

PRACTICE DIRECTION 19B – FIXED COSTS AND DEPUTY REMUNERATION IN THE COURT OF PROTECTION

This practice direction supplements Part 19 of the Court of Protection Rules 2017.

General

1. Rule 19.13 enables a practice direction to set out a schedule of fees to determine the amount of remuneration payable to deputies. Rule 19.14 enables a practice direction to make provision in respect of costs in proceedings. This practice direction sets out the fixed costs that may be claimed by deputies who are permitted to charge by a court order acting in Court of Protection proceedings and the fixed amounts of remuneration that may be claimed by deputies who are permitted to charge to act as a deputy for P.

2. The practice direction applies principally to solicitors, and 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 chartered legal executives, accountants, case managers and not-for profit organisations.¹

3. This practice direction applies where the period covered by the category of fixed costs or remuneration ends on or after 1 April 2024. However deputies who are permitted to charge should continue to claim the rates applicable in the previous Practice Directions and Practice Notes, where the period covered by the category of fixed costs or remuneration ended before 1 April 2024.

When does this practice direction apply?

4. Rule 19.2 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 P's estate. The provisions of this practice direction apply where the deputy is authorised to be paid costs or remunerated 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 the Senior Courts Costs Office (SCCO). Where a court order or direction provides for a detailed assessment of costs, the professional deputy may elect to take fixed costs or remuneration in lieu of a detailed assessment.

Payments in advance of assessment

6. Where a professional deputy elects for detailed assessment of annual management charges, they may take payments in advance of assessment for the year, which are proportionate and reasonable taking into account the size of the estate and the functions they have performed. Interim bills may be rendered provided the cumulative sum does not

¹ Not for profit organisations and other professionals acting as deputy are also referred to in the following judgments: *The Friendly Trust's Bulk Application* [2016] EWCOP 40, *The London Borough of Enfield v Matrix Deputies Limited, DW, OM & the Public Guardian* [2018] EWCOP 22, *The Public Guardian v Andrew Riddle (No. 2)* [2020] EWCOP 41.

exceed 75% of the work in progress for the annual management or 75% of the estimate provided to the Office of the Public Guardian, whichever is the lower.

Interim bills of account must not be submitted to the Senior Courts Costs Office (SCCO). At the end of the annual management year, the deputy, unless they are taking fixed costs, must submit their annual bill to the SCCO for detailed assessment and adjust the final total due to reflect payments on account already received. If the deputy has been overpaid, they must reimburse P's estate within 28 days of the final costs certificate being issued.

The Office of the Public Guardian

7. As part of its supervisory procedure, the Office of the Public Guardian (OPG) will ask professional deputies to estimate the amount of activity they anticipate being required on a case in the coming period, and the costs attendant on that. If the actual time spent is likely to be more than 20% higher than the estimate, a revised estimate must be provided to the OPG. The professional deputy will share this estimate with the SCCO at the same time as they submit their costs for assessment.

Solicitors' costs in court proceedings

8. The following fixed costs apply to solicitors, trust corporations regulated by the Solicitors Regulation Authority, chartered legal executives and other deputies who have specific authority by a court order to take costs at the solicitors' rates:

Category I

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

An amount not exceeding £ 1,204 (plus VAT)

Category II

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

An amount not exceeding £ 633 (plus VAT)

Category III

Applications made under Practice Direction 9D paragraph 4 by an existing deputy.

An amount not exceeding £ 633 (plus VAT)

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

- Category I to all orders appointing a deputy for property and affairs made on or after 1 April 2024.
- Category II to all applications for the appointment of a new trustee made on or after 1 April 2024.

- Category III to all applications under Practice Direction 9D paragraph 4 made on or after 1 April 2024.

Remuneration of solicitors appointed as deputy for P

10. The following fixed rates of remuneration will apply where the court appoints a solicitor, trust corporation regulated by the Solicitors Regulation Authority, chartered legal executive and other deputies who have specific authority by a court order to take solicitors' rates, to act as deputy (but not where an office holder of a public authority is appointed and employs a solicitor, or a solicitor employed by a public authority is appointed as an office holder of a public authority; or where a solicitor is employed by a deputy who is not authorised to take solicitor's rates):

Category IV – Maximum Amounts

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

- a) For the first year: An amount not exceeding £ 2,116 (plus VAT)
- b) For the second and subsequent years: An amount not exceeding £ 1,672 (plus VAT)
- c) Where the net assets of P are below £20,300, the professional deputy for property and affairs is not permitted to apply for assessed costs; instead they 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 (plus VAT).²

Category V

Where the court appoints a professional deputy for health and welfare, the deputy may take an annual management fee not exceeding 2.5% of P's net assets (plus VAT) on the anniversary of the court order appointing the professional as deputy up to a maximum of £ 703.

Category VI

Preparation and lodgement of a report or an account to the Public Guardian
An amount not exceeding £ 336 (plus VAT)

Category VII

Preparation of a basic HMRC income tax return (bank or NS&I interest and taxable benefits, discretionary trust or estate income) on behalf of P.
An amount not exceeding £ 317 (plus VAT)

The deputy is allowed to use P's funds to pay for the completion of a complex tax return as a specialist service that P would normally be expected to pay for if P retained capacity. Where the deputy wishes to instruct their own practice, in accordance with the judgment of Senior

² 'Net estate' falls to be interpreted according to the ordinary meaning of the phrase, as "total assets minus total liabilities." See *Penntrust Ltd v West Berkshire District Council & Oths* [2020] EWCOP 48.

