of the foregoing grounds has been established, the decision of the Sub Committee shall be deemed to have become final.
  - (f) The decision of the Review Committee shall be final and not subject to appeal, dissent and complaint or any other form of further review.
11. The Committee may make such further rules as it considers necessary or desirable for giving effect to, or for preventing abuses of, these Regulations and rules made under this subsection may in particular make provision:
- (a) as to any further procedure to be observed in relation to an application for legal aid including the design and content of the application form;
  - (b) as to the information to be furnished by any Applicant applying for or receiving legal aid and as to the provision of information by any solicitor acting for any such person; and
  - (c) enabling the Sub Committee to authorise a payment to account of legal expenses incurred by the Applicant in appropriate circumstances.

## **Schedule**

### **Part One**

#### **Rules of Procedure**

#### **GENERAL PROVISIONS**

##### **1. Meetings and procedure of the Sub Committee**

- (1) The quorum for meetings of the Sub Committee shall be two members.
- (2) The business of the Sub Committee may, if the Convener so directs and none of the other members objects, be carried out by correspondence (by letter or email) or by conference telephone call, video conference or the like electronic means.

##### **2. Notification of issue, amendment, discharge or revocation of Certificate**

Where any Certificate or any notice of the amendment, discharge or revocation of a Certificate is sent to any solicitor in accordance with Rule 6, 8 or 9 the solicitor shall lodge a copy of the Certificate or notice with either the Solicitor of the Church (where the proceedings to which the Certificate relates are before the Presbyterial Commission) or the Principal Clerk (where the proceedings to which the Certificate relates are before the Judicial Commission).

#### **APPLICATIONS FOR LEGAL AID AND ISSUE OF CERTIFICATES**

### **3. Applications for legal aid**

- (1) An application for legal aid:
  - (a) shall be made in writing in a form approved by the Sub Committee; and
  - (b) shall be lodged with the Secretary.
- (2) Every application for legal aid shall state the name and address of the solicitor selected by the Applicant to act for him or her in the proceedings concerned. That solicitor must hold and continue to hold an unrestricted practising certificate issued by the Law Society of Scotland. The said application shall also contain such information and be accompanied by such documents as may be requisite to enable the Sub Committee
  - (a) to determine the nature of the proceedings to which the application relates; and
  - (b) to reach a view on the matters set out at Regulation 4 (a) to (c) above.
- (3) Any application for legal aid shall contain an undertaking made by the Applicant and an undertaking by the said solicitor that they will comply with these Regulations, and any such undertakings shall be made on forms approved by the Sub Committee, or in such other manner, being in writing, as the Secretary may accept as sufficient in the circumstances of the case. Any solicitor appointed in terms of Rule 8(5) shall give an undertaking in said terms.
- (4) The Applicant irrevocably waives his or her right of confidentiality insofar as its exercise would otherwise hinder or restrain his or her solicitor's ability to comply with Rule 14.

### **4. Provision of additional information**

An Applicant shall, if required by the Secretary or the Sub Committee to do so for the purpose of providing additional information:

- (a) attend for interview by the Secretary or the Sub Committee;
- (b) supply such further documents or other information as the Secretary or the Sub Committee may require.

### **5. Interim Certificates**

- (1) The Secretary may issue an interim Certificate for legal aid on behalf of the Sub Committee in any case in which the Secretary on receiving an application under Rule 3 considers that there are reasonable grounds for concluding that the Applicant should be granted legal aid in respect of the whole or part of the costs to be incurred by any person before the determination of the application by the Sub Committee.
- (2) Before issuing an interim Certificate under paragraph (1) the Secretary shall consult the Convener of the Sub Committee or, if it is not practicable to do so, shall consult the two other members of the Sub Committee one of whom shall be legally qualified.

### **6. Issue and contents of Certificates**

- (1) The Secretary shall send any Certificate issued by or on behalf of the Sub Committee to the Applicant's solicitor and shall send a copy of the Certificate to the Applicant.
- (2) In addition to any provision included in the Certificate by virtue of Regulation 6, the Certificate shall specify:
  - (a) the date on which it is issued;

- (b) the name and address of the Applicant;
- (c) the name and address of the Applicant's solicitor; and
- (d) the proceedings to which the Certificate relates.

