

1988 No. 1328 (L. 15)

MATRIMONIAL CAUSES
SUPREME COURT OF ENGLAND AND WALES
COUNTY COURTS

The Matrimonial Causes (Costs) Rules 1988

Made - - - - - *26th July 1988*

Laid before Parliament *1st August 1988*

Coming into force in accordance with rule 1

We, the authority having the power to make rules of court for the purposes mentioned in section 50 of the Matrimonial Causes Act 1973(a), in exercise of that power and the further power conferred on us by section 64 of the Family Law Act 1986(b), hereby make the following Rules:

Citation and commencement

1.—(1) These Rules may be cited as the Matrimonial Causes (Costs) Rules 1988, shall come into force on 3rd October 1988, and shall apply subject to the following provisions of this rule for the taxation of costs in matrimonial proceedings whenever instituted.

(2) The taxation of the costs of work done before 3rd October 1988 shall be governed by rules 6, 7(1) and 8 of the Matrimonial Causes (Costs) Rules 1979(c) on the bases of taxation applicable under those Rules, and rules 7 to 11, 17 and 21 of these Rules shall not apply.

(3) For three months after 3rd October 1988 a party entitled to require any costs to be taxed may prepare and lodge a bill in the form required before that date, and shall be entitled to have a bill so lodged taxed as if these Rules had not been made and as if all the work to which the bill related had been done before that date.

(4) Where a bill of costs includes a claim for work done under Part III of Schedule 2 to these Rules in respect of an attendance on or after that date, no allowance may be made for any work done in preparing documents before that date and for which an allowance is claimed under Part I of the matrimonial scale set out in the Appendix to the Matrimonial Causes (Costs) Rules 1979(c); but this shall not prevent an allowance being made under item 10 of Part IV of the said matrimonial scale in respect of time spent by a fee earner in preparing any such document.

(5) Rule 12 shall come into force when section 53 of the Administration of Justice Act 1985(d) comes into force.

(a) 1973 c.18; section 50 was amended by the Domicile and Matrimonial Proceedings Act 1973 (c.45), section 6(2), by the Inheritance (Provision for Family and Dependents) Act 1975 (c.63), section 26(2), Schedule, by the Children Act 1975 (c.72), section 108, Schedule 3 paragraph 79, by the Administration of Justice Act 1977 (c.38), Schedule 5 Part VI, by the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22), section 89, Schedule 2 paragraph 40, by the Matrimonial Homes Act 1983 (c.19), Schedule 2, by the County Courts Act 1984 (c.28), section 148, Schedule 2 Part V paragraph 44, and by the Family Law Act 1986 (c.55), sections 64, 68, Schedule 1 paragraph 15.

(b) 1986 c.55.

(c) S.I. 1979/399.

(d) 1985 c.61.

Interpretation

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

“the Act of 1974” means the Legal Aid Act 1974(a);

“ancillary application” means an application for one or more of the following forms of relief—

(a) ancillary relief,

(b) an injunction,

(c) an order under section 37(2) (a) of the Act of 1973 restraining any person from attempting to defeat a claim for financial relief or otherwise for protecting the claim, or

(d) an order relating to the custody or education of a child or an order committing him to the care of the local authority under section 43 of the Act of 1973(b) or providing for his supervision under section 44(c) of that Act, except where the order is made at or immediately after the trial of a cause or on a children appointment;

“children appointment” means an appointment fixed under rule 48(4) of the principal rules, whether or not any such order as is mentioned in sub-paragraph (d) above is made on the appointment;

“the principal rules” means the Matrimonial Causes Rules 1977(d);

“taxing officer” means any person who by virtue of rule 3 has power to tax costs;

and references to costs shall be construed as including references to fees, charges, disbursements, expenses and remuneration and, in relation to proceedings (including taxation proceedings), also include references to costs of or incidental to those proceedings.

(2) Unless the context otherwise requires, a rule or Schedule referred to by number means the rule or Schedule so numbered in these Rules.

(3) In these Rules any reference to an Order and rule prefixed by the letters “C.C.R.” is a reference to that Order and rule in the County Court Rules 1981(e) .

(4) The County Court Rules 1936(f) and the Rules of the Supreme Court 1965(g), which pursuant to rule 3(1) of the principal rules apply, subject to the provisions of those rules and of any enactment, to the practice and procedure in matrimonial proceedings, shall apply for the purposes of these Rules subject to any specific provision of these Rules and with the following modifications—

(a) for the references to the County Court Rules 1936 there shall be substituted references to the County Court Rules 1981, and a reference to any provision of the 1936 Rules shall be construed as a reference to the corresponding provision of the 1981 Rules;

(b) R.S.C. Order 62 shall apply only to the extent that these Rules specifically so provide.

(5) Subject to the foregoing provisions of this rule, these Rules shall be construed as one with the principal rules.

(a) 1974 c.4.

