

## EXPLANATORY MEMORANDUM TO

### **THE MAGISTRATES' COURTS AND COUNTY COURT APPEALS (CRIMINAL LEGAL AID) (COSTS) RULES (NORTHERN IRELAND) 2009 – S.R. 2009 No. 313 and THE LEGAL AID IN CRIMINAL PROCEEDINGS (COSTS) (AMENDMENT) RULES (NORTHERN IRELAND) 2009 – S.R. 2009 No. 314**

1. This explanatory memorandum has been prepared by the Northern Ireland Court Service and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

#### **2. Purpose of the instruments**

2.1 The purpose of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 (the 2009 Rules) is to introduce a new system of standard fees for publicly funded defence representation in criminal proceedings in the magistrates' court and criminal appeals to the County Court. In doing so, it replaces the current system of time-based and composite fees provided by the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) (the 1992 Rules). In introducing standard fees, the Court Service aims to meet the government's objectives of bringing control, predictability and value for money to the legal aid budget.

2.2 The purpose of the Legal Aid in Criminal Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2009 – (the 1992 (Amendment) Rules), is to provide that the 1992 rules will no longer apply to the determination of costs in respect of criminal proceedings in the magistrates' courts and County Court appeals where the defendant is in receipt of legal aid.

#### **3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These instruments breach the 21-day rule by one day. This breach was unintentional.

3.2 This breach occurred because of an error in communication between officials in the Department. As a result, the instruments were forwarded for laying at a late stage and the window of opportunity provided was too limited to enable the instruments to be laid that same day.

3.3 The Department accepts that there was no justification for this breach. The instruments were laid at the earliest opportunity the following day. The Department apologises for the error which arose on this occasion, and has put measures in place to avoid any reoccurrence.

3.4 These instruments need to come into effect on the day specified for the reason indicated in paragraph 2.1 above. That is, the standard fees prescribed by the main instrument, the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009, are being introduced to meet the government's objectives of bringing control, predictability and value for money to the legal aid budget.

#### **4. Legislative Context**

- 4.1 Article 36(3) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 enables the Lord Chancellor to set by way of rules a remuneration system for defence representatives engaged in proceedings where the defendant is in receipt of legal aid.
- 4.2 The statutory instrument currently in force is the 1992 Rules. By virtue of the 1992 (Amendment) Rules, the 1992 Rules will be replaced by the 2009 Rules, in cases where legal aid is granted, from 30 September 2009.

#### **5. Territorial Extent and Application**

- 5.1 Both instruments apply to Northern Ireland only.

#### **6. European Convention on Human Rights**

- 6.1 As each instrument is subject to the negative resolution procedure, and does not amend primary legislation, no statement is required.

#### **7. Policy Background**

- *What is being done and why*

- 7.1 The 1992 Rules, currently governing remuneration, enable legal representatives to submit claims for payment to the Northern Ireland Legal Services Commission (“the NILSC”) in three formats: time-based, composite or a mixture of time-based and composite claims. Not only is this system administratively complex, but, as assessment of the cost of a case is left until the end of proceedings, the NILSC has no way of projecting the cost of each case in advance. As there is a significant volume of bills paid to solicitors and counsel in criminal proceedings, the 1992 Rules require a range of administrative systems and make accurate budget-forecasting difficult.
- 7.2 Intervention is necessary as the government needs to be satisfied that the remuneration arrangements for legal aid represent value for money for the taxpayer. With its unpredictable budget-forecasting and variety of administrative systems, the 1992 Rules are not capable of delivering this.
- 7.3 The Court Service is therefore replacing the 1992 Rules with the Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009. The 2009 Rules introduce a range of standard fees for remunerating solicitors and counsel engaged in legally-aided criminal defence work in the magistrates’ courts and County Court criminal appeals. Standard fees will be paid in accordance with the category of offence and the manner in which a case is disposed: for example, the standard fee payable for a guilty plea to a summary offence differs from the standard fee payable in a summary offence case which is disposed of by way of a contest.
- 7.4 By introducing standard fees – and replacing a system of payment involving retrospective assessment of the work done, with one where the amount payable is known in advance – the 2009 Rules will bring greater predictability to the cost of these cases, both for the lawyers involved and the public purse; provide greater control to budgetary forecasts on the overall

cost of providing such services; deliver value for money for the funds expended; reduce the complexity for both lawyers and the NILSC in administering legal aid and facilitate prompt payment to solicitors and counsel.

