

2009 No. 313

LEGAL AID AND ADVICE

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

Made - - - - - *29th August 2009*

Coming into operation - *30th September 2009*

To be laid before Parliament

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The Lord Chancellor makes the following Rules in exercise of the powers conferred by Article 36(3) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(a), and now vested in the Lord Chancellor(b).

In accordance with Article 36(3) of that Order, the Lord Chancellor has consulted with the Lord Chief Justice, the Attorney General, the County Court Rules Committee and the Magistrates' Courts Rules Committee and has obtained the approval of the Treasury.

In accordance with Article 37 of that Order, the Lord Chancellor has had regard to the matters specified in that Article.

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(c);

“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(d);

“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;

(a) S.I. 1981/228 (N.I. 8)
(b) S.I. 1982/159
(c) S.I. 2003/435 (N.I. 10)
(d) 1978 c. 23

“the 1998 Order” means the Criminal Justice (Children) (Northern Ireland) Order 1998(a);
“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(b).

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.

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.

(a) S.I. 1998/1504 (N.I. 9)
(b) 2003 c. 41

(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

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

Dated 29th August 2009

We approve

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

Dated 4th September 2009

SCHEDULE 1

Standard Fee Cases

Rules 6(1) and 8(1)

PART 1

Scope and Definitions

Application

1.—(1) Subject to sub-paragraph (2), this Schedule applies to every case dealt with in the magistrates' court or county court, including cases dealt with by way of a youth conference and proceedings arising out of an alleged breach of an order of the court (whether or not this Schedule applies to the proceedings in which the order was made).

(2) Subject to paragraphs 21 and 22, this Schedule does not apply to a Very High Cost Case.

Categories of Offence

2. For the purposes of this Schedule—

- (a) the terms “summary offence”, “hybrid offence”, “I/TS offence” and “indictable only offence” have the respective meanings given in the list of offences established and maintained by the Public Prosecution Service for Northern Ireland and published by the Commission in August 2009, as amended^(a);
- (b) aiding, abetting, counselling or procuring the commission by another person of an offence falls within the same category as the substantive offence to which they relate; and
- (c) attempts, conspiracy or incitement to commit an offence fall within the same category as the substantive offence to which they relate.

Interpretation

3.—(1) A case in the magistrates' court is a guilty plea if it was disposed of without a contest because the assisted person pleaded guilty to one or more charges.

(2) Subject to sub-paragraph (3), a Guilty Plea 1 Fee shall be payable in a case where the assisted person pleaded guilty to one or more charges and the case did not proceed as a contest.

(3) A Guilty Plea 2 Fee shall be payable in a case which was listed for, but did not proceed as, a contest because the assisted person pleaded guilty to one or more charges.

(4) A Contest Fee shall only be payable for a case in the magistrates' court where the assisted person pleaded not guilty to one or more charges and the hearing of the case proceeded as a contest.

(5) For the purposes of sub-paragraph (4), a case shall only be considered as having proceeded as a contest:

- (a) where the first prosecution witness had begun to give evidence; or
- (b) where the case was contested either —
 - (i) on the papers only,
 - (ii) on legal arguments, with no witnesses being called, or
 - (iii) with the prosecution evidence being accepted but a defence was put forward.

(6) Subject to paragraphs 12, 15 and 17, a Committal Fee shall be payable in a case where a preliminary inquiry or investigation was held in the magistrates' court.

^(a) Available from www.niisc.org.uk

PART 2

Standard Fees

Magistrates' court – adult

4. Subject to paragraph 5, the standard fee for a representative representing one assisted person in the magistrates' court shall be the amount set out in the Table following paragraph 9 as appropriate to the representative, the offence with which the assisted person was charged and the nature of the disposal of the case.

Magistrates' court – child

5.—(1) This paragraph applies where the assisted person was a child charged with an indictable only offence, whose case was dealt with in the magistrates' court as provided for under Article 17 of the 1998 Order.

(2) The standard fee for a representative representing that assisted person in the magistrates' court shall be the amount set out in the Table following paragraph 9 as appropriate to the representative and the nature of the disposal of the case.