(b) Section 43 was amended by the Child Care Act 1980 (c.5), section 89, Schedule 5 paragraph 34, Schedule 6, by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 2 paragraph 20, by the Matrimonial and Family Proceedings Act 1984 (c.42), section 46, Schedule 3, by the Local Government Act 1985 (c.51), Schedule 17 and (as from a day to be appointed) by the Children and Young Persons (Amendment) Act 1986 (c.28), section 1(3).

(c) Section 44 was amended by the Children Act 1975 (c.72), section 108, Schedule 3 paragraph 78, by the Matrimonial and Family Proceedings Act 1984 (c.42), section 46, Schedule 3 and by the Local Government Act 1985 (c.51), Schedule 17.

(d) S.I. 1977/344; rule 48(4) was amended by S.I. 1978/527.

(e) S.I. 1981/1687.

(f) S.R. & O. 1936/626.

(g) S.I. 1965/1776. R.S.C. Order 62 was amended by S.I. 1986/632, and C.C.R. Order 38, which applies R.S.C. Order 62 to proceedings in county courts, was amended by S.I. 1986/636. Both amending instruments came into force on 28th April 1986, subject to transitional provisions for matrimonial proceedings. R.S.C. Order 62 has subsequently been amended by S.I. 1987/1423; C.C.R. Order 38 has been amended by S.I. 1983/1716, 1984/878, 1986/636, 1987/493, 1397 and 1988/278, 897.

Powers of registrars and others to tax costs

3.—(1) Without prejudice to a taxing master's powers, under R.S.C. Order 62, rule 19(1), to tax the costs of or arising out of any cause or matter in the Supreme Court, including matrimonial proceedings, and subject to the provisions of this rule, the costs of matrimonial proceedings may be taxed as follows—

- (a) a registrar of the divorce registry may tax the costs of any matrimonial proceedings in that registry which are treated as pending in a divorce county court, and any matrimonial proceedings in the High Court;
- (b) a Grade 7 officer or senior executive officer of the divorce registry, who is authorised in that behalf by the President, may tax the costs of any proceedings within the scope of that authority that a registrar of the divorce registry may tax under sub-paragraph (a);
- (c) the registrar of a district registry may tax the costs of any matrimonial proceedings in the High Court which are proceeding in that registry;
- (d) a Grade 7 officer or senior executive officer of a district registry who has previously served in either of such capacities for at least two years in one of the offices mentioned in paragraph (2), and who is authorised in that behalf by the Lord Chancellor, may tax the costs of any proceedings within the scope of that authority that the registrar of the district registry may tax under sub-paragraph (c);
- (e) a registrar of a divorce county court may tax the costs of any matrimonial proceedings in that court;
- (f) a clerk of a divorce county court who is authorised in that behalf by the Lord Chancellor may tax the costs of any matrimonial proceedings in that court if the amount of the bill of costs does not exceed £500.

(2) The offices mentioned in paragraph (1)(d) are the Supreme Court Taxing Office, the divorce registry, and the following district registries—

Birmingham	Leeds
Bristol	Liverpool
Cardiff	Manchester.

(3) A Grade 7 officer or senior executive officer of the divorce registry or of a district registry, or a clerk of a divorce county court, shall not have power to tax a solicitor's bill of costs in pursuance of an order under the Solicitors Act 1974(a).

(4) Where a party to proceedings objects to a bill of costs or any part of it being taxed by a Grade 7 officer, a senior executive officer or a clerk under paragraph (1)(b), (d) or (f), he shall, before the taxation begins, deliver to the registrar of the divorce registry or of the district registry or of the divorce county court, as the case may be, written reasons for his objections and, if sufficient reason is shown to the registrar, he shall tax the bill or the relevant part of it himself.

(5) Where no objection is made under paragraph (4), a registrar may nevertheless reserve to himself the taxation of the whole or a part of a bill of costs unless the court has directed otherwise.

(6) On a taxation under paragraph (1)(b), (d) or (f), a Grade 7 officer, a senior executive officer or a clerk shall comply with any directions given to him—

- (a) in relation to a taxation in the divorce registry, by a registrar of the divorce registry;
- (b) in relation to a taxation in a district registry, by the registrar of that district registry; and
- (c) in relation to a taxation in a divorce county court, by the registrar of that divorce county court.

(7) Unless the context otherwise requires, any reference in the principal rules, or in any rules applied by the principal rules, to "the registrar" in relation to the taxation or assessment of any costs shall be construed as a reference to the taxing officer.

(a) 1974 c.47.

Commencement and costs of taxation proceedings

4.—(1) A party who is entitled to require the costs of any matrimonial proceedings to be taxed must begin proceedings for the taxation of those costs not later than six months after the judgment, final decree or order in the proceedings, or such other period as the court may direct—

Provided that where a notice in Form 11 or 13 has been filed before or within three months after the judgment, final decree or order, the proceedings for taxation may be begun at any time within six months after the making of any order on the application to which the notice relates.

(2) Paragraph (1) shall have effect, in relation to the taxation of costs pursuant to an order under the Solicitors Act 1974, as if for the period of six months first mentioned in that paragraph there were substituted a reference to 14 days.