- 7.5 The aim of the 2009 Rules is not to reduce the overall sums payable out of the legal aid fund for criminal proceedings in the magistrates' court and criminal appeals to the County Court. Rather, the aim is to bring control, predictability and value for money to the legal aid budget. Standard fees have already been introduced in 2005 for legally aided defence representation in Crown Court proceedings.
- 7.6 The levels of fees in the 2009 Rules have been devised in accordance with the statutory 'value for money' test. The main body of the Rules deals with the manner in which costs are to be determined and paid. Schedule 1 to the Rules provides the standard fees payable for the carriage of most cases. Schedule 2 provides for hourly and daily rates in respect of very high cost cases. Provision is made for solicitors and counsel to appeal to the Taxing Master against decisions made in a particular case.

## **8. Consultation outcome**

- 8.1 There was extensive consultation with the professional bodies in the development of the 2009 Rules over a period of 18 months prior to the public consultation exercise. This was followed by a brief public consultation from mid-December 2008 to the end of January 2009 and a further round of engagement with the professional bodies. The consultation paper was published on the Court Service's website and, by arrangement, copies were distributed to members of the legal profession by the Law Society of Northern Ireland and the Bar Council of Northern Ireland. Copies were also sent to other interested parties (including local political parties and statutory bodies). A total of 20 formal responses were received.
- 8.2 There has been general opposition to the introduction of standard fees by the legal profession. Standard fees, it was argued, would not represent fair remuneration due to the increasing complexity and protracted nature of cases in the magistrates' courts and they would not reward the long hours and dedication that such cases require. One argument made was that the 1992 Rules provided remuneration for the number of hours worked on each case.
- 8.3 In the course of discussions with the legal profession, the Court Service clarified that the proposals had been developed on a broadly cost-neutral basis; and that the purpose of the standard fee scheme is not to reduce the amount of money payable from the legal aid fund, but rather to bring control, predictability and value for money to the budget.
- 8.4 To address some of the concerns raised by the legal profession, the Court Service amended its policy and draft Rules by extending the scope and range of fees available.
- 8.5 The response to this consultation will be published at the start of September 2009. The response paper will be available on the Court Service website at [www.courtsni.gov.uk](http://www.courtsni.gov.uk)

## **9. Guidance**

- 9.1 Guidance notes on the new remuneration system will be published on the Northern Ireland Legal Services Commission's website.

## **10. Impact**

- 10.1 An Impact Assessment has been prepared; and a copy, as signed by the Minister responsible, is attached.
- 10.2 The impact on solicitor firms and barristers is likely to be cost neutral, in terms of submitting bills to NILSC. Although precise figures are not yet available, it is anticipated that this reform will produce savings to 2 of the main affected groups, namely the legal profession and the NILSC as a result of the reduced administrative burden in a standard fee environment.
- 10.3 The Scottish standard fee system led to no significant difference in the income of generalist and non-specialist firms. Specialist firms did suffer an initial decline in income but this was short-lived and within 2 years of the standard fee regime being in place, specialist firms' incomes had risen to pre-standard fee payment level.
- 10.4 In Scotland, standard fees have had an impact on case trajectories with an increase in cases being concluded before going to trial.
- 10.5 Defendants are impacted by the proposals as lawyers will no longer be remunerated on the basis of time spent in the preparation of the defence.

## **11. Regulating small business**

- 11.1 The instrument does not apply to small business.

## **12. Monitoring and review**

- 12.1 The 2009 Rules include a provision requiring the levels of prescribed fees and the rates of payment to be formally reviewed every two years. However, it is intended that an initial review will be conducted one year after implementation to examine whether the Rules meets their policy objectives and to assess their effects.