Bail applications

6.—(1) This paragraph applies—

- (a) where the assisted person was making an application for bail in the magistrates' court on a first occasion or, where there has been a change in circumstances, a further substantive application for bail while the defendant is in custody;
- (b) where there was an application in the magistrates' court arising from a breach of bail which had previously been granted to the assisted person;
- (c) where there was an application by the assisted person for bail, or to vary the conditions of bail, under Article 132A of the Magistrates' Courts (Northern Ireland) Order 1981(a); or
- (d) where there was an application by the prosecution for reconsideration of the decision to grant bail under Article 133A of the Magistrates' Courts (Northern Ireland) Order 1981.

(2) The standard fee for a representative representing the assisted person shall be the amount set out in the Table following paragraph 9 as appropriate to the representative.

(3) Any fee payable to a representative under this paragraph shall be paid together with the fee payable under paragraph 4 or 5, as applicable.

County court appeals

7.—(1) Subject to sub-paragraph (2), the standard fee for a representative representing one assisted person in a county court appeal shall be the amount set out in the Table following paragraph 9 as appropriate to the representative and the nature of the disposal of the appeal.

(2) Where an appeal was withdrawn, the standard fee payable shall be the amount set out in the Table following paragraph 9.

Additional fees

8.—(1) This paragraph applies to a case which was heard in the magistrates' court by way of a contest or committal proceedings, or in the county court by way of an appeal against conviction and sentence.

(a) S.I. 1981/1675 (N.I. 26)

(2) Subject to sub-paragraph (3), where the duration of the contest, the committal proceedings or the appeal exceeded one day, the additional fee set out in the Table following paragraph 9 shall be payable for the second and each subsequent day.

(3) An additional fee shall not be payable under sub-paragraph (2) in respect of any day when the case was listed for hearing (or further hearing) but it did not proceed on that day, or any resumed hearing where the case was adjourned for sentence following conviction.

Youth conference cases

9.—(1) This paragraph applies where the assisted person was a child who was the subject of:

- (a) a diversionary youth conference and in respect of whom a criminal aid certificate was granted under Article 28A of the 1981 Order; or
- (b) a court-ordered youth conference and in respect of whom a criminal aid certificate was granted under Article 28 or 30 of the 1981 Order.

(2) Subject to sub-paragraphs (3) to (5), the standard fee for a representative representing that assisted person shall be the amount set out in the Table following this paragraph as appropriate to the representative and the nature and duration of the youth conference.

(3) The Commission shall allow the standard fee claimed by the representative unless—

- (a) where the principal standard fee has been claimed, the conference lasted no more than one hour in which case the lower standard fee shall be allowed, or
- (b) where a fee in excess of the principal standard fee has been claimed, in which case (if the conference lasted in excess of two hours) an additional fee shall be allowed of £44.75 per hour to a solicitor and £29.25 per hour to counsel.

(4) Fees shall be paid in respect of the period of time beginning 15 minutes before the case was listed on the first occasion and ending—

- (a) where the client was present at the youth conference, 15 minutes after the conference finally ended, or
- (b) where the client failed to attend, when the meeting ended on that day,

and, save in exceptional circumstances, shall not be payable during any luncheon adjournment.

(5) Any fees payable to a representative under this paragraph in relation to attendance at a court-ordered youth conference shall be paid together with those fees which are payable under this Part in respect of the court proceedings for the offence in question.

Table 1 – Standard Fees

(1)	<i>Paragraph providing for fee</i>	<i>Solicitor's Fee</i>	<i>Counsel's Fee</i>
(1)	(2)	(3)	(4)
Cases heard in the magistrates' court			
<i>Category of offence and nature of disposal of the case</i>			
Summary offence			
— Guilty Plea 1 Fee	4	£260	N / A
— Guilty Plea 2 Fee		£350	N / A
— Contest Fee		£470	N / A
Hybrid or I/TS offence			
— Guilty Plea 1 Fee	4	£275	£275
— Guilty Plea 2 Fee		£440	£415
— Contest Fee		£590	£550
Indictable only offence			
— Guilty Plea 1 Fee	4	£300	£300
— Guilty Plea 2 Fee		£450	£450
— Contest Fee		£600	£600
Hybrid, I/TS or indictable only offence			
— Committal Fee	4	£820	£800
Child charged with indictable only offence			
— Guilty Plea 1 Fee	5	£820	£800
— Guilty Plea 2 Fee		£820	£800
— Contest Fee		£1,000	£1,000
Bail application Fee	6	£75	£120
Additional Fee	8	£200 per day	£200 per day
Cases appealed to the county court			
<i>Nature of disposal of the appeal</i>			
Appeal against Sentence Fee	7(1)	£265	£115
Appeal against Conviction Fee	7(1)	£355	£350
Withdrawn appeal	7(2)	£145	£50
Additional Fee	8	£200 per day	£200 per day
Diversionary youth conferences (Preparation and Attendance)			
9(1)(a)			
Lower standard fee			
— Conferences lasting up to and including one hour		£112	£84
Principal standard fee			
— Conferences lasting more than one hour but not exceeding two hours		£180	£135