(3) Subject to the provisions of any Act and of these Rules, the party whose bill is being taxed shall be entitled to his costs of the taxation proceedings—

Provided that where it appears to the taxing officer that in the circumstances of the case some other order should be made as to the whole or any part of the costs, the taxing officer shall have, in relation to the costs of taxation proceedings, the same powers as the court has in relation to the costs of proceedings.

(4) Subject to paragraph (6), the party liable to pay the costs of the proceedings which gave rise to the taxation proceedings may make a written offer to pay a specific sum in satisfaction of those costs which is expressed to be “without prejudice save as to the costs of taxation” at any time before the expiration of 14 days after the delivery to him of a copy of the bill of costs under rule 6(2) and, where such an offer is made, the fact that it has been made shall not be communicated to the taxing officer until the question of the costs of the taxation proceedings falls to be decided.

(5) The taxing officer may take into account any offer made under paragraph (4) which has been brought to his attention.

(6) No offer to pay a specific sum in satisfaction of costs may be made in respect of any work done under a legal aid certificate within the meaning of the Legal Aid (General) Regulations 1980(a).

(7) In this rule any reference to the costs of taxation proceedings shall be construed as including a reference to any fee which is prescribed by the Orders as to Court fees for the taxation of a bill of costs.

Entitlement to costs

5.—(1) Save where these Rules otherwise provide, the following provisions of Part II of R.S.C. Order 62 relating to entitlement to costs shall apply with any necessary modifications in relation to the costs of and incidental to any matrimonial proceedings governed by these Rules as they apply in relation to the costs of any proceedings to which that Order applies—

Rule 3(1), (2), (4) and (6) (general principles), other than the definition of the term “costs reserved”;

Rule 6(1), (2), (5) and (6) (cases where costs do not follow the event); and

Rule 7(4) (fractional or gross sum in lieu of taxed costs).

(2) The provisions of Part II of R.S.C. Order 62 which refer to the Official Solicitor or to court fees shall not apply in relation to proceedings in a divorce county court, or to matrimonial proceedings in the divorce registry which are treated as pending in a divorce county court.

Procedure for taxation

6.—(1) Where a party (in this rule called “the applicant”) is entitled to require taxation of the costs of any matrimonial proceedings, he must within the time specified in rule 4 lodge his bill of costs, together with all necessary vouchers and papers and a copy of the bill for every other party entitled to be heard on the taxation.

(a) S.I. 1980/1894.

(2) The taxing officer shall send to every such party a copy of the bill together with a notice requiring him to inform the taxing officer, within 14 days after receipt of the notice, if he wishes to be heard on the taxation—

Provided that the taxing officer shall not be required to send a copy of the bill to an assisted person who has a financial interest in the taxation if he is satisfied that that person has received a copy of the bill and has indicated whether or not he wishes to be heard on the taxation; and an assisted person who has indicated that he does wish to be heard shall be deemed to have been given notice under this paragraph, and to have informed the taxing officer of his wish for the purposes of paragraph (3).

(3) If a party to whom notice has been given under paragraph (2) informs the taxing officer within the time limited that he wishes to be heard on the taxation, the taxing officer shall fix an appointment for the taxation and give not less than 14 days' notice of the appointment to the applicant and that party.

(4) If no party to whom notice has been given under paragraph (2) informs the taxing officer within the time limited that he wishes to be heard on the taxation, the taxing officer, unless he otherwise directs, shall send to the applicant a notice specifying the amount which the taxing officer proposes to allow in respect of the bill and requiring him to inform the taxing officer, within 14 days after receipt of the notice, if he wishes to be heard on the taxation.

(5) If the applicant informs the taxing officer within the time limited that he wishes to be heard on the taxation, the taxing officer shall fix an appointment for the taxation and give 14 days' notice of the appointment to the applicant.

(6) The foregoing provisions of this rule shall apply to the taxation of a bill which is to be paid out of the legal aid fund under the Act of 1974 subject to the modifications that, if the bill is not also to be taxed inter partes and if the assisted person does not wish to be heard on the taxation, paragraphs (2) and (3) shall not apply, and paragraph (4) shall apply as if the words preceding the words "the taxing officer, unless he otherwise directs" were omitted.

(7) This rule shall not apply to the taxation of a solicitor's bill to his own client.

(8) In this rule, "party entitled to be heard on the taxation" means—

- (a) a person who, whether or not he has acknowledged service or taken any part in the proceedings which gave rise to the taxation, is directly liable under an order for costs made against him, or
- (b) a person who has begun proceedings for taxation in accordance with rule 4, or
- (c) a person who has given the applicant and the taxing officer written notice that he has a financial interest in the outcome of the taxation, or
- (d) a person who is so entitled by virtue of a direction given by the registrar.

Bases of taxation

7. The provisions of R.S.C. Order 62, rules 12, 14 and 15(1) and (2) relating to the bases of taxation shall apply in relation to the taxation of costs in matrimonial proceedings as they apply in relation to the taxation of costs in the High Court.