## **7. Contribution by Assisted Person**

Where a Certificate is issued under Regulation 6 (b), any contribution to be made by the Assisted Person which is specified in the Certificate shall not be payable to the Sub Committee or into the Fund, but the amount paid or payable out of the Fund on the authority of the Certificate shall not exceed the amount (if any) by which the total amount of the costs incurred by the Assisted Person, as taxed or assessed in accordance with these Rules, exceeds the amount of that contribution.

## **AMENDMENT, DISCHARGE AND REVOCATION OF CERTIFICATES**

### **8. Power to amend Certificates**

- (1) The Sub Committee may, either on the request of the Assisted Person or of its own motion, amend any Certificate issued by it where in its opinion:
  - (a) there is a mistake in the Certificate; or
  - (b) it has become desirable for the Certificate to extend to additional proceedings; or
  - (c) it has become desirable for the Certificate to extend to additional stages of, or to reduce or restrict it from certain stages of, the proceedings in respect of which it was issued; or
  - (d) there has been a material change in the financial circumstances of the Assisted Person;

or where the Assisted Person desires to change his or her solicitor or where his or her solicitor withdraws from the conduct of the case. Any new solicitor assuming the agency must hold and continue to hold an unrestricted practising certificate issued by the Law Society of Scotland.

- (2) Application for the amendment of a Certificate shall contain such information and be accompanied by such documents as the Secretary considers necessary or desirable to enable the Sub Committee to determine the application, and Rules 3(1) and 4, and Regulations 4, 8, 9 and 10 shall apply in relation to an application for the amendment of a Certificate as they apply in relation to an application for legal aid.
- (3) Before amending a Certificate in the circumstances specified in paragraph (1)(c) or (d) so as to reduce or restrict the Assisted Person's entitlement to legal aid, the Sub Committee shall:
  - (a) notify the Assisted Person that it is considering making the amendment; and
  - (b) afford him or her an opportunity of making representations, whether in writing or orally and whether in person or by his or her solicitor or counsel, with respect to the proposed amendment.
- (4) An amendment to a Certificate shall take effect from such date as the Sub Committee may specify, and (subject to Rule 11) shall have effect in respect of costs incurred on or after that date.
- (5) Where a Certificate has been amended the Secretary shall send notice of the amendment, specifying the date from which it takes effect, together with a copy of the

notice, to the Assisted Person's solicitor for the time being, and shall send a further copy of the notice to the Assisted Person.

## **9. Power to discharge or revoke Certificates**

- (1) The Sub Committee may terminate a Certificate by discharging or revoking it in accordance with this Regulation.
- (2) Subject to Rule 11:
  - (a) where a Certificate is discharged, that Certificate shall cease to be in force on the date from which the discharge takes effect; and
  - (b) where a Certificate is revoked, that Certificate shall be deemed never to have been in force.
- (3) The Sub Committee may discharge a Certificate in the following circumstances:
  - (a) where the Assisted Person has requested or consented to the discharge;
  - (b) where the Sub Committee is satisfied that
    - (i) the Assisted Person has died or has had a bankruptcy order made against him or her; or
    - (ii) the proceedings or the part of the proceedings to which the Certificate relates have or has been disposed of or completed;
  - (c) where as a result of information which has come to the Sub Committee it is satisfied that:
    - (i) the Assisted Person no longer has reasonable grounds for taking, defending or being a party to the proceedings or for continuing to do so;
    - (ii) the Assisted Person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the proceedings be continued;
    - (iii) the financial circumstances of the Assisted Person are such that he or she could afford to proceed without legal aid; or
    - (iv) it is unreasonable in the particular circumstances that the Assisted Person should continue to receive legal aid.
- (4) Where as a result of information which has come to the Sub Committee:
  - (a) the Sub Committee is satisfied that an Assisted Person has willfully failed to comply with these Rules or Regulations; or
  - (b) it is satisfied that an Assisted Person has knowingly made a false statement or false representation in connection with an application for legal aid or for an amendment of a Certificate; or
  - (c) it is satisfied that an Assisted Person has failed to disclose a material fact in connection with an application for legal aid or an application for an amendment of a Certificate, and he or she cannot show that he or she used due care and diligence to avoid that failure,

the Sub Committee may discharge the Certificate issued in respect of the Assisted Person or, if the act or omission or the first of the acts or omissions by the Assisted Person specified in sub-paragraph (a), (b) or (c) occurred before the date on which the Certificate was issued, may revoke the Certificate.

