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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 313**

**The Magistrates' Courts and County Court Appeals  
(Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009**

**Citation and commencement**

1. These Rules may be cited as the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 and shall come into operation on 30th September 2009.

**Interpretation**

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

“category of offence” has the meaning given by paragraph 2 of Schedule 1;

“child” has the meaning given in Article 2(2) of the 1998 Order;

“the Commission” means the Northern Ireland Legal Services Commission established under Article 3 of the Access to Justice (Northern Ireland) Order 2003(1);

“Committal Fee” has the meaning given by paragraph 3 of Schedule 1;

“Contest Fee” has the meaning given by paragraph 3 of Schedule 1;

“costs” means, in the case of a solicitor, the fees and disbursements payable under Article 36 of the 1981 Order and, in the case of counsel, the fees payable under that Article;

“counsel” means counsel assigned under a criminal aid certificate granted under Article 28, 28A or 30 of the 1981 Order;

“court-ordered youth conference” has the meaning given by Article 33A(5) of the 1998 Order;

“the Court Service” means the Northern Ireland Court Service established under section 69 of the Judicature (Northern Ireland) Act 1978(2);

“disbursements” means travelling and witness expenses and other out of pocket expenses incurred by a solicitor in giving legal aid;

“diversionary youth conference” has the meaning given by Article 10A(2) of the 1998 Order;

“fee-earner” means a solicitor or any clerk who regularly does work for which it is appropriate to make a direct charge to the client;

“Guilty Plea 1 Fee” has the meaning given by paragraph 3 of Schedule 1;

“Guilty Plea 2 Fee” has the meaning given by paragraph 3 of Schedule 1;

“legal aid” means legal aid given under a criminal aid certificate granted under Article 28, 28A or 30 of the 1981 Order;

“meeting” has the meaning given by Article 3A(1) and (2) of the 1998 Order;

“the 1981 Order” means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;

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(1) S.I. 2003/435 (N.I. 10)

(2) 1978 c. 23

- “the 1998 Order” means the Criminal Justice (Children) (Northern Ireland) Order 1998(3);
- “representative” means a solicitor or counsel;
- “solicitor” means a solicitor assigned under a criminal aid certificate granted under Article 28, 28A or 30 of the 1981 Order;
- “taxing master” means the Master (Taxing Office);
- “the relevant judge” means the judge who conducted the hearing of the relevant stage of the case which is the subject-matter of the appeal under rule 13;
- “youth conference” has the meaning given by Article 3A(1) of the 1998 Order;
- “youth conference co-ordinator” has the meaning given by Article 3A(3) of the 1998 Order;
- “a Very High Cost Case” has the meaning given by rule 9.

### **Application**

3.—(1) Subject to paragraph (2), these Rules shall apply for the determination of costs which are payable in respect of work done under a criminal aid certificate granted under Article 28, 28A or 30 of the 1981 Order on or after 30th September 2009.

(2) These Rules shall not apply to—

- (a) the fees payable to counsel instructed to appear in a case where the court did not assign counsel under Article 28, 28A or 30 of the 1981 Order, as applicable;
- (b) an extradition case funded by the way of free legal aid under sections 184 and 185 of the Extradition Act 2003(4).

### **Prior authorities**

4.—(1) The Commission may grant general authority to solicitors acting for assisted persons in any particular class of case—

- (a) to obtain a report or opinion of one or more experts or to tender evidence;
- (b) to employ a person to provide a report or opinion (other than as an expert);
- (c) to bespeak transcripts of shorthand notes, or tape or digital recordings, of any proceedings,

and if it does so it shall state the maximum fee (including the maximum hourly rate) payable for any such report, opinion, expert evidence or transcript.

(2) The Commission may only consider an application for a prior authority in an individual case if it is satisfied that the circumstances of the application fall outside the scope of any general authorities which the Commission may have granted under paragraph (1).

(3) An application for a prior authority in an individual case shall be submitted to the Commission in such form and manner as it may direct, and in accordance with such guidance as the Commission may from time to time issue.

(4) If the Commission grant a prior authority under paragraph (2), it shall state the number of reports or opinions that may be obtained or the number of persons who may be authorised to give expert evidence and the total amount to be paid in respect of each specific authority.