Provisions for ascertaining costs on a taxation inter partes

8.—(1) Subject to paragraph (2), the provisions of Schedule 1 shall apply for ascertaining the amount of costs to be allowed on a taxation of costs inter partes in matrimonial proceedings except where those costs are payable to a solicitor out of the legal aid fund.

(2) Where the amount of a solicitor's remuneration in respect of non-contentious business is regulated (in the absence of agreement to the contrary) by any general orders for the time being in force under the Solicitors Act 1974, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same notwithstanding anything in Schedule 1.

(3) In this rule, "contentious business" and "non-contentious business" have the meanings assigned by section 87 of the Solicitors Act 1974(a).

Costs payable to a solicitor by his own client

9. Except where rule 10 applies, costs which are to be paid to a solicitor by his own client shall be taxed in accordance with rule 8.

Costs payable out of the legal aid fund

10.—(1) Costs payable to a solicitor out of the legal aid fund under the Act of 1974, other than pursuant to section 13 of that Act, shall be taxed in accordance with this rule and with the following provisions of Schedule 1: paragraphs 1(3), (4)(a) and (5) and paragraph 2(2)(a) of Part I, and Part II.

(2) Subject to the following paragraphs, the amounts to be allowed on a taxation under this rule shall be—

- (a) in accordance with column 2 of Schedule 2 where the costs were incurred in relation to proceedings in the High Court;
- (b) in accordance with column 3 of Schedule 2 where the costs were incurred in relation to proceedings in a divorce county court or proceedings in the divorce registry which were treated as proceedings in a divorce county court;
- (c) in accordance with paragraph (2) of rule 8 where the costs incurred relate to the kind of work to which that paragraph applies,
- (d) in accordance with paragraph 1(1) of Part I of Schedule 1 where no provision is made by Schedule 2 for the kind of work to which the costs relate.

(3) On taxation the taxing officer—

- (a) in allowing costs under item 4 of Part I of Schedule 2, shall allow costs at the higher rate where at the time when the relevant work was done the proceedings were conducted in the divorce registry or in another court on the South-Eastern Circuit;
- (b) may allow a larger amount than that specified in column 2 or column 3, as the case may be, of Parts I, II, III and V of Schedule 2 where it appears to him reasonable to do so having regard to—
 - (i) the exceptional competence with which the work was done, or
 - (ii) the exceptional expedition with which the work was done, or
 - (iii) any other exceptional circumstances of the case,

but, without prejudice to regulation 104 of the Legal Aid (General) Regulations 1980, the taxing officer may in respect of any item in Part I, II, III or V of Schedule 2 allow a lower amount than that specified in column 2 or column 3 of that Part, as the case may be, where it appears to him reasonable to do so having regard to any failure on the part of the solicitor to provide timely preparation or advice, or for any similar reason.

(4) Without prejudice to regulation 104 of the Legal Aid (General) Regulations 1980, where a standard fee is specified in Part IV of Schedule 2 for work done by junior counsel that fee shall be allowed unless the taxing officer considers that it would be unreasonable to do so, in which case he shall allow such lesser or greater fee as may be reasonable—

Provided that the fee allowed shall not exceed any maximum fee which is specified unless the taxing officer considers that, owing to the time and labour expended by counsel or to any other special circumstance of the case, the maximum fee specified would not provide reasonable remuneration for some or all of the work done, in which case the fee to be allowed shall be in the discretion of the taxing officer.

(5) For the purpose of determining which of the brief fees provided by item 13 of Schedule 2 should be allowed—

- (a) a one hour fee shall be allowed where the hearing lasts for one hour or less than one hour;
- (b) a half day fee shall be allowed where the hearing lasts for more than one hour and
 - (i) begins and ends before the luncheon adjournment, or
 - (ii) begins after the luncheon adjournment and ends before 5.30p.m.;

(a) Section 87 is amended as from a day to be appointed by the Administration of Justice Act 1985 (c.61), section 69, Schedule 1 paragraph 12(a).

- (c) a full day fee shall be allowed where the hearing lasts for more than one hour and
 - (i) begins before and ends after the luncheon adjournment but before 5.30p.m., or
 - (ii) begins after the luncheon adjournment and ends after 5.30p.m.; and
- (d) a more than a full day fee shall be allowed where the hearing
 - (i) begins before the luncheon adjournment and ends after 5.30p.m. on the same day, or
 - (ii) begins on one day and continues into a subsequent day.

(6) In exercising his discretion under paragraphs (2) to (5) of this rule, or in relation to any provision of Schedule 2 where the amount of costs to be allowed is in his discretion, the taxing officer shall exercise his discretion in accordance with paragraph 1(2) of Part I of Schedule 1.

(7) Disbursements (other than counsel's fees) for which no allowance is made in Schedule 2 shall be taxed and allowed, or disallowed, according to the general principles applicable to the taxation of costs in R.S.C. Order 62.

Litigants in person

11.—(1) Subject to the following provisions of this rule, on any taxation of the costs of a litigant in person there may be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on the litigant's behalf.