- (5) Before discharging a Certificate in the circumstances specified in paragraph (3) (c) or discharging or revoking a Certificate in the circumstances specified in paragraph (4), the Sub Committee shall:
  - (a) notify the Assisted Person that it is considering the discharge or revocation of the Certificate; and
  - (b) afford him or her an opportunity of making representations, whether in writing or orally and whether in person or by his or her representative, with respect to the proposed discharge or revocation.
- (6) The discharge of a Certificate under the foregoing provisions of this Rule shall take effect from such date as the Sub Committee may consider appropriate.
- (7) Where a Certificate is discharged or revoked the Secretary shall send notice of the discharge or revocation (specifying in the case of a discharge the date from which it takes effect), together with a copy of the notice, to the solicitor of the person in respect of whom a certificate had been issued and shall (except where the Certificate has been discharged because of the death of that person) send a further copy of the notice to that person, in each case stating the grounds for the action taken.

#### **10. Effect of amendment, discharge or revocation on costs already incurred**

- (1) Where a Certificate is amended so as to reduce or restrict the amount of legal aid payable under it or is discharged or revoked, that amendment, discharge or revocation shall not affect the payment, or the amount of the payment, out of the Fund to the solicitor of the person in relation to whom the Certificate was issued in respect of costs incurred before the date on which notice of the amendment, discharge or revocation is received by that solicitor.
- (2) Where a Certificate has been amended or discharged with effect from a date earlier than the date on which notice of the amendment or discharge is received by the solicitor of the person to whom the Certificate was issued, that person accepts personal liability for and shall pay into the Fund the amount of any legal aid paid or payable to his solicitor by virtue of paragraph (1) in respect of costs incurred between those dates.
- (3) Where a Certificate has been revoked, the person to whom it was issued accepts personal liability for and shall pay into the Fund the amount of any legal aid paid or payable to his or her solicitor by virtue of paragraph (1) in respect of costs incurred before the date on which notice of the revocation is received by that solicitor.

### **CONDUCT OF PROCEEDINGS**

#### **11. Notification of changes in circumstances**

- (1) An Applicant or Assisted Person shall forthwith inform his or her solicitor of:
  - (a) any material change in his or her financial circumstances; and
  - (b) any other change in the circumstances of his or her case which he or she has reason to believe might affect the terms or continuation of the Certificate, andan Applicant's or Assisted Person's solicitor who receives any such information from the Applicant or Assisted Person or otherwise shall forthwith report that information to the Sub Committee.
- (2) Without prejudice to paragraph (1), where a solicitor who has acted or is acting for an Assisted Person is:



- (a) aware that the Assisted Person has died or granted a protected trust deed or applied for a debt payment programme or has had a bankruptcy order made against him; or
  - (b) satisfied that the proceedings or the part of the proceedings to which the Certificate relates have or has been disposed of or completed,
- he or she shall forthwith report those matters to the Sub Committee.

## **12. Abuse of legal aid**

- (1) Where an Assisted Person's solicitor has reason to believe that any of the circumstances mentioned in paragraph (3) exist, he or she shall forthwith report those circumstances to the Sub Committee.
- (2) Where at any time during the hearing of any proceedings in respect of which legal aid is granted, the Presbyterial Commission or the Judicial Commission (as the case may be) considers that any of the circumstances mentioned in paragraph (3) exist, it may make an order referring to the Sub Committee the question of whether the Assisted Person's Certificate should continue.
- (3) The circumstances referred to in paragraphs (1) and (2) are that:
  - (a) the Assisted Person has required the proceedings to which the Certificate relates to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the proceedings be continued;
  - (b) the Assisted Person has wilfully failed to comply with these Regulations;
  - (c) the Assisted Person has knowingly made a false statement or false representation in connection with an application for legal aid or for amendment of a Certificate;
  - (d) the Assisted Person has failed to disclose a material fact in connection with an application for legal aid or for amendment of a Certificate and he or she cannot show that he or she used due care and diligence to avoid that failure.
- (4) Where it appears to the Sub Committee that a person has, with intent to reduce that person's disposable income or disposable capital, whether for the purpose of making that person eligible for legal aid, reducing that person's liability to pay a contribution towards civil legal aid or otherwise
  - (a) directly or indirectly deprived that person of any resources; or
  - (b) converted any part of that person's resources into resources which under these Regulations are to be wholly or partly disregarded or in respect of which nothing is to be included in determining the resources of that person