Court-ordered youth conferences (Attendance only)	9(1)(b)		
Lower standard fee			
— Conferences lasting up to and including one hour		£70	£70
Principal standard fee			
— Conferences lasting more than one hour but not exceeding two hours		£112.50	£112.50

PART 3

Miscellaneous

General provisions

10. Except as provided under this Part, all work undertaken by a representative is included within the standard fee specified in Part 2 as appropriate to—

- (a) the category of representative;
- (b) the offence with which the assisted person was charged; and
- (c) the nature of the disposal of the case in the magistrates' court or the appeal, as applicable.

Additional charges and additional cases

11.—(1) Where an assisted person was charged with more than one offence on the summons or charge sheet, the standard fee payable to the representative in the magistrates' court shall be based on whichever of those offences the representative shall select for the purposes.

(2) Where a representative represented more than one assisted person in the same case, only one standard fee shall be payable; and the relevant fee provided for under Part 2 in the magistrates' court or county court, as applicable, shall be enhanced by twenty per cent for each additional assisted person after the first such person.

Arrest warrants

12.—(1) This paragraph applies where the hearing of a case did not proceed because of the failure of the assisted person to attend and an arrest warrant was issued.

(2) Subject to sub-paragraph (4), the fee payable to a representative in the magistrates' court shall be fifty per cent of the standard Guilty Plea 1 Fee or the Committal Fee, as applicable, provided for in Part 2 as appropriate to the representative and the offence with which the assisted person was charged.

(3) Subject to sub-paragraph (4), the fee payable to a representative in the county court shall be fifty per cent of the standard fee provided for in Part 2 as appropriate to the representative and the nature of the disposal of the appeal.

(4) Where the assisted person failed to attend the hearing of the case or the appeal on more than one occasion, a fixed fee of £50 shall be payable in respect of the second and each subsequent occasion on which an arrest warrant was issued.

(5) Subject to sub-paragraphs (6) and (7), when the arrest warrant is executed, the fee payable to a representative on final disposal of the case shall be fifty per cent of the standard fee provided for in Part 2 as appropriate to the representative, the offence with which the assisted person was charged (if applicable) and the nature of the disposal of the case or the appeal.

(6) Where a significant period of time had elapsed since the issuing of the arrest warrant, the Commission may, in its discretion, allow up to one hundred per cent of the relevant standard fee.

(7) In a case to which sub-paragraph (4) applies, on the final disposal of the case the Commission may, in its discretion, allow the representative a fixed fee of £50 or fifty per cent of the relevant standard fee provided for in Part 2.

Breach of court order

13.—(1) This paragraph applies where a criminal aid certificate was granted for proceedings arising out of an alleged breach of an order of the court.

(2) Subject to sub-paragraphs (3) and (4), the fee payable to a representative shall be fifty per cent of the standard fee provided for in Part 2 as appropriate to the representative, the offence with which the assisted person was charged and the nature of the disposal of the case.

(3) A Contest Fee shall be payable where the assisted person did not admit the breach and the hearing of the case proceeded as a contest.

(4) The fixed fee of £140 shall be payable to a representative where the certificate was granted for proceedings arising out of an alleged breach of an order of the Crown Court.