## **13. Contact**

Paul Andrews at the Northern Ireland Court Service, tel: 028 9041 2218, email [paulandrews@courtsni.gov.uk](mailto:paulandrews@courtsni.gov.uk) or Padraig Cullen tel: 028 9041 2235, email [padraigcullen@courtsni.gov.uk](mailto:padraigcullen@courtsni.gov.uk), can answer any queries regarding these instruments.

## IMPACT ASSESSMENT

### Summary: Intervention & Options

**Department /Agency:**  
Northern Ireland Court  
Service

**Title:** Impact Assessment of introducing standard fees for remunerating solicitors and counsel engaged in publicly funded defence work in criminal proceedings in the magistrates' courts and for criminal appeals to the County Court in Northern Ireland.

**Stage:** Implementation

**Version:** 1

**Date:** 21 August 2009

**Related Publications:** Consultation Document on Remuneration of Defence Representation in Non Crown Court Proceedings

#### Available to view or download at:

<http://www.courtsni.gov.uk>

**Contact for enquiries:** Elizabeth Collins

**Telephone:** 02890 412914

#### What is the problem under consideration? Why is government intervention necessary?

At present remuneration for the legal representatives of defendants who have been granted criminal legal aid for proceedings in the magistrates' court, (and onward appeals to the County Court), is governed by the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992. Under the current Rules the legal representatives may submit their claim for payment in three different ways: time-based claims, composite fee claims or a mixture of time-based and composite fees. These claims are assessed at the conclusion of the criminal proceedings by the Northern Ireland Legal Services Commission, who are responsible for administering legal aid in Northern Ireland. As the Commission cannot know the cost of each case until its conclusion, this poses significant challenges for accurate budgetary forecasting and accurate assessment of the level of legal aid funding required by the Commission to pay the claims presented by the legal representatives. Government intervention is necessary to bring control and predictability to the funding required to meet the fees payable to members of the legal profession. Northern Ireland Legal Services Commission faces a significant funding deficit during this CSR period, the extent of which reinforces the need to maximise forecasting capacity in legal aid expenditure in high spend areas. In the most recent financial year, the fees paid to legal representatives for legally aided criminal proceedings in the magistrates' court and criminal appeals to the County Court accounted for over a 1/3 of the total legal fees paid in criminal legal aid (excluding interim payments).

### What are the policy objectives and the intended effects?

Government proposes to introduce a new system of remuneration by introducing standard fees for criminal proceedings in the magistrates' court and for criminal appeals to the County Court. The introduction of standard fees will bring enhanced predictability to per case spending both for the lawyers involved and the public purse; standard fees have already been introduced for defence representation in Crown Court proceedings. This will be achieved by the introduction of new remuneration Rules. Government – as set out in the Access to Justice (Northern Ireland) Order 2003 - must also be satisfied that the remuneration arrangements for legal aid deliver value for money for the taxpayer. The new rules introducing standard fees will apply to proceedings where legal aid is granted after the rules come into force; the existing rules will remain in place for proceedings where legal aid has already been granted. The new Rules will provide greater accuracy to budgetary forecasts on the overall cost of criminal defence costs in proceedings where the defendant has been granted legal aid, in addition to providing value for money for the funds expended. Standard fees will also reduce the complexity for both lawyers and the NI Legal Services Commission in administering legal aid and provide prompt payment to counsel and solicitors. The design of the new system seeks to complement other initiatives within the criminal justice system, such as tackling unnecessary delay.

### What policy options have been considered? Please justify any preferred option.

At this final phase of consultation, 2 options were considered, namely,

1. No intervention
2. To implement a remuneration system of standard fees based on 2 key features, the classification of the offence and the manner in which the case was disposed.