the resources of which that person has so deprived himself or herself or which he or she has so converted shall be treated as part of that person's resources or as not so converted, as the case may be.
- (5) Where it appears to the Sub Committee that any solicitor has, in connection with the provision of legal aid, acted in such a way as to justify action being taken against him or her by the Law Society of Scotland or the Scottish Solicitors' Discipline Tribunal it shall refer the matter to either of those bodies so that they can consider whether to take action. Where the Sub Committee has referred a matter to either of the bodies mentioned it may withhold payment of any fees due to him or her in respect of legal aid pending the outcome of the investigation by the body or bodies to which the matter has been referred.

**13. Provision of further information**

An Assisted Person and his or her solicitor shall give to the Sub Committee such information regarding the progress and disposal of the proceedings in respect of which the Certificate has been issued as the Sub Committee may from time to time require to enable it to perform its functions.

**14. Power of Sub Committee to request documents.**

- (1) The Sub Committee may, for the purpose of determining whether a solicitor may be seeking to recover from the Fund money to which he or she is not entitled, as, for example, by performing unnecessary work, or where a solicitor is or may not be complying with his or her obligations under these Regulations, request any solicitor to produce such documents relating wholly or partly to the provision of legal aid as it may specify, at such time and place as it may specify.
- (2) If it appears to the Sub Committee that there is good reason to do so, it may request any solicitor to produce forthwith any such documents as are mentioned above.
- (3) The power under this section to request production of documents includes power:
  - (a) to request any person, who is a present or past partner or employee of any such solicitor or his or her firm and who appears to the Sub Committee to have any documents, to produce them;
  - (b) if any documents are produced:
    - (i) take copies of them or extracts from them; and
    - (ii) to request the person producing them, or any other person who is a present or past partner or employee of the solicitor or his or her firm, to provide an explanation of them;
  - (c) if any document or information is held other than in legible form, to request the production of a copy of it in legible form; and
  - (d) if documents are not produced, to ask the person who was requested to produce them to state, to the best of his knowledge and belief, where they are.
- (4) No documents obtained by the Sub Committee by virtue of this Rule shall be used by it for any purpose other than the purposes mentioned in subsection (1) above.

**15. Privilege etc. not to prevent disclosure**

- (1) No solicitor shall be precluded, by reason of any privilege arising out of the relationship between solicitor and client, from disclosing to the Sub Committee any information or documents or from giving any opinion which:
  - (a) he or she is required to disclose or give to the Sub Committee under these Regulations; or
  - (b) may enable the Sub Committee to perform its functions.
- (2) For the purpose of providing information under these Regulations to enable the Sub Committee to perform its functions, any party to proceedings to which an Assisted Person is or was a party may disclose to the Sub Committee communications relating to those proceedings which have been sent by the Assisted Person's solicitor, whether or not they are expressed to be "without prejudice".

**16. False information etc.**

If any Assisted Person, person seeking legal aid or person in respect of whom a certificate has been issued

- (a) wilfully fails to comply with any Regulations as to the information to be furnished by him or her; or
- (b) for the purpose of obtaining legal aid knowingly makes any false statement or false representation,

he or she may be guilty of a disciplinary offence for the purposes of the Act.

## **COSTS**

### **17. Authority to incur costs**

(1) Where:

- (a) it appears to the Assisted Person's solicitor to be necessary for the proper conduct of proceedings to which the Certificate relates to incur costs by taking any of the steps specified in paragraph (2); and
- (b) payment of legal aid in respect of those costs is not specifically authorised by the Certificate,

the Assisted Person's solicitor shall apply to the Sub Committee for authority to incur those costs, and no payment of legal aid shall be made in respect of any such costs incurred in advance of the solicitor's first having obtained authority from the Sub Committee. Authority may be granted subject to any restriction, condition or qualification as to cost limits or otherwise as to the Sub Committee shall seem reasonable.

(2) The steps referred to in paragraph (1) are:

- (a) lodging an appeal;
- (b) obtaining a report or opinion from one or more experts or tendering expert evidence;
- (c) employing a person to provide a report or opinion (other than as an expert) or paying a person (not being an expert witness) a fee to prepare a report or opinion and to give evidence if required;
- (d) requiring transcripts of shorthand notes or tape recordings of any proceedings;
- (e) performing any act which either is unusual in its nature or involves unusually large expenditure.
- (f) Instructing junior counsel.
- (g) Instructing senior counsel.