Applications

14.—(1) Subject to sub-paragraph (2), the fixed fee of £75 shall be payable to a representative in respect of:

- (a) the hearing of a bad character application under Article 5 or 6 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004^(a);
- (b) the hearing of a hearsay application under Article 18 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004;
- (c) the hearing of a disclosure application under section 8 of the Criminal Procedure and Investigations Act 1996^(b);
- (d) the hearing of a special measures application under Article 11, 12 or 15 of the Criminal Evidence (Northern Ireland) Order 1999^(c); or
- (e) the hearing of an application to stay the proceedings on the ground that they constitute an abuse of the process of the court.

(2) Where an application made under sub-paragraph (1)(e) was successful and the case did not proceed, a Contest Fee shall be payable in accordance with paragraph 4 or 5, as applicable.

Dismissal or withdrawal of representative

15.—(1) This paragraph applies where a representative was dismissed by the assisted person, or the Commission is satisfied that the representative was obliged to withdraw from the case for compelling professional reasons.

(2) For a case in the magistrates' court, the Commission may, in its discretion, allow the following fees to the representative—

- (a) if the representative was dismissed or withdrew before the case was listed for disposal in the magistrates' court (whether as a guilty plea, contest or committal hearing), fifty per cent of the standard Guilty Plea 1 Fee or the Committal Fee, as applicable, provided for in Part 2 as appropriate to the representative and the offence with which the assisted person was charged;
- (b) if the representative was dismissed or withdrew on the day the case was listed for hearing as a contest or committal, seventy-five per cent of the standard Contest Fee or the Committal Fee, as applicable, provided for in Part 2 as appropriate to the representative and the offence with which the assisted person was charged.

(a) S.I. 2004/1501 (N.I. 10)

(b) 1996 c. 25

(c) S.I. 1999/2789 (N.I. 8)

(3) For a case in the county court, the Commission may, in its discretion, allow the following fees to the representative—

- (a) if the representative was dismissed or withdrew before the case was listed for hearing, fifty per cent of the standard fee provided for in Part 2 as appropriate to the representative and the nature of the disposal of the appeal;
- (b) if the representative was dismissed or withdrew on the day the appeal was listed for hearing, seventy-five per cent of the standard fee provided for in Part 2 as appropriate to the representative and the nature of the disposal of the appeal.

(4) In exceptional circumstances, the Commission may also, in its discretion, allow an additional fee of £100 if it is satisfied that the circumstances of the case merit additional remuneration.

Limited certificates

16.—(1) This paragraph applies where a limited criminal aid certificate was granted under Article 28(2A) of the 1981 Order.

(2) Subject to sub-paragraph (3), the standard fee payable to a representative shall be the amount set out in the Table following this paragraph as appropriate to the limitation imposed on the certificate.

(3) Where the limited certificate lasted for more than six months, the fee payable to the representative shall be the standard fee provided for in Part 2 as appropriate to the representative, the offence with which the person was charged and the nature of the disposal of the case.

(4) Where more than one limited certificate was granted to the assisted person in connection with the same case, the certificates (whether granted consecutively or simultaneously) shall be treated as extensions of the one certificate and only one fee shall be payable in accordance with this paragraph.

(5) Where a limited certificate was granted in a case and a full certificate was subsequently granted in that case under Article 28 of the 1981 Order, the fee payable to the representative shall be the standard fee provided for in Part 2, and no additional fee shall be allowed under this paragraph.

Table 2 – Limited criminal aid certificates

<i>Limitation on certificate</i>	<i>Paragraph providing for fee</i>	<i>Fee</i>
Certificate lasting not more than 4 weeks	16(2)	£50
Certificate lasting more than 4 weeks but not more than 6 months	16(2)	£100
Certificate for bail application in the magistrates' court	16(2)	£120

Withdrawn or discontinued cases

17. Any case in which —

- (a) the prosecution withdrew all charges; or
- (b) the prosecution offered no evidence (or no further evidence) and which was discontinued,

shall be treated as a contested case.

Deferred sentence fee

18. The fixed fee of £75 shall be payable to a representative for attending at a sentencing hearing where sentence was deferred under Article 3 of the Criminal Justice (Northern Ireland) Order 1996(a).

Late sitting fee

19. The fixed fee of £80 shall be payable to a representative in respect of any day forming part of the main hearing of the case when the court sat more than 45 minutes beyond 4.30 pm.