During the pre-consultation engagement with stakeholders, 3 options were considered. The significant period of pre-consultation and the post-consultation with key stakeholders has led to this final model of remuneration. The option of no intervention was ruled out at the early stages of the pre-consultation exercise on 2007. At that time the pressures on the legal aid budget were significant; since that time legal aid budgetary pressures have increased further with the result that the need for enhanced budgetary forecasting capacity has become more compelling. The preferred option of introducing a system of standard fees will assist in forecasting legal aid expenditure for defence representation in magistrates' court cases and County Court appeals. Standard fees, which are the central tenet of Option 2, will cap per case spending and enable the NILSC to better forecast and budget annual legal aid spend on magistrates' court cases and County Court appeals. Standard fees will also streamline the processing of legal aid claims resulting in quicker payment times.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Provisions in the 2009 Rules will require their operation to be reviewed every two years. However, an initial review will be conducted one year after implementation to examine whether the policy meets its objectives and assess its effects.

**Ministerial Sign-off** For Implementation Stage Impact Assessment:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

A handwritten signature in black ink that reads "Bridget Prentice". The signature is written in a cursive, flowing style.

Date: 28 August 2009

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description: Impact Assessment of introducing standard fees for remunerating solicitors and counsel engaged in publicly funded defence work in criminal proceedings in the magistrates' courts and for criminal appeals to the County Court in Northern Ireland.</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>The main affected groups are solicitors and barristers working on publicly funded non Crown Court proceedings, the defendants who have been granted criminal legal aid, the NI Legal Services Commission and the NI Court Service.</p> <p>As these fees have been developed on a broadly cost neutral basis, the annual cost to solicitors and barristers is considered to be nil as the Rules do not seek to reduce the overall fees paid for publicly funded non Crown Court proceedings. The standard fees will be reviewed one year after implementation and then biennially thereafter as part of the wider review of the operation of the 2009 Rules.</p> <p>There will be a one-off cost of £7,000 to the Court Service to purchase 2 PCs, to enable case workers in the Legal Services Commission to verify solicitor and counsel claims on the Court Service's ICOS computer system. There will also be on-going costs of £2,320 for broadband rental and associated service charges.</p> <p>A one off cost of £12,375 has also been incurred for requests for change to the Legal Services Commission's case management system to accommodate the new remuneration system.</p>
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ 19,375</b>	1	
	<b>Average Annual Cost (excluding one-off)</b>		
	<b>£ 2,320</b>	1+	
		<b>Total Cost (PV) £ 18,697</b>	
<p><b>Other key non-monetised costs by 'main affected groups'.</b></p> <p>Training and guidance on the operation of the new remuneration Rules for both the legal profession and the NI Legal Services Commission.</p>			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>Although precise figures are not yet available, it is anticipated that this reform will produce savings to 2 of the main affected groups, namely the legal profession and the Northern Ireland Legal Services Commission as a result of the reduced administrative burden in a standard fee environment.</p>
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ TBC</b>		



<b>Average Annual Benefit</b> (excluding one-off)	
<b>£ TBC</b>	<b>Total Benefit (PV) £ TBC</b>
<p><b>Other key non-monetised benefits by 'main affected groups.'</b>  The introduction of standard fees will simplify the process of submitting fee claims for legal aid. It will reduce the administrative time involved for solicitors and counsel submitting legal aid claims, and reduce the time required by NILSC to assess fee claims submitted by the legal profession. It is hoped that this will enable NILSC to pay bills quicker in due course. The new fees will also enable the NILSC to better forecast a significant portion of the legal aid budget.</p>	

### Key Assumptions/Sensitivities/Risks

The standard fees have been calculated on a broadly cost neutral basis based on a sample of bills assessed by Northern Ireland Legal Services Commission. If the sample proves to be unrepresentative of all legally aided criminal proceedings before the magistrates' court, or onward appeals to the County Court, then the cost to the legal aid fund may be higher or lower than anticipated. In addition if the profile of proceedings were to change from that suggested by the sample, for instance an increase in the number of defendants charged with more serious criminal offences, this would also increase the liabilities to the legal aid fund. The introduction of standard fees should improve control and predictability as the NILSC will be able to budget more effectively in the knowledge that each case (unless certified for Very High Cost Case status) will receive a set amount depending on the manner in which it is disposed. Standard fees should also improve the achievement of value for money as the fees will place a cap on per case spending.