(3) Authority may be granted retrospectively on special cause shown.

### **18. Costs for legal aid to be taxed or assessed**

Legal aid shall be payable only in respect of costs of an Assisted Person which have been taxed or assessed in accordance with these Rules.

### **19. Restriction on payment and employment of solicitor or counsel**

Where legal aid is available to a person in connection with any proceedings (whether legal aid is available in connection with all or only part of the proceedings):-

- (a) the solicitor or counsel providing legal aid shall not take any payment in respect of any advice given or anything done in connection with such proceedings during any period when legal aid was so available except for such payment as may be made, in accordance with these Regulations; and
- (b) without prejudice to any right of a solicitor or advocate to entrust it to another solicitor or advocate, no solicitor or counsel other than the solicitor or counsel referred to in Rule 3(2) shall advise or act for him in connection with the proceedings.

## **20. Taxation of costs**

- (1) Any taxation of costs under these Regulations may be carried out in such manner as the Sub Committee considers appropriate. Without prejudice to the generality of the foregoing the Sub Committee may refer the matter for taxation to an Auditor of the Court of Session, Sheriff Appeal Court or any Sheriff Court and the Assisted Person agrees to be bound by the determination of such Auditor. Liability for the fees and other costs incurred in taxation shall be a matter for the discretion of the Sub Committee.
- (2) In any proceedings for taxation in accordance with these Regulations the Sub Committee shall have power to require the attendance of witnesses and production of documents so far as is necessary for the discharge of its functions or those of any Auditor.
- (3) Proceedings for taxation of costs in accordance with these Regulations shall be commenced by the Assisted Person's solicitor:
  - (a) lodging with the Secretary an application in writing for taxation, together with the bill of costs and all necessary papers and vouchers (including copies of the Certificate and of any notice of amendment, discharge or revocation of the Certificate); and
  - (b) serving on any other party copies of the application and the bill of costs.
- (4) The Secretary may deal with the taxation of costs by correspondence or may elect to fix a time and place for a taxation hearing and if a hearing is deemed to be appropriate shall give not less than seven days' notice of that time and place to the Assisted Person's solicitor and any other party.
- (5) If:
  - (a) any other party does not attend at the time and place fixed for the taxation; and
  - (b) the Sub Committee is satisfied that he or she had due notice of that time and place,the Sub Committee or Auditor may proceed with the taxation in his absence.
- (6) Without prejudice to any other provision of these Regulations or any statutory provision, on a taxation in accordance with these Regulations:
  - (a) any costs in excess of the appropriate level of authorised expenditure allowed in terms of Regulation 5 (c) shall be disallowed;
  - (b) any costs wasted by failure to conduct the proceedings with reasonable competence and expedition shall be disallowed or reduced; and
  - (c) where a solicitor has without good reason failed within four months to put in his or her bill for taxation, the whole of the costs covered by that bill may be disallowed or reduced.

- (7) No costs shall be disallowed or reduced under paragraph (6) unless notice has been served by the Sub Committee on the solicitor in question requiring the solicitor to show cause orally or in writing why those costs should not be disallowed or reduced.
- (8) For the purposes of this rule “other party” means any person other than the Assisted Person who is or was a party to the proceedings to which the Certificate relates and who has an interest in the taxation.

