

## **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. This Practice Direction applies where the period covered by the category of fixed costs or remuneration ends on or after 1 May 2009. 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 May 2009.

#### **When does this practice direction apply?**

3. 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 solicitor 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 by solicitors - generally**

4. 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, solicitors may elect to take fixed costs or remuneration in lieu of a detailed assessment.

### Solicitors' costs in court proceedings

5. The fixed costs are as follows:

		<i>Amount</i>
Category I	Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs.	£825 (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	£370 (plus VAT)

6. 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 May 2009.
- Category II to all applications for the appointment of a new trustee made on or after 1 May 2009.

### Remuneration of solicitors appointed as deputy for P

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

		<i>Amount</i>
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:  Provided that, 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.	£1,440 (plus VAT)  £1,140 (plus VAT)
Category IV	Where the court appoints a professional deputy for health and welfare, the deputy may take an annual management fee not exceeding 2.5% of P's net assets on the anniversary of the court	

order appointing the professional as deputy for health and welfare up to a maximum of £500.

Category V	Preparation and lodgement of the annual report or annual account to the Public Guardian	£225 (plus VAT)
Category VI	Preparation of an HMRC income tax return on behalf of P	£225 (plus VAT)

8. 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 May 2009.
- Category V to reports or accounts lodged on or after 1 May 2009.
- Category VI to all HMRC returns made on or after 1 May 2009.

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

### **Remuneration of public authority deputies**

10. Where an office holder in a public authority is appointed to act as deputy for P, he may claim the following fixed costs:

		<i>Amount</i>
Category I	Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs.	£645 (plus VAT)
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:	£670 (plus VAT)
	(b) for the second and subsequent years:	£565 (plus VAT)
	Provided that, 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 health and welfare, the local authority may take an annual management fee not exceeding 2.5% of P's net assets on the anniversary of the court order appointing the local authority as deputy for health and welfare up to a maximum of £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.	£260 (plus VAT)
Category IV	Preparation and lodgement of an annual report or account to the Public Guardian	£185 (plus VAT)

11. 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 May 2009.
- Category II to all annual management fees for anniversaries falling on or after 1 May 2009.
- Category III on the anniversary of appointment as deputy where the anniversary falls on or after 1 May 2009; or upon completion of the sale of a property, where the transaction was concluded on or after 1 May 2009.
- Category V to reports or accounts lodged on or after 1 May 2009.

12. 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.

**This Practice Direction is made by the President with the agreement of the Lord Chancellor, and will come into effect on 1<sup>st</sup> May 2009.**

*Sir Mark Potter*  
President