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(3) S.I. 1998/1504 (N.I. 9)

(4) 2003 c. 41

## **General**

5.—(1) Costs in respect of work done under a criminal aid certificate to which these Rules apply shall be determined by the Commission in accordance with these Rules and having regard to such directions and guidance as may be issued by the Lord Chancellor.

(2) In determining costs in a Very High Cost Case, the Commission shall, subject to and in accordance with these Rules—

- (a) take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and
- (b) allow a reasonable amount in respect of all work reasonably undertaken and properly done.

## **Claims for costs by solicitors**

6.—(1) Subject to rules 9 and 10, claims for fees by solicitors shall be made and determined in accordance with the provisions of Schedule 1.

(2) Claims for disbursements by solicitors shall be made and determined in accordance with the provisions of rule 7.

(3) Subject to rule 15, no claim by a solicitor for costs in respect of work done under a criminal aid certificate shall be entertained unless the solicitor submits it within three months of the conclusion of the proceedings to which it relates.

(4) Subject to paragraph (5), a claim for costs shall be submitted to the Commission in such form and manner as it may direct and shall be accompanied by any receipts or other documents in support of any disbursement claimed.

(5) A claim in a Very High Cost Case shall—

- (a) summarise, where appropriate, the items of work done by a fee-earner in respect of which fees are claimed according to the classes of fee specified in Schedule 2;
- (b) state, where appropriate, the dates on which the items of work were done, the time taken where appropriate, the sums claimed and whether the work was done for more than one assisted person; and
- (c) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.

(6) Where there are any special circumstances which should be drawn to the attention of the Commission, the solicitor shall specify them.

(7) The solicitor shall supply such further particulars, information and documents as the Commission may require.

## **Determination of solicitors' disbursements**

7.—(1) Subject to the provisions of this rule, the Commission shall allow such disbursements claimed under rule 6(2) as appear to it to have been actually and reasonably incurred.

(2) No question as to the propriety of any step or act in relation to which prior authority has been obtained under these Rules may be raised on any determination of disbursements, unless the solicitor knew or ought reasonably to have known that the purpose for which the authority was given had failed or had become irrelevant or unnecessary before the disbursements were incurred.

(3) Where disbursements are reasonably incurred in accordance with and subject to the limit imposed by a prior authority given under these Rules, no question may be raised on any determination of disbursements as to the amount of the payment to be allowed for the step or act in relation to which the authority was given.

(4) Where disbursements are incurred in taking any steps or doing any act for which authority may be given under these Rules, without such authority having been given or in excess of any fee so authorised, payment in respect of those disbursements may nevertheless be allowed on a determination of disbursements payable under rule 6.

### **Claims for fees by counsel**

**8.—(1)** Subject to rules 9 and 10, claims for fees by counsel shall be made and determined in accordance with the provisions of Schedule 1.

(2) Subject to rule 15, no claim by counsel for fees in respect of work done under a criminal aid certificate shall be entertained unless counsel submits it within three months of the conclusion of the proceedings to which it relates.

(3) Subject to paragraph (4), a claim for fees shall be submitted to the Commission in such form and manner as it may direct.

(4) A claim in a Very High Cost Case shall—

(a) summarise, where appropriate, the items of work done in respect of which fees are claimed according to the classes of fee specified in Schedule 2; and

(b) state, where appropriate, the dates on which the items of work were done, the time taken where appropriate, the sums claimed and whether the work was done for more than one assisted person.

(5) Where there are any special circumstances which should be drawn to the attention of the Commission, counsel shall specify them.

(6) Counsel shall apply such further particulars, information and documents as the Commission may require.

### **Very High Cost Cases**

**9.—(1)** A representative shall—

(a) where the circumstances prescribed at paragraph (3) exist; and

(b) subject to the conditions prescribed at paragraph (5),

instead of receiving the standard fee specified in Schedule 1, be paid in accordance with the provisions in rule 10.

(2) It shall be for the Commission to determine whether the circumstances prescribed at paragraph (3) exist, and whether the conditions prescribed at paragraph (5) are met; and if the Commission decides that those circumstances do not exist, or that those conditions are not met, the standard fee provided for in Schedule 1 shall apply and no other uplift shall be payable.

(3) The circumstances referred to in paragraph (1)(a) are where an assisted person would be deprived of the right to a fair trial in any case because of the amount of the standard fee payable under Schedule 1.