**21. Assessment of costs**

- (1) Paragraph (2) applies where Rule 20 requires any costs to be taxed or assessed in accordance with these Regulations and where:
  - (a) the retainer of the Assisted Person’s solicitor was determined before the proceedings in question were begun, and there has been no subsequent change in the Assisted Person’s solicitor; or
  - (b) the Assisted Person’s solicitor is of opinion that the total amount of the costs which he or she would receive after a taxation in accordance with these Regulations would not be more than £1,000 (or any greater sum for the time being authorised by the Sub Committee for the purposes of this Rule); or
  - (c) there has been an agreement in respect of the amount of the costs to be paid to the Assisted Person, and the Assisted Person’s solicitor is willing to accept that agreed amount in full satisfaction of work done; or
  - (d) there are special circumstances in which a taxation:
    - (i) would be against the interests of the Assisted Person; or
    - (ii) would increase the amount payable out of the Fund.
- (2) Where this paragraph applies the Assisted Person’s solicitor may apply in writing to the Secretary for an assessment by the Sub Committee of the amount of the Assisted Person’s costs.
- (3) On any such application the Sub Committee may if it thinks fit assess the amount of those costs without a taxation.
- (4) Where no such application has been made and the Sub Committee is satisfied that:
  - (a) there are special circumstances rendering it desirable to assess the amount of those costs without a taxation; and
  - (b) to do so would not be against the interests of the Assisted Person,the Sub Committee may assess the amount of those costs without a taxation.
- (5) An assessment under this Rule shall be carried out so as to allow:
  - (a) as nearly as may be the same amount of costs as would have been allowed on a taxation under these Regulations; or
  - (b) if the Sub Committee thinks fit in a case within sub-paragraph (1)(c), the agreed amount referred to in that sub-paragraph.

**Part Two**

**Financial Eligibility**

Disposable Income and capital range and maximum contribution – sliding scale

**Disposable capital** (as defined in Part Three of this Schedule)

Lower limit on or below which an Assisted Person will not have to pay a contribution: **£7,853**.

Upper capital limit above which the Sub Committee may refuse an Applicant legal aid if it considers that he or she can afford to proceed without it: **£13,017**.

If a person has disposable capital of between **£7,853 and £13,017** he or she is eligible on capital, but will have to pay a contribution. This contribution is equal to the difference between his or her capital and £7,853.

If a person has capital worth over **£13,017** he or she will not be eligible for legal aid, unless it appears to the Sub Committee that he or she cannot afford to proceed without legal aid.

**Disposable Income** (as defined in Part Three of this Schedule)

Lower disposable limit on or below which a person will not have to pay a contribution: **£3,521** p.a

Upper disposable limit above which a person will be ineligible on income: **£26,239** p.a

**Income contributions**

<b>Annual Disposable income</b>	<b>Contribution rates applied to income in that range</b>
Below £3,521	0%
£3,522 - £11,540	33%
£11,541 - £15,743	50%
£15,744 - £26,239	100%
Above £26,239	Ineligible

**Part Three**  
**Financial Eligibility**

Detailed rules as to calculation of capital and income

**A. Calculation of disposable capital**

1. Subject to the provisions of these Regulations, there shall be included in the computation of the Applicant's capital the amount or value of every resource of a capital nature available to the Applicant and his or her partner ascertained as on the date of the application for legal aid. Where it is brought to the notice of the Sub Committee that, between the date of the application and the determination, there has been a substantial fluctuation in the value of a resource or there has been a substantial variation in the nature of a resource affecting the basis of computation of its value, or any resource has ceased to exist or a new resource has come into the possession of the person concerned, the Sub Committee shall compute the capital resources of the Applicant in the light of such facts and the resources as so computed shall be taken into account in the determination.

2. So far as any resource does not consist of money, the amount or value thereof shall be taken to be the amount which that resource would realise if sold in the open market or, if there is only a restricted market for that resource, the amount which it would realise in that market, or shall be taken to be the amount or value thereof assessed in such manner as appears to the Sub Committee to be just and equitable.
3. Where money is due to the Applicant or his or her partner, whether immediately payable or otherwise and whether the payment thereof is secured or not, the value shall be taken to be the present value thereof.
4. If the Applicant or his or her partner stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Sub Committee may, in lieu of ascertaining the value of stocks, shares, bonds or debentures in that company, treat the Applicant or their partner as if he or she were such sole owner or partner and compute the amount of his or her capital in respect of that resource in accordance with the succeeding rule.
5. Where the Applicant or his or her partner is or is to be treated as the sole owner of or a partner in any business, the value of such business or their share therein shall be taken to be either:
  - (a) such sum, or the Applicant's or his or her partner's share of such sum, as the case may be, as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development thereof; or
  - (b) such sum as the Applicant or his or her partner could borrow on the security of his or her interest in such business without substantially injuring the commercial credit of that business;whichever is the greater.
6. The value of any interest, whether vested or contingent, of the Applicant or his or her partner in the fee of any heritable or moveable property forming the whole or part of any trust or other estate, shall be computed by the Sub Committee in such manner as appears to it to be both equitable and practicable.
7. In computing the amount of capital of the Applicant or his or her partner where he or she is in receipt of income support under section 124 of the 1992 Act or an income-based jobseeker's allowance (payable under the Jobseekers Act 1995) or an income-related employment and support allowance or universal credit under Part 1 of the Welfare Reform Act 2012, there shall be disregarded any amount which exceeds the sum for the time being specified as the disposable capital lower limit in Part Two of the Schedule.
8. In computing the amount of capital of the Applicant or his or her partner, there shall be wholly disregarded:
  - (a) any Welfare Fund payment;
  - (b) a back to work bonus (payable under the Jobseekers Act 1995);