Judge Hilder in *Re ACC* [2020] EWCOP 9 they should obtain 3 quotes (including from their own practice) and decide which quote to accept as being in P's best interests. This decision should be included in the deputy's report to the OPG.

If the deputy wishes to accept their own practice's quote which is over £2,000 (plus VAT and disbursements), the deputy should seek the court's specific authority before completing the tax return work.³

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

- Category IV and V to all annual management fees for anniversaries falling on or after 1 April 2024
- Category VI to reports or accounts lodged on or after 1 April 2024
- Category VII to HMRC returns made on or after 1 April 2024

12. In cases where fixed costs are not appropriate, a professional deputy may, if preferred, apply to the SCCO for a detailed assessment of costs. However, this does not apply if P's net assets are below £20,300 where the option for detailed assessment will only arise if the court makes a specific order for detailed assessment.

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

Conveyancing costs

14. The deputy is allowed to use P's funds to pay for the conveyancing costs of selling or buying a property as a specialist service that P would normally be expected to pay for if P retained capacity. Where the deputy is selling or purchasing a property on behalf of P and wishes to instruct their own practice, they should obtain 3 quotes (including from their own practice) in accordance with the judgment of Senior Judge Hilder in *Re ACC* [2020] EWCOP 9 and decide which quote to accept as being in P's best interests. This decision should be included in the deputy's report to the OPG.

15. If the deputy wishes to accept their own practice's quote which is over £2,000 (plus VAT), the deputy should seek the court's specific authority before undertaking conveyancing work.⁴

Public authorities costs in court proceedings

16. The following fixed rates of costs will apply where the court appoints a holder of an office in a public authority to act as deputy and to other deputies who have specific authority by a court order to take public authority rates. These rates should be applied regardless of who carries out the function within the public authority.

³ *Re ACC* [2020] EWCOP 9. Assets include but are not limited to any capital which a person has a right to but is not yet in possession, for example a debt, inheritance following a death, damages award where liability has been agreed.

⁴ See *Re ACC* [2020] EWCOP 9.

Category I

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

An amount not exceeding £ 944

Category II

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

An amount not exceeding £ 633

Category III

Applications made under Practice Direction 9D paragraph 4 by an existing deputy.

An amount not exceeding £ 633

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

- Category I to all orders appointing a deputy for property and affairs made on or after 1 April 2024.
- Category II to all applications for the appointment of a new trustee made on or after 1 April 2024.
- Category III to all applications made under Practice Direction 9D paragraph 4 made on or after 1 April 2024.

Remuneration of public authority deputies

18. The following fixed rates of remuneration will apply where the court appoints an office holder of a public authority as a property and affairs deputy, and to other deputies who have specific authority by a court order to take public authority rates:

Category IV

Annual management fee where the court appoints a public authority deputy for property and affairs, payable on the anniversary of the court order. Management costs are assumed to cover any incidental costs incurred in management of P's affairs with the exception of those mentioned under paragraph 22 below.

- a) For the first year: An amount not exceeding £ 982
- b) For the second and subsequent years: An amount not exceeding £ 824
- c) Where the net assets⁵ of P are below £20,300, the public authority deputy for property and affairs may take an annual management fee not exceeding 3.5% of P's net assets on the anniversary of the court order appointing the public authority as deputy.
- d) Where the court appoints a public authority deputy for health and welfare, the public authority may take an annual management fee not exceeding 2.5% of

⁵ 'Net estate' falls to be interpreted according to the ordinary meaning of the phrase, as "total assets minus total liabilities." See *Penitrust Ltd v West Berkshire District Council & Oths* [2020] EWCOP 48.

P's net assets on the anniversary of the court order appointing the public authority as deputy for health and welfare up to a maximum of £ 703

Category V

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

An amount not exceeding £ 380

Category VI

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

An amount not exceeding £ 274

Category VII

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

An amount not exceeding £ 89

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

- Category IV to all annual management fees for anniversaries falling on or after 1 April 2024.
- Category V on the anniversary of appointment as deputy where the anniversary falls on or after 1 April 2024, or upon completion of the sale of a property where the transaction was concluded on or after 1 April 2024.
- Category VI to reports or accounts lodged on or after 1 April 2024.
- Category VII to HMRC returns made on or after 1 April 2024.

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

Outsourcing of work by public authorities.

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

Disbursements

22. Public authorities are allowed to use P's funds to pay for specialist services that P would have normally been expected to pay for if P had retained capacity such as but not limited to conveyancing, tax returns, obtaining expert valuations and obtaining investment advice.

23. In addition, where it is considered to be in P's best interests, public authorities are allowed to use P's funds for specialist services to ascertain details of P's assets and

liabilities such as asset, debt and will searches, and to safeguard P's affairs, such as but not limited to the cost of registration with a credit reference agency.

Travel Rates

24. Public authority and other not for profit deputies are allowed the fixed rate of £51 per hour for travel costs.

Remuneration of other deputies permitted to charge

25. Deputies for who are permitted to charge but who are not solicitors, trust corporations regulated by the Solicitors Regulation Authority, chartered legal executives or a public authority may add VAT to their costs where the deputy is VAT registered.