Senior counsel

20. Where senior counsel is assigned to an assisted person under a criminal aid certificate granted under Article 28 or 30 of the 1981 Order, the standard fee for a senior counsel representing one assisted person shall be two times the appropriate figure in column (4) of the Table following paragraph 9.

Travelling allowance – solicitors

21.—(1) Where a solicitor attended court other than the solicitor's local court, the Commission—

- (a) shall allow travelling time on each such occasion at the rate of £24.75 per hour; and
- (b) may allow an amount to cover any travelling expenses actually and reasonably incurred and necessarily and exclusively attributable to the solicitor's attendance at that court.

(2) For the purposes of sub-paragraph (1), a solicitor's local court shall be determined by the Commission in accordance with a list which it shall establish and maintain recording the local court for each solicitors' firm in Northern Ireland.

(3) Subject to the Commission being satisfied that the work involved was reasonably undertaken and properly done, a travelling allowance shall also be payable under sub-paragraph (1) in respect of attendance at any court on a Saturday, Sunday or public holiday, prison visits, other consultations and views.

Travelling allowance – counsel

22.—(1) Where counsel was instructed to appear in a court which is more than 20 miles from the Head Post Office, Belfast, the Commission—

- (a) shall allow travelling time at the rate of £12 per hour; and
- (b) may allow an amount to cover any travelling expenses actually and reasonably incurred and necessarily and exclusively attributable to the counsel's attendance at that court.

(2) Subject to the Commission being satisfied that the work involved was reasonably undertaken and properly done, a travelling allowance shall also be payable under sub-paragraph (1) in respect of attendance at prison visits, other consultations and views.

(a) S.I. 1996/3160 (N.I. 24)

SCHEDULE 2

Rule 10

Very High Cost Cases

1. The rates for preparation payable under this Schedule are the rates specified in the Table following this paragraph.

Table 1 – Rates for preparation

<i>Representative</i>	<i>Fee</i>
Solicitor	
— Routine letters written and routine telephone calls	£3.45 per item
— Other preparation	£90 per hour
Junior Counsel	£80 per hour
Senior Counsel	£110 per hour

2.—(1) The rates for non-preparatory work payable under this Schedule are the rates specified in the Table following this paragraph.

(2) Paragraph 21 of Schedule 1 will also apply in respect of the travelling allowance payable to a solicitor in a Very High Cost Case.

Table 2 – Hourly rates for non-preparatory work

	<i>Fee</i>
<i>Attendance at court</i>	
Solicitor (where counsel was assigned)	£45 per hour
<i>Waiting</i>	
Solicitor	£24.75 per hour
Counsel	£12 per hour

3.—(1) The rates for advocacy payable under this Schedule are the rates specified in the Table following this paragraph.

(2) The full daily rate will be allowed if the representative was in court for more than 3.5 hours; half that rate will be allowed if the representative was in court for 3.5 hours or less.

(3) The daily rate for a solicitor will only be payable where the court did not assign counsel under Article 28(2) or 30 of the 1981 Order, as applicable.

(4) Paragraphs 21 and 22 of Schedule 1 will also apply in respect of the travelling allowance payable to a solicitor or counsel in a Very High Cost Case.

Table 3 – Rates for advocacy

<i>Representative</i>	<i>Fee</i>
Solicitor	£22.50 per remand hearing
Junior counsel / Solicitor	£250 per day
Senior counsel	£500 per day

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the remuneration for solicitors and counsel assigned under Articles 28, 28A or 30 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

The main body of the Rules deals with the manner in which costs are to be determined and paid. Those provisions draw to a large extent on the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992, which relate to criminal representation provided under Part III of the 1981 Order, and which are being superseded by these Rules insofar as they prescribe the costs payable for Magistrates' Courts cases and County Court appeals.

Schedule 1 deals with the standard fees which shall be payable for most cases to solicitors and counsel respectively. Rules 9 and 10, together with Schedule 2, provide for special rates of payment in Very High Cost Cases.

Initial determinations will be undertaken by the Northern Ireland Legal Services Commission. Provision is made for solicitors and counsel to appeal to the taxing master to challenge the fees determined in a particular case.

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