- (c) any payment made under the Community Care (Direct Payments) Act 1996 or as a direct payment as defined in section 4(2) of the Social Care (Self-directed Support) (Scotland) Act 2013.
- 9. Save in exceptional circumstances, nothing shall be included in the amount of capital of the Applicant or his or he partner in respect of:
  - (a) the household furniture and effects of the dwelling house occupied by that person and (if a manse) of any other dwelling house owned by the Applicant and/or their partner;
  - (b) articles of personal clothing; and
  - (c) any personal tools and equipment of the Applicant's trade, not being part of the plant or equipment of a business to which the provisions of Rule 5 of this Part Three A of the Schedule apply.
- 10. (1) In computing the amount of capital of the Applicant or his or her partner, the value of any interest in the main or only dwelling in which he or she resides or owns shall be wholly disregarded.
- (2) Where the Applicant resides in or owns more than one dwelling in which that person has an interest, the Sub Committee shall decide which is the main dwelling and shall take into account, in respect of the value to the Applicant of any interest in a dwelling which is not the main dwelling, (i) any sum which might be obtained by borrowing money on the security thereof and (ii) any sum accruing to him or her by way of rent on such dwelling.
- 11. Where the Applicant has received or is entitled to receive from a body of which he or she is a member a sum of money by way of legal aid towards the cost of the proceedings in respect of which legal aid is applied for, such sum shall be disregarded.
- 12. The value of any life assurance or endowment policy shall be taken to be the amount which the Applicant could readily borrow on the security thereof.
- 13. Where under any bond, agreement, indemnity, guarantee or other instrument the Applicant is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, an allowance shall be made of such an amount as is reasonably likely to become payable within the 12 months immediately following the date of application for legal aid.
- 14. An allowance may be made in respect of any debt owed by the Applicant (other than a debt secured on the dwelling or dwellings in which that person resides) to the extent to which the Sub Committee considers reasonable, provided that he or she produces evidence to its satisfaction that the debt or part of the debt will be discharged within the twelve months immediately following the date of the application.
- 15. In computing the amount of capital of the Applicant there shall be wholly disregarded any capital payment received from any source which is made in relation to the subject matter of the dispute in respect of which the application for legal aid has been made.



16. In computing the amount of capital there shall be disregarded such an amount of capital, if any, as the Sub Committee in the circumstances of the case may in its discretion decide.

**B. Calculation of disposable income**

1. The income of the Applicant or his or her partner from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the preceding year.
2. The income in respect of any emolument, benefit or privilege receivable otherwise than in cash shall be estimated at such a sum as in all the circumstances is just and equitable but shall not include any sum in relation to the occupation of a manse by a Minister.
3. (1) The income from any gainful occupation other than stipend, or employment at a wage or salary, shall be deemed to be whichever of the following the Sub Committee considers more appropriate and practicable:
  - (a) the profits which have accrued or will accrue to the Applicant or their partner in respect of the period of computation; or
  - (b) the drawings of the person concerned.(2) In calculating the profits and drawings referred to in paragraph (1) above:
  - (a) the Sub Committee may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared; and
  - (b) there shall be deducted all sums necessarily expended to earn those profits, but no deduction shall be made in respect of the living expenses of the Applicant or any member of that person's family or household, except in so far as that person is wholly or mainly employed in that trade or business and such living expenses form part of that person's remuneration.
4. (1) In computing the disposable income of the Applicant or his or her partner there shall be deducted the total amount of tax which it is estimated would be payable by the Applicant or his or her partner if his or her income, as computed in accordance with this Part Three B of the Schedule (but without taking into account the operation of Rule 10(1) of this Part Three B of the Schedule), were that person's income for a fiscal year and that person's liability for tax in that year were to be ascertained by reference to that income and not by reference to that person's income in any other year or period.
  - (2) For the purposes of this rule the tax shall be estimated at the rate provided by and after making all appropriate allowances, deductions or reliefs in accordance with the provisions of the Income Tax Acts in force for the fiscal year current at the date of the application.