In developing these fees on a cost neutral basis, the swings and roundabouts principle has been presumed: namely that in some cases solicitors and counsel will receive reduced payment from what they would have received previously, while in other cases they will receive increased payment. Standard fees may impact on the quality of representation provided to defendants. While standard fees should complement other priorities within the criminal justice system, such as the strategy to tackle delay, the conduct of the defence is only one element in the progress of cases. Recognition of the assumptions, sensitivities and risks reinforces the need for an effective post-implementation review. This review will examine the extent to which the new fees improve legal aid forecasting capabilities, whether administrative savings have been achieved, the impact on solicitors' firms and the impact on defendants in terms of the quality of representation they receive.

Price Base Year N/A	Time Period Years N/A	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate) £ N/A
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What is the geographic coverage of the policy/option?	Northern Ireland
On what date will the policy be implemented?	28 September 2009
Which organisation(s) will enforce the policy?	NILSC
What is the total annual cost of enforcement for these organisations?	£ 2,320 (running costs)
Does enforcement comply with Hampton principles?	Yes

Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	Not known			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	No	No

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>				
Increase of	£ N/A	Decrease of	£ N/A	<b>Net Impact</b>
				(Increase - Decrease) £ N/A

Key:

**Annual costs and benefits:  
Constant Prices**

**(Net) Present Value**

**Proposal** - the introduction of a reformed system of remuneration for defence representation in publicly funded non Crown Court proceedings.

**Purpose and intended effect of measure**

**Objective**

To introduce a reformed system of remuneration that facilitates better forecasting of expenditure and exerts an enhanced level of control over costs to obtain better value for money from funds allocated to legal aid.

**Option appraisal**

**Option 1 – Do Nothing**

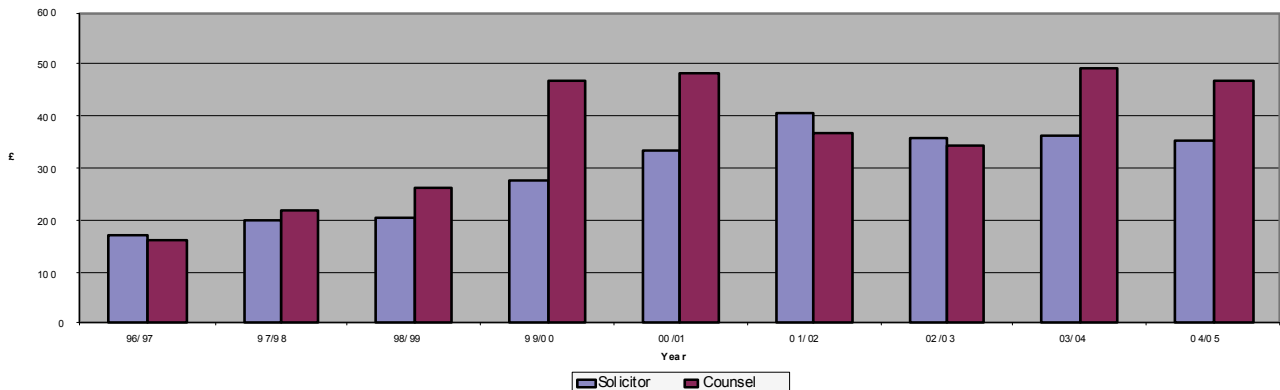
The Northern Ireland Legal Services Commission would continue to use the same remuneration rules and rates – as set out in the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992 ('the 1992 Rules') - in place.

