

PRACTICE DIRECTION – FIXED COSTS

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

PRACTICE DIRECTION B – FIXED COSTS IN THE COURT OF PROTECTION

General

1. This practice direction sets out the fixed costs that may be claimed by solicitors and public authorities acting in Court of Protection proceedings and the fixed amounts of remuneration that may be claimed by solicitors and office holders in public authorities appointed to act as a deputy for P. Rule 167 enables a practice direction to set out a schedule of fees to determine the amount of remuneration payable to deputies. Rule 168 enables a practice direction to make provision in respect of costs in proceedings.
2. The practice direction applies principally to solicitors or office holders in public authorities appointed to act as deputy. However, the court may direct that its provisions shall also apply to other professionals acting as deputy including accountants, case managers and not-for-profit organisations
3. This Practice Direction applies where the period covered by the category of fixed costs or remuneration ends on or after 1 February 2011. The Practice Direction supersedes the earlier Practice Directions and Practice Notes relating to fixed costs issued by the Court of Protection. However solicitors and office holders in public authorities should continue to claim the rates applicable in the previous Practice Directions and Practice Notes, where the period covered by the category of fixed costs or remuneration ended before 1 February 2011.

When does this practice direction apply?

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

Claims generally

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

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

Payments on account

6. Where professional deputies elect for detailed assessment of annual management charges, they may take payments on account for the first three quarters of the year, which are proportionate and reasonable taking into account the size of the estate and the functions they have performed. Interim quarterly Bills must not exceed 20% of the estimated annual management charges - that is up to 60% for the whole year. Interim bills of account must not be submitted to the Senior Courts Costs Office. At the end of the annual management year, the deputy must submit their annual bill to the Senior Courts Costs Office for detailed assessment and adjust the final total due to reflect payments on account already received

Solicitors' costs in court proceedings

7. The fixed costs are as follows:

| | | <i>An amount not exceeding</i> |
|-------------|---|--------------------------------|
| Category I | Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs. | £850 (plus VAT) |
| Category II | Applications under sections 36 (9) or 54 of the Trustee Act 1925 or section 20 of the Trusts of Land and Appointment of Trustees Act 1996 for the appointment of a new trustee in the place of 'P' and applications under section 18(1)(j) of the Mental Capacity Act 2005 for authority to exercise any power vested in P, whether beneficially, or as trustee, or otherwise | £385 (plus VAT) |

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

- Category I to all orders appointing a deputy for property and affairs made on or after 1 February 2011.
- Category II to all applications for the appointment of a new trustee made on or after 1 February 2011.

Remuneration of solicitors appointed as deputy for P

9. The following fixed rates of remuneration will apply where the court appoints a solicitor to act as deputy:

An amount not exceeding

| | | |
|--------------|--|--|
| Category III | Annual management fee where the court appoints a professional deputy for property and affairs, payable on the anniversary of the court order (a) for the first year: (b) for the second and subsequent years: Where the net assets* of P are below £16,000, the professional deputy for property and affairs may take an annual management fee not exceeding 4.5% of P's net assets* on the anniversary of the court order appointing the professional as deputy. | £1,500 (plus VAT) £1,185 (plus VAT) |
| Category IV | Where the court appoints a professional deputy for personal welfare, the deputy may take an annual management fee not exceeding 2.5% of P's net assets* on the anniversary of the court order appointing the professional as deputy for personal up to a maximum of £500. | |
| Category V | Preparation and lodgement of the annual report or annual account to the Public Guardian | £235 (plus VAT) |
| Category VI | Preparation of an HMRC income tax return on behalf of P | £235 (plus VAT) |

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

- Category III and IV to all annual management fees for anniversaries falling on or after 1 February 2011.
- Category V to reports or accounts lodged on or after 1 February 2011.
- Category VI to all HMRC returns made on or after 1 February 2011.

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

12. Where the period for which an annual management fee claimed is less than one

* Net assets includes any land or property owned by P except where that land or property is occupied by P or one of P's dependents.

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

Conveyancing costs

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

Category VII A value element of 0.15% of the consideration with a minimum sum of £350 and a maximum sum of £1,500, plus disbursements.

14. Category VII applies to any conveyancing transaction where contracts are exchanged on or after 1 February 2011.

Remuneration of public authority deputies

15. The following fixed rates of remuneration will apply where the court appoints a holder of an office in a public authority to act as deputy:

| | | <i>An amount not exceeding</i> |
|-------------|---|--------------------------------|
| Category I | Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs. | £670 |
| Category II | Annual management fee where the court appoints a local authority deputy for property and affairs, payable on the anniversary of the court order | |
| | (a) for the first year: | £700 |
| | (b) for the second and subsequent years: | £585 |

Where the net assets* of P are below £16,000, the local authority deputy for property and affairs may take an annual management fee not exceeding 3% of P's net assets on the anniversary of the court order appointing the local authority as deputy

(d) Where the court appoints a local authority deputy for personal welfare, the local authority may take an annual management fee not exceeding 2.5% of P's net assets* on the anniversary of the court

order appointing the local authority as deputy for personal welfare up to a maximum of £500.

| | | |
|--------------|---|------|
| Category III | Annual property management fee to include work involved in preparing property for sale, instructing agents, conveyancers, etc or the ongoing maintenance of property including management and letting of a rental property. | £270 |
| Category IV | Preparation and lodgement of an annual report or account to the Public Guardian | £195 |

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

- Category I to all orders appointing a deputy for property and affairs made on or after 1 February 2011.
- Category II to all annual management fees for anniversaries falling on or after 1 February 2011.
- Category III on the anniversary of appointment as deputy where the anniversary falls on or after 1 February 2011; or upon completion of the sale of a property, where the transaction was concluded on or after 1 February 2011.
- Category V to reports or accounts lodged on or after 1 February 2011.

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