(2) The amount allowed in respect of any item shall be such sum as the taxing officer thinks fit but not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the taxing officer would have been allowed in respect of that item if the litigant had been represented by a solicitor.

(3) Where it appears to the taxing officer that the litigant has not suffered any pecuniary loss in doing any item of work to which the costs relate, he shall be allowed in respect of the time reasonably spent by him on that item not more than £6.50 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his case shall not be entitled to a witness allowance in addition.

(5) Nothing in rule 18 of, or Appendix B to, C.C.R. Order 38 shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising solicitor.

Reimbursement of additional costs under section 53, Administration of Justice Act 1985

12.—(1) In default of agreement between the Lord Chancellor and a person as to the amount of additional costs to be reimbursed under section 53 of the Administration of Justice Act 1985, either of them may make a written request to the taxing officer that such costs be taxed.

(2) Only a registrar shall tax such costs.

(3) Notwithstanding R.S.C. Order 62, rule 3(4), such costs shall be taxed on the indemnity basis.

Payment of costs

13.—(1) Where in any matrimonial proceedings the costs payable by a party are required to be taxed, they shall be payable within 14 days after the making of an order for payment made on or after the signature of the taxing officer's certificate of the result of the taxation, or within such other time as may be specified in the order.

(2) Notwithstanding any enactment to the contrary, costs payable under an order made in proceedings pending in a divorce county court shall not be paid into court.

Misconduct or neglect in the conduct of any proceedings

14.—(1) Where it appears to the court in any proceedings that any thing has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party, the court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him to that other party.

(2) Instead of making an order under paragraph (1) the court may refer the matter to a registrar, in which case the registrar shall deal with the matter under rule 16(1).

Personal liability of solicitor for costs

15.—(1) Subject to the following provisions of this rule, where it appears to the court that costs have been incurred unreasonably or improperly in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, the court may—

(a) order—

- (i) the solicitor whom it considers to be responsible (whether personally or through a servant or agent) to repay to his client costs which the client has been ordered to pay to any other party to the proceedings; or
- (ii) the solicitor personally to indemnify such other parties against costs payable by them; and
- (iii) the costs as between the solicitor and his client to be disallowed;

or

(b) direct a registrar to inquire into the matter and report to the court, and upon receiving such a report the court may make such order under sub-paragraph (a) as it thinks fit.

(2) When conducting an inquiry pursuant to a direction under paragraph (1)(b) the registrar shall have all the powers and duties of the court under paragraphs (3) to (6).

(3) Subject to paragraph (4), before an order may be made under paragraph (1)(a) the court shall give the solicitor a reasonable opportunity to appear and show cause why an order should not be made.

(4) The court shall not be obliged to give the solicitor a reasonable opportunity to appear and show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the solicitor—

- (a) fails to attend in person or by a proper representative,
- (b) fails to deliver any document for the use of the court which ought to have been delivered or to be prepared with any proper evidence or account, or
- (c) otherwise fails to proceed.

(5) The court may, except in proceedings in a divorce county court or in proceedings in the divorce registry which are treated as pending in a divorce county court, direct the Official Solicitor to attend and take part in any proceedings or inquiry under this rule, and the court shall make such order as to the payment of the Official Solicitor's costs as it thinks fit.

(6) The court may direct that notice of any proceedings or order against a solicitor under this rule be given to his client in such a manner as may be specified in the direction.

(7) Instead of proceeding under paragraph (1), the court may refer the matter to a registrar, in which case the registrar shall deal with the matter under rule 16(2).

(8) In relation to proceedings in a divorce county court or proceedings in the divorce registry which are treated as pending in a divorce county court, jurisdiction which under the provisions of this rule is conferred on the court shall be exercised in accordance with C.C.R. Order 1, rule 8.

Powers of registrars in relation to misconduct, neglect etc.

16.—(1) Where, whether or not on a reference by the court under rule 14(2), it appears to the registrar when taxing a bill of costs that any thing has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, he may exercise the powers conferred on the court by rule 14(1).

(2) Where, whether or not on a reference by the court under rule 15(7), it appears to the registrar that—

- (a) any costs have been incurred unreasonably or improperly in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, or
- (b) any costs have been wasted by failure to conduct those proceedings with reasonable competence and expedition, or
- (c) there has been a failure to procure taxation,

he may exercise the powers conferred on the court by rule 15(1)(a), and in so doing shall have all the powers and duties of the court under paragraphs (3) to (6) of that rule.

(3) Where a party entitled to costs—

- (a) fails without good reason to commence or conduct proceedings for the taxation of those costs in accordance with these Rules or any direction, or
- (b) delays lodging a bill of costs for taxation,

the registrar may allow the party so entitled less than the amount he would otherwise have allowed on taxation of the bill or may wholly disallow the costs.

Allowances for and expenses of witnesses

17.—(1) Subject to the following provisions of this rule, there may be allowed such sum as the taxing officer thinks reasonable in respect of the attendance at court for the purposes of any matrimonial proceedings of an expert witness or of any person (including a party to the proceedings) as a witness of fact or as a witness producing a document.