5. In computing the disposable income of the Applicant or his or her partner, there shall be disregarded:
  - (a) income support paid under section 124 of the Social Security Contributions and Benefits Act 1992 ("the 1992 Act");
  - (b) an income-based jobseeker's allowance (payable under the Jobseekers Act 1995);
  - (c) a back to work bonus (payable under the Jobseekers Act 1995);
  - (d) any payment made under the Community Care (Direct Payments) Act 1996 or as a direct payment as defined in section 4(2) of the Social Care (Self-directed Support) (Scotland) Act 2013;
  - (e) state pension credit (payable under the State Pension Credit Act 2002);
  - (f) an income-related employment and support allowance;
  - (g) universal credit paid under Part 1 of the Welfare Reform Act 2012.
  - (h) attendance allowance paid under section 64 of the 1992 Act;
  - (i) disability living allowance paid under section 71 of the 1992 Act;
  - (j) constant attendance allowance paid as an increase to a disablement pension under section 104 of the 1992 Act.
6. When the income of the Applicant or his or her partner consists, wholly or in part, of stipend or a wage or salary from employment there shall be deducted:
  - (a) the amount of any payments reasonably made for travel to and from his or her workplace, membership of a trade union or professional organisation; and
  - (b) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme within the meaning of the Social Security Pensions Act 1975 or to a personal pension scheme within the meaning of section 1 of the Pension Schemes Act 1993.
7. There shall be a deduction in respect of the amounts payable or estimated to be payable in the 12 months following the application by the Applicant in respect of:
  - (a) Council Tax; and
  - (b) Water and Sewerage Charges.
8. (1) There shall be a deduction, in respect of (a) mortgage payments or (b) rent of the main or only dwelling in the case of a householder, of the amount of the net mortgage or rent paid or such part thereof as is reasonable in the circumstances. Any contributions received from any other person towards that payment of mortgage or rent shall be taken into account as income, and the Sub Committee shall decide which is the main dwelling where the Applicant resides in more than one dwelling in which he or she has an interest.

- (2) In this rule the expression "rent" means:
- (a) the rent payable in respect of a year; and
  - (b) a sum in respect of the yearly outgoings borne by the householder including, in particular, a reasonable allowance towards any necessary expenditure on repairs and insurance and any other annual burden.
- (3) In this rule the expression "net rent" means:
- (a) the rent less any proceeds of subletting any part of the premises in respect of which the said rent is paid or the outgoings incurred; or
  - (b) where any person or persons other than the Applicant, his or her partner or any dependent of the Applicant is accommodated, otherwise than as a subtenant, in the premises for which the rent is paid, the rent less such an amount as the Sub Committee may determine to be reasonably attributable to the accommodation of such person.
9. If the Applicant is not a householder, there shall be a deduction in respect of the cost of that person's living accommodation of such amount as is reasonable in the circumstances.
10. (1) There shall be a deduction in respect of the maintenance of the partner of the Applicant, if they are living together, and in respect of the maintenance of any person wholly or substantially maintained by the Applicant, being a member of his or her household, ("a dependent person") at the following rates:-
- (a) in the case of a partner, at a rate of £2,177;
  - (b) in the case of a dependent person, at a rate of £3,488;
- Provided that the Sub Committee may reduce such rate by taking into account the income and other resources of the dependent person to such extent as appears to it to be just and equitable.
- (2) In ascertaining whether a person is a dependent person regard shall be had to their income and other resources.
11. If the Applicant is making and, throughout such period as the Sub Committee may consider adequate, has regularly made *bona fide* payments for the maintenance of a partner who is living apart, of a former partner, of a child or of a relative who is not (in any such cases) a member of the household of the Applicant, there shall be a deduction at the rate of such payments or at such rate, not exceeding the rate of such payments, as in all the circumstances is reasonable.
12. Where the Applicant must provide for any other matter the Sub Committee may make an allowance of such amount as it considers to be reasonable in the circumstances of the case.
13. In computing income from any source there shall be disregarded such amount, if any, as the Sub Committee considers to be reasonable having regard to the nature of the income or to any other circumstances of the case.