**Benefits and Costs**

The main benefit of doing nothing is to leave in place a system with which the legal profession and Northern Ireland Legal Services Commission are familiar, the 1992 Rules. For solicitors, these Rules prescribe hourly rates for: advocacy; consultation with counsel; attendance at court; listening to audio tapes; letter writing and telephone calls; preparation; prison visits; transcribing tapes; video-link conferences; viewing video tapes and waiting. In addition to this time-based approach, the 1992 Rules also prescribe composite fees i.e. fixed fees that a solicitor can claim for work done in the magistrates' courts, County Court appeals and High Court bails. This allows solicitors the option to submit claims for cases in three different formats: time-based, composite or a mixture of time-based and composite. For counsel, the 1992 Rules prescribe hourly rates for the brief fee; consultation; advice; court attendance; written work and waiting.

However any system that leaves assessment of the cost of a case to the end of proceedings brings with it a large element of unpredictability and is difficult to budget accurately. This unpredictability can be seen from the following table which details the fluctuations in average case costs.

**Average fees paid to Solicitors and Counsel in Magistrates' Courts from 1996/97**



The year on year fluctuations in the average cost per case have severe implications for the ability of the NI Legal Services Commission to engage in accurate budgetary forecasting which in turn has implications for the public purse. Doing nothing would therefore not address the Government's objectives to bring control, predictability and value for money to the legal aid fund. Standard fees, by comparison, will enable all concerned (the Commission and lawyers alike) to accurately predict the cost of individual cases.

Furthermore, the 1992 Rules represent a time-consuming and administratively complicated system for both the legal professions and the NI Legal Services Commission. The NILSC currently employs 14 staff to assess legal aid claims submitted for magistrates' court cases and County Court appeals. Reducing the complexity of assessing legal aid claims will enable staff to be redeployed to other functions within the NILSC.

### **Option 2 – Preferred Option: Standard fees for all cases disposed of in the magistrates' court by category of offence and disposal type.**

Under this option, standard fees would be payable for all legally aided criminal cases disposed of in the magistrates' court and criminal appeals to the County Court by reference to the classification of the offence and the manner in which the case is disposed.

#### **Benefits and Costs**

This option will bring more control, predictability and value for money to the legal aid fund for magistrates' court cases and onward appeals. Unlike the 1992 Rules with its complex time-based, composite and mixed time-based/composite format, the 2009 Rules will provide standard fees payable by offence classification and disposal type. Provision has also been made to remunerate Very High Cost Cases. A separate fee is also available for the more complex youth cases which are disposed of in the Youth Court. Provision has been made to remunerate those cases ultimately disposed of in the Crown Court.

As legal aid is demand led, the purpose of introducing standard fees is not to reduce the overall amount of fees payable to solicitors and counsel in legal aid spend. Rather, it is intended that standard fees will place a cap on per case spending. Standard fees where both the legal profession and the NILSC know in advance the amount payable will afford greater budgetary predictability and cash flow forecasting.

The following sections provide estimates of the cost of introducing standard fees and also show how standard fees aid budgetary forecasting.

#### **Analysis of the new Rules on the Legal Aid Spend - Solicitors**

The December 2008 consultation document proposed that solicitor fees be structured around the following main disposal categories:

Summary guilty plea:	£290
Summary contest:	£490
Hybrid/ITS guilty plea:	£300
Hybrid/ITS contest:	£630
Committal proceeding:	£820

The fees proposed below in Table 1 are a refinement of the fees proposed in the December 2008 consultation document as a result of consultation with key stakeholders; the main difference is the introduction of a Guilty Plea 2 fee.

A Guilty Plea 2 fee was added to the fee structure – for solicitors and counsel – following consultation with the Law Society and Bar to recognise work done in preparing cases listed for contest but which are ultimately disposed of by way of a guilty plea.

Analysis was carried out to determine the impact on spend of implementing the new fixed fee system. The methodology employed was to take a random sample of 1037 solicitor bills paid under the 1992 Rules system and to recalculate what would have been paid to solicitors had these bills been paid under the 2009 Rules.