(4) The factors to be taken into account by the Commission in considering whether the circumstances prescribed at paragraph (3) exist shall include—

(a) whether the number and nature of witnesses is significantly greater than that in other cases involving the same offence;

(b) whether the volume and nature of evidence is significantly greater than that in other cases involving the same offence;

(c) the complexity of the law (including procedural complexity);

(d) whether the assisted person may be unable to understand the proceedings.

- (5) The conditions referred to in paragraph (1)(b) are as follows—
- (a) the representative shall make an application to the Commission—
    - (i) in such manner and form; and
    - (ii) containing such information,

as it may specify, at as early a stage following the grant of the criminal aid certificate as is reasonably practicable and that representative shall, if required by the Commission to do so, supply such further information or such documents as the Commission may require to enable it to determine the application;

- (b) that representative shall keep proper records, in accordance with paragraph (6), of all work done and any outlays incurred under the criminal aid certificate, whether before or after the Commission exercises its power to determine whether the conditions prescribed at paragraph (5)(a) are met; and
- (c) the representative shall provide periodic reports and projections as to the future costs of the case to the Commission at such times and in such a form as the Commission shall direct.

(6) Where the Commission determines that the circumstances prescribed at paragraph (3) exist, and that the condition prescribed at paragraph (5)(a) is met, it shall require the representative (or each representative, as applicable)—

- (a) to record contemporaneously the number of hours the representative spends in preparation work on the case, together with a short description of the nature of the work performed on each occasion and a note of the fee-earner performing that work, as applicable; and
- (b) to maintain such records in a permanently accessible format.

#### **Very High Costs Cases – Determination of representatives’ fees**

**10.**—(1) Subject to rule 9, fees in respect of work done in a Very High Cost Case shall be assessed and determined in accordance with paragraph (2).

(2) When determining the fees payable to a representative under paragraph (1), the Commission shall:

- (a) assess the fees based only on the hours recorded in the contemporaneous records maintained by that representative under rule 9(6); and
- (b) allow fees at rates no higher than those set out for the appropriate category of work and the appropriate representative in Schedule 2.

#### **Payment of costs**

**11.**—(1) Having determined the costs payable to a representative in accordance with these Rules, the Commission shall notify the representative of the costs payable and authorise payment accordingly.

(2) Where the costs payable under paragraph (1) are varied as a result of any appeal brought pursuant to these Rules, then—

- (a) where the costs are increased, the Commission shall authorise payment of the increase;
- (b) where the costs are decreased, the representative shall repay the amount of such decrease; and
- (c) where the payment of any costs of the representative is ordered under rule 13(14), the Commission shall authorise payment.

### **Reasons for Commission decisions**

**12.**—(1) Where a representative is dissatisfied with—

- (a) the Commission’s decision on an application for a prior authority under rule 4(2) or (4);
- (b) the calculation of the costs payable under Schedule 1; or
- (c) the decision not to grant a Very High Cost Case certificate under rule 9, or the decision as to the amount of fees allowed under rule 10, as applicable,

the representative may request the Commission to give reasons in writing for its decision and the Commission shall comply with any such request.

(2) Subject to rule 15, the request shall be made—

- (a) within 21 days of receiving notification of the decision or the costs payable under rule 11, as the case may be; and
- (b) in such form and manner as the Commission may direct.

(3) Clerical mistakes, or errors arising from any accidental slip or omission, in the calculation of fees under rule 6 or 8, the determination of disbursements under rule 7 or the determination of fees under rule 10 may be corrected by the Commission without an appeal under rule 13.

### **Appeals to the taxing master**

**13.**—(1) Where the Commission has given reasons for its decision under rule 12, a representative who is dissatisfied with that decision may appeal to the taxing master.

(2) Subject to rule 15, an appeal shall be instituted within 21 days of receiving the Commission’s reasons, by giving notice in writing to the taxing master.

(3) The appellant shall send a copy of any notice of appeal given under paragraph (2) to the Commission.

(4) The notice of appeal shall be accompanied by—

- (a) the Commission’s reasons for its decision given under rule 12(1); and
- (b) the particulars, information and documents supplied to the Commission under rule 6 or 8, as appropriate.