(2) There may be allowed in respect of a witness or party who has attended court for the purposes of any matrimonial proceedings, in addition to any sum allowed under paragraph (1), any expenses which the witness or party has actually and reasonably incurred in travelling to and from the court or in staying at an hotel.

(3) Where a witness or party attends court on the same day in respect of two or more matrimonial proceedings, the sum which might be allowed to him in respect of one attendance may be apportioned between the several proceedings.

(4) Allowances may be made in respect of a witness whether he was called or not, if his attendance was necessary.

(5) For the purposes of this rule, a party who has attended for medical examination under rule 30 of the principal rules shall be treated as having attended court.

Application to taxing officer for review

18.—(1) Any party to any taxation proceedings who is dissatisfied with any decision of a taxing officer, other than a decision on a provisional taxation under rule 6(4), may apply to the taxing officer who conducted the taxation for a review of his decision.

(2) An application under this rule for review of a taxing officer's decision must be made within 21 days after that decision or within such other period as may be fixed by the taxing officer.

(3) Every applicant for review under this rule must at the time of making his application deliver to the taxing officer his objections in writing specifying what is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objections to every other party entitled to be heard on the taxation under rule 6(8).

(4) Any party to whom a copy of the objections is delivered under this rule may, within 21 days after delivery of the copy to him or such other period as may be fixed by the taxing officer, deliver to the taxing officer answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and must at the same time deliver a copy of the answers to the party applying for review and to every other party entitled to be heard on the taxation under rule 6(8).

Review by registrar

19.—(1) A review following an application under rule 18 shall be conducted by a registrar and, where the taxation was conducted by a registrar, that registrar may review it.

(2) On a hearing of a review, the registrar may receive further evidence and may exercise all the powers which he might exercise on an original taxation, including the power to award costs of the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(3) On a hearing of a review, a party to whom a copy of objections was delivered under rule 18(3) shall be entitled to be heard in respect of all or any of the objections notwithstanding that he did not deliver written answers to the objections under paragraph (4) of that rule.

(4) When the registrar gives his decision after he has conducted a review under this rule he shall, if requested to do so by any party to the proceedings before him, state in the certificate or otherwise in writing by reference to the objections the reasons for his decision on the review, and any special facts or circumstances relevant to it.

(5) A request under paragraph (4) must be made within 14 days after the review or such other period as may be fixed by the registrar.

Review by a judge

20.—(1) Any party who is dissatisfied with the decision of a registrar on a review under rule 19 may apply to a judge for an order to review that decision either in whole or in part, provided that one of the parties to the taxation proceedings has requested that registrar to state the reasons for his decision in accordance with paragraph (4) of that rule.

(2) An application under this rule may be made at any time within 14 days after the registrar has issued a certificate in accordance with rule 19(4).

(3) An application under this rule shall be made by summons or, in the case of proceedings in a divorce county court or proceedings in the divorce registry which are treated as pending in a divorce county court, on notice, and shall, unless the judge thinks fit to adjourn it into court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on the review by the registrar but, save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the registrar in relation to the subject matter of the application.

(5) If the judge thinks fit to exercise in relation to an application under this rule the power of the court to appoint assessors under section 70 of the Supreme Court Act 1981 (a) or section 63 of the County Courts Act 1984 (b), the judge shall appoint not less than two assessors, of whom one shall be a registrar and one a practising solicitor.

(6) On an application under this rule the judge may make such order as the circumstances may require and in particular may order the registrar's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another registrar for taxation.

(a) 1981 c.54.

(b) 1984 c.28.

Amendment of Legal Aid Act 1974

21. For the purposes of these Rules, paragraph 4 of Schedule 2 to the Act of 1974 (remuneration of persons giving legal aid under Part I of the Act) shall be amended as follows—

- (a) in sub-paragraph (1), for the words from “, costs shall” to “interested;”, there shall be substituted the following words—
“and to any statutory provision to the contrary, costs shall be taxed for the purposes of this Schedule on the standard basis within the meaning of rules of court made under section 84 of the Supreme Court Act 1981;”;
- (b) in sub-paragraph (2)—
 - (i) for the words “the rules applicable on such a taxation as there mentioned”, there shall be substituted the words “any statutory provision to the contrary”; and
 - (ii) for the words “such a taxation” in the second place where they occur, there shall be substituted the words “a taxation”;
- (c) after sub-paragraph (2) there shall be added the following new sub-paragraph—
“(3) In this paragraph, “statutory provision” has the same meaning as in section 64(3) of the Family Law Act 1986.”.

County court proceedings in divorce registry

22. Paragraphs 1 to 4 of Schedule 2 to the Act of 1974 (a) and section 74(3) of the Solicitors Act 1974 shall apply to matrimonial proceedings in the divorce registry which are treated as pending in a divorce county court.

Savings

23. Where part of any matrimonial proceedings has taken place in the High Court, whether before or after the coming into force of these Rules, nothing in these Rules or in section 45 of the County Courts Act 1984 shall authorise the costs of that part of the proceedings to be awarded or taxed on any of the county court scales.