**Table 1**

Analysis of random sample of 1,037 Solicitor Bills from the NILSC. This represents a **4.64%** sample of the 22,353 solicitor bills paid from April 2008 to March 2009.<sup>1</sup>

<b>Case Disposal</b>	<b>Standard Fee Payable - 2009 Rules £</b>	<b>Number of Bills</b>	<b>Number of bills factored to 100%</b>	<b>% of total</b>	<b>Estimated paid - 2009 Rules : £</b>
Summary Guilty Plea	260	99	2134	9.5	554,840
Summary Guilty Plea 2	350	17	366	1.6	128,100
Summary Contest	470	98	2112	9.5	992,640
Hybrid / ITS Guilty Plea	275	322	6940	31.1	1,908,500
Hybrid / ITS Guilty Plea 2	440	100	2155	9.6	948,200
Hybrid/ ITS Contest	590	216	4655	20.8	2,746,552
Committal Proceeding	820	84	1810	8.1	1,484,200
Indictable Guilty plea	300	13	280	1.3	84,000
Indictable Guilty Plea 2	450	3	65	0.3	29,250
Indictable contest	600	15	323	1.4	193,800
Indictable Youth Guilty Plea	820	2	43	0.2	35260
Indictable Youth Contest	1000	2	43	0.2	43,103
Arrest required / transfer of solicitors	50% relevant fee	66	1422	6.4	198,362
<b>Total</b>					<b>9,346,807</b>

Standard fees will lead to the NILSC being in a position to more accurately forecast and budget how much money will be required per case. In circumstances where the NILSC are able to accurately forecast the annual volume of particular types of case – for example that there would be 2134 summary guilty pleas all receiving the £260 fee - standard fees would bring greater control and predictability to the legal aid fund. Standard fees would also place a cap on per case spending bringing enhanced value for money.

<sup>1</sup> Information provided by NILSC.

## Analysis of the new Rules on the Legal Aid Spend - Counsel

The December 2008 consultation document proposed that counsel fees be structured around the following main disposal categories:

Hybrid/ITS Guilty Plea:	£320
Hybrid/ITS Contest:	£510
Committal Proceeding:	£800

Unlike solicitors, there is no statutory provision for free legal aid to be granted for counsel acting for summary offences in a magistrates' court. Therefore no fees have been provided for counsel in such proceedings.

The fees proposed below in Table 2 are also a refinement of the fees in the consultation document of December 2008; the main difference is the introduction of a Guilty Plea 2 fee.

Analysis was carried out to determine the impact on spend of implementing the new fixed fee system. The methodology employed was to take a random sample of 247 counsel bills paid under the 1992 Rules system and to recalculate what would have been paid to counsel had these bills been paid under the 2009 Rules.

**Table 2**

**Analysis of random sample of 247 counsel bills from the NILSC.** This represents a 4.878% sample of the 5063 counsel bills paid from April 2008 to March 2009.<sup>2</sup>

Case Disposal	Standard Fee Payable - 2009 Rules £	Number of Bills	Number of bills factored to 100%	% of total	Estimated paid - 2009 Rules : £
Hybrid / ITS Guilty Plea	275	48	984	19	270,600
Hybrid / ITS Guilty Plea 2	415	60	1230	24	510,450
Hybrid/ ITS Contest	550	95	1948	38	1,071,400
Committal Proceeding	800	8	164	3	131,200
Indictable Guilty plea	300				
Indictable Guilty Plea 2	450	2	41	1	18,450
Indictable contest	600	1	21	0.4	12,600
Indictable Youth Guilty Plea	800	1	21	0.4	16,800
Indictable Youth Contest	1000	1	21	0.4	21,000
Bails	120	2	41	1	4,920
Arrest required / transfer of solicitors	50% relevant fee	4	82	2	11,275
<b>Total</b>					<b>2,068,695</b>

<sup>2</sup> Information provided by NILSC.

Standard fees will lead to the NILSC being in a position to more accurately forecast and budget how much money will be required per case. As above, in circumstances where the NILSC are able to accurately forecast the annual volume of particular types of case - for example that there will be 984 hybrid/ITS guilty pleas all receiving the £275 fee - standard fees would bring greater control and predictability to the legal aid fund. Standard fees would also place a cap on per case spending bringing enhanced value for money.