(5) The notice of appeal shall—

- (a) be in such form as the taxing master may direct; and
- (b) specify separately each item appealed against, showing (where appropriate) the amount claimed for the item, the amount determined and the grounds of the objection to the determination, together with any written representations which the representative wishes to make.

(6) The taxing master may, and if so directed by the Lord Chancellor either generally or in a particular case shall, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.

(7) With a view to ensuring that the public interest is taken into account, the Lord Chancellor may arrange for written representations to be made and, if intending to do so, the Lord Chancellor shall inform the taxing master and the appellant.

(8) Any written representations made on behalf of the Lord Chancellor under paragraph (7) shall be sent to the taxing master and the appellant.

(9) The appellant shall be permitted a reasonable opportunity to make further written representations in reply.

(10) If the taxing master considers it necessary to receive oral representations, the taxing master shall inform the appellant and, where applicable, the Lord Chancellor of the date of any hearing and, subject to the provisions of this rule, may give directions as to the conduct of the appeal.

(11) The taxing master may consult the relevant judge or the Commission and may require the appellant to provide any further information required for the purpose of the appeal and, unless the taxing master otherwise directs, no further evidence may be received on the hearing of the appeal and no ground of objection shall be valid which was not raised in the notice of appeal given under paragraphs (2) and (5).

(12) The taxing master shall have the same powers as the Commission under these Rules and, in the exercise of such powers, may alter the determination of the Commission in respect of any sum allowed, whether by increase or decrease.

(13) The taxing master shall communicate the decision and the reasons for it in writing to the appellant, the Lord Chancellor and the Commission.

(14) Where the sums determined under rule 6, 8 or 10, as appropriate, are increased, the taxing master may allow the appellant a sum in respect of part or all of any reasonable costs incurred by the appellant in connection with the appeal (including any fee payable in respect of an appeal).

(15) The decision of the taxing master on an appeal under this rule shall be final.

### **Restriction on payment**

**14.** Where a criminal aid certificate has been granted in respect of any proceedings to which these Rules apply, a representative shall not receive or be a party to the making of any payment for work done in connection with those proceedings except such payments as may be made—

- (a) by the Commission; or
- (b) in respect of any expenses or fees incurred in preparing, obtaining or considering any report, opinion or further evidence, whether provided by an expert witness or otherwise, where an application for an authority to incur such expenses or fees has been refused by the Commission.

### **Time limits**

**15.—(1)** Subject to paragraph (2), the time limit within which any act is required or authorised to be done under these Rules may, for good reason, be extended—

- (a) in the case of acts required or authorised to be done under rule 13, by the taxing master; and
- (b) in the case of any acts required or authorised to be done by a representative under any other rule, by the Commission.

(2) Where a representative without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the Commission or the taxing master, as the case may be, may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the costs; provided that the costs shall not be reduced unless the representative has been permitted a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.

(3) A representative may appeal to the taxing master against a decision made under this rule by the Commission and such an appeal shall be instituted within 21 days of receiving notification of the decision by giving notice in writing to the taxing master specifying the grounds of appeal.

### **Review**

**16.—(1)** The Court Service shall keep the general operation of these Rules under review to ensure that they are consistent with the requirements of Article 37 of the 1981 Order.

(2) Without prejudice to paragraph (1), the Court Service shall conduct a formal review of the levels of the prescribed fees and the rates of payment under these Rules at least once in every review period.

(3) Where the Court Service has conducted a review under this rule, it shall publish the result of the review—

- (a) as soon as is reasonably practicable;
- (b) in such form as it considers appropriate; and
- (c) together with any proposals it may have with respect to the matters reviewed.

(4) When conducting a review under this rule, the Court Service shall have regard, among the matters which are relevant, to—

- (a) any representations made by the Lord Chief Justice, the Law Society of Northern Ireland, the General Council of the Bar of Northern Ireland, the Director of Public Prosecutions for Northern Ireland and the Commission; and
- (b) any other representations which it considers to be relevant.

(5) In paragraph (2) “review period” means the period of two years beginning with the commencement of these Rules and each subsequent period of two years.

Signed by authority of the Lord Chancellor

Dated 29th August 2009

*Bridget Prentice*  
Parliamentary Under-Secretary of State  
Ministry of Justice

We approve

Dated 4th September 2009

*Dave Watts*  
*Bob Blizzard*  
Two of the Lords Commissioners  
of Her Majesty’s Treasury