Revocation

24. Subject to the provisions of rule 1, the following Rules are revoked—

- (a) the Matrimonial Causes (Costs) Rules 1979;
- (b) (i) rule 11(5) of the Rules of the Supreme Court (Amendment) 1986(b), and
(ii) rule 24(4) of the County Court (Amendment) Rules 1986(c),
which provide respectively that R.S.C. Order 62 and C.C.R. Order 38, as in force immediately before 28th April 1986, shall continue to have effect for the purposes of the Matrimonial Causes (Costs) Rules 1979.

*Mackay of Clashfern, C.
Stephen Brown, P.
Anthony Ewbank, J.
Joyanne W. Bracewell
C. F. Turner
Roger Bird
T. A. C. Coningsby
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M. J. W. Churchouse*

Dated 26th July 1988

(a) Schedule 2 paragraphs 1 and 2 were amended by S.I. 1987/2098.
(b) S.I. 1986/632.
(c) S.I. 1986/636.

PART I

Amount of costs

1.—(1) Subject to rule 11, the amount of costs to be allowed shall be in the discretion of the taxing officer.

(2) In exercising his discretion the taxing officer shall have regard to all the relevant circumstances, and in particular to—

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;
- (c) the number and importance of the documents (however brief) prepared or perused;
- (d) the place and circumstances in which the business involved is transacted;
- (e) the importance of the cause or matter to the client;
- (f) where money or property is involved, its amount or value;
- (g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

(3) The bill of costs shall consist of such of the items specified in Part II as may be appropriate, set out, except for item 1, in chronological order.

(4) An allowance for general care and conduct, having regard to such of the circumstances referred to in sub-paragraph (2) as may be relevant, may be included—

- (a) in respect of costs payable out of the legal aid fund in accordance with rule 10, only in items 1 to 4 of Schedule 2;
- (b) in other cases, in each item which does not relate only to time spent in travelling and waiting.

(5) A bill of costs shall be endorsed with the name and business address of the solicitor or firm whose bill it is, and shall be signed by the solicitor or by a partner of the firm.

Fees to Counsel

2.—(1) Except in the case of taxations under the Act of 1974 and taxation of fees payable by the Crown, no fee to counsel shall be allowed unless—

- (a) before taxation its amount has been agreed by the solicitor instructing counsel; and
- (b) before the taxing officer issues his certificate a receipt for the fees signed by counsel is produced.

(2) Except in taxations under rule 9—

- (a) no costs shall be allowed
 - (i) in High Court proceedings, in respect of counsel attending before a registrar in chambers or of more counsel than one attending before a judge in chambers, or
 - (ii) in county court proceedings or in proceedings which are treated as pending in a divorce county court, in respect of counsel attending before the judge or registrar on an interlocutory application or in respect of more counsel than one attending before the judge or registrar on any occasion,
unless the judge or registrar, as the case may be, has certified the attendance as being proper in the circumstances of the case;
- (b) except in the case of taxations under the Act of 1974, a refresher fee, the amount of which shall be in the discretion of the taxing officer, shall be allowed to counsel either—
 - (i) for each period of 5 hours (or part thereof) after the first, during which a trial or hearing is proceeding, or
 - (ii) at the discretion of the taxing officer, in respect of any day after the first day on which the attendance of counsel at the place of trial was necessary.

PART II

1. Preparation

Part A: The doing of any work which was reasonably done arising out of or incidental to the proceedings, including—

- (i) The client: taking instructions to petition, defend, cross-petition, appeal or oppose etc., attending upon and corresponding with client; taking and preparing proofs of evidence;
- (ii) Witnesses: interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at court, including issue of subpoena or witness summons;
- (iii) Expert Evidence: obtaining and considering advice or reports from experts; where appropriate, arranging their attendance at court, including issue of subpoena or witness summons;
- (iv) Inspections: inspecting any property or place material to the proceedings;
- (v) Searches and Enquiries: making searches at offices of public records and elsewhere for relevant documents; searches in the Companies Registry and similar matters;
- (vi) Other Parties: attending upon and corresponding with other parties or their solicitors;
- (vii) Discovery: perusing, considering or collating documents for affidavit or list of documents; attending to inspect or produce for inspection any documents required to be produced or inspected by order of the court or otherwise;
- (viii) Documents: preparation and consideration of pleadings and affidavits, cases and instructions to and advice from counsel, any law involved and any other relevant documents including collating and service;
- (ix) Negotiations: work done in connection with negotiations with a view to settlement;
- (x) Agency: correspondence with and attendances upon London or other agents and work done by them;
- (xi) Interest: where relevant, the calculation of interest;
- (xii) Notices: preparation and service of miscellaneous notices, including notices to witnesses to attend court.

Part B: The general care and conduct of the proceedings.

Part C: Travelling and waiting time in connection with the above matters.

Note:

The sums sought under each of sub-paragraphs (i) to (xii) of Part A should be shown separately against each item followed by the total of all items under Part A; the sums charged under Parts B and C should each be shown separately, and the total of the items under Parts A, B and C should then follow.