### **Sectors Impacted**

It is considered that the following sectors will be impacted as a result of the proposals:

- Defendants granted criminal legal aid;
- The Legal Profession;
- Northern Ireland Legal Services Commission.

Defendants are impacted by the proposals as lawyers will no longer be remunerated on the basis of the time spent in the preparation of the defence. Standard fees may be less attractive to practitioners with a low volume of criminal legal aid work; this may in turn reduce the level of choice of representative available to defendants. Indeed there is some evidence from Scotland, where a similar standard fee regime was in 1999, that standard fees led to an overall decline in the level of contact between lawyer and clients than under the previous time-and-line system. In addition, standard fees have had an impact on case trajectories with an increase in cases being concluded before going to trial.<sup>3</sup> These are matters that the Court Service will keep under close review.

Solicitor practices and barristers in Northern Ireland are affected by the proposals. Solicitors' practices in Northern Ireland are privately owned and historically the profile of firms has been to remain small. The introduction of standard fees may result in a change in the profile of firms conducting criminal legal aid work; for instance, firms may find that merger of small firms into larger practices is more viable in a standard fee environment. However, there is evidence from Scotland that legal firms can successfully adapt to a standard fee system. The Scottish standard fee system led to no significant difference in the income of generalist and non-specialist firms. Specialist firms did suffer an initial decline in income but this was short-lived and within 2 years of the standard fee regime being in place, specialist firms' incomes had risen to pre-standard fee payment level.<sup>4</sup>

Solicitor firms will benefit from a reduction in administration costs required to support claims for payment. Solicitors and counsel will also benefit from improved processing and payment times for legal aid claims lodged with the NILSC. It is also hoped that if solicitors and counsel know that a case will attract a standard fee – regardless of the length of the case – that will also act as an incentive towards efficiency.

The Northern Ireland Legal Services Commission will benefit from administrative savings as a result of the significant reduction in the number of cases requiring detailed assessment of time-based claims.

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<sup>3</sup> “Impact of the Introduction of Fixed Payments into Summary Criminal Legal Aid: Report of an Independent Study” – 2007. This report was commissioned by the Justice Department of the Scottish Executive.

<sup>4</sup> Ibid.

## **Small Firms Impact Test**

Initial consultation has taken place with the Enterprise Directorate of the Department for Business, Innovation and Skills who do not anticipate that these proposals will have a significant or disproportionate impact on business.

## **Legal Aid Impact Test**

The NILSC assumed responsibility for the administration of legal aid in Northern Ireland on 1 November 2003.

The implications of moving to a fixed fee structure in terms of both legal aid expenditure and resources have been assessed, in consultation with NILSC, as part of an overall Legal Aid Impact Test.

## **Competition Assessment**

As the reform proposals for barristers and solicitors will be applied equally it is not anticipated that it would have a negative impact upon competition generally.

The proposals are not considered to create a situation whereby newly created solicitors firms are disadvantaged as the fees would be the same for them as for more established firms. It would not lead to higher set up costs for new firms that existing firms do not have to meet. The introduction of standard fees will have no effect on the granting of legal aid by the court. With the introduction of these fees, the rules regarding payment for travelling have been changed. In summary, solicitors will no longer be paid for travel to their local court. The new Rules may have an impact on competition.

## **Evaluation**

Although the 2009 Rules require their operation to be reviewed every two years, an initial review will be conducted one year after implementation. This review will look at not only the level of the fees, but also how the new Rules are working with regard to the quality of service provided, the impact on the solicitors firms, administrative savings in the NILSC and whether standard fees improve legal aid forecasting capacity.

## **Public Consultation**

Copies of the consultation paper and draft rules were made available to the public and the legal professions in hard copy upon request or electronically on the Court Service website.

## **Summary and Recommendation**

The recommended option will facilitate the effective remuneration of defence representation in publicly funded non Crown Court proceedings, enabling the Northern Ireland Legal Services Commission to better forecast expenditure, deliver better value for money and bring an enhanced level of per case spending control. This will be achieved by implementing Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	Yes	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No



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