2. Conferences with counsel

- (a) (i) Attending counsel in conference.
- (ii) Care and conduct.
- (b) Travelling and waiting.

3. Attendances

- (a) (i) Attending the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment.
- (ii) Care and conduct.
- (b) Travelling and waiting.

4. Taxation

- (a) Taxation of Costs
 - (i) Preparing the bill (where allowable) and preparing for and attending the taxation.
 - (ii) Care and conduct.
 - (iii) Travelling and waiting.
- (b) Review
 - (i) Preparing and delivering objections to a decision of a taxing officer on taxation or answers to objections, and considering opponent's answers or objections, as the case may be; attending hearing of review.
 - (ii) Care and conduct.
 - (iii) Travelling and waiting.

SCHEDULE 2

Rule 10(2)

PART I
PREPARATION

<i>Column 1</i>	<i>Column 2 High Court</i>	<i>Column 3 County Court</i>
ITEM		
1. Writing routine letters	£3.25 per item	£2.90 per item
2. Receiving routine letters	£1.55 per item	£1.40 per item
3. Routine telephone calls	£3.25 per item	£2.90 per item
4. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine	Where the proceedings were conducted in the divorce registry or in another court on the South-Eastern Circuit at the time when the relevant work was done: £36.00 per hour All other circuits: £34.00 per hour	£32.00 per hour £30.00 per hour
5. In addition to items 1–4 above, to cover the general care and conduct of the proceedings	+50%	+50%
6. Travelling and waiting time in connection with the above matters	£25.00 per hour	£23.00 per hour

PART II
CONFERENCES WITH COUNSEL

7. Attending counsel in conference	£30.00 per hour	£26.50 per hour
8. Travelling and waiting	£25.00 per hour	£23.00 per hour

PART III
ATTENDANCES

9. Attending with counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment	£30.00 per hour	£26.50 per hour
10. Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment	£42.00 per hour	£38.00 per hour
11. Travelling and waiting	£25.00 per hour	£23.00 per hour

PART IV
FEES FOR JUNIOR COUNSEL

12. With a brief on an unopposed application for an injunction, or procedural issue	Standard £70.00 Maximum £115.00	£60.00 £100.00
13. With a brief on the trial of a cause or matter or on the hearing of an ancillary application or on a children appointment where the hearing lasts for (a) one hour	Standard £105.00 Maximum £210.00	£90.00 £180.00

(b) a half day	Standard £145.00 Maximum £240.00	£125.00 £210.00
(c) a full day	Standard £290.00 Maximum £460.00	£250.00 £400.00
(d) more than a full day	Discretionary	Discretionary
14. For each day or part of a day on which the trial of a cause or matter, or the hearing of an ancillary application, or a children appointment, is continued after the first day	Discretionary	Discretionary
15. Conference (including time reasonably spent in preparation and conference, but not otherwise remunerated)	Standard £16.00 per ½ hour	Standard £14.00 per ½ hour
16. (a) Complex items of written work (such as advices on evidence, opinions and affidavits of a substantial nature, requests for particulars or answers)	Standard £75.00 per item	Standard £65.00 per item
(b) All other written work	Standard £45.00 per item	Standard £40.00 per item
17. Except where the court is within 25 miles of Charing Cross or where there is no local Bar in the court town, or within 25 miles thereof, for travelling time	Standard £14.50 per hour + expenses	Standard £12.50 per hour + expenses

PART V
TAXATION AND REVIEW OF TAXATION

18. Preparing the bill (where allowable) and completing the taxation (excluding preparing for and attending the taxation).	£25-£70	£25-£40
19. Preparing for and attending the taxation (including travelling and waiting).	Discretionary	Discretionary
20. Review by registrar or judge (including preparation)	Discretionary	Discretionary

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules revoke the Matrimonial Causes (Costs) Rules 1979, subject to the transitional provisions in rule 1, and make fresh provision for the taxation of costs in matrimonial proceedings in the High Court and county courts following closely the revision of Order 62 of the Rules of the Supreme Court by the Rules of the Supreme Court (Amendment) 1986, S.I. 1986/632.

The most important changes made by these Rules are—

- (a) to enable certain officers of the court service to tax bills of costs in district registries of the High Court (*rule 3(1)(d)*),
- (b) to provide only two bases of taxation, the standard basis and the indemnity basis, in place of the four bases currently in use (*rule 7*),
- (c) in exercise of the powers conferred by section 64 of the Family Law Act 1986 to prescribe the rates of costs, but only for costs payable out of the legal aid fund (*rule 10 and Schedule 2*),
- (d) to provide for the taxation of costs under section 53 of the Administration of Justice Act 1985 (reimbursement of additional costs resulting from death or incapacity of presiding judge) (*rule 12*), and
- (e) in exercise of the powers conferred by section 64 of the 1986 Act to amend paragraph 4 of Schedule 2 to the Legal Aid Act 1974 for the purposes of these Rules (*rule 21*).

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