
DRAFT STATUTORY INSTRUMENTS

2003 No.

Access to Justice (Northern Ireland) Order 2003

PART II

NORTHERN IRELAND LEGAL SERVICES COMMISSION

Civil legal services

Costs of successful unassisted parties

19.—(1) This Article applies to proceedings—

- (a) to which an individual, for whom civil legal services relating to the proceedings, or to a part of the proceedings, are funded by the Commission, is a party, and
- (b) which are finally decided in favour of a party for whom such services are not so funded (“the unassisted party”).

(2) In any proceedings to which this Article applies the court by which the proceedings were so decided may, subject to paragraphs (3) and (4), make an order for the payment by the Commission to the unassisted party of the whole or any part of the costs incurred by him in the proceedings.

(3) Before making an order under this Article, the court shall consider what orders should be made for costs against the party for whom civil legal services relating to the proceedings, or to a part of the proceedings, are funded by the Commission and for determining his liability in respect of such costs.

(4) An order under this Article in respect of any costs may only be made if—

- (a) an order for costs would be made in the proceedings apart from this Order;
- (b) as respects the costs incurred in a court of first instance, those proceedings were instituted by the party for whom civil legal services relating to the proceedings, or to a part of the proceedings, are funded by the Commission and the court is satisfied that the unassisted party will suffer financial hardship unless the order is made; and
- (c) in any case, the court is satisfied that it is just and equitable in all the circumstances of the case that provision for the costs should be made out of public funds.

(5) Without prejudice to any other provision restricting appeals from any court, no appeal shall lie against an order under this Article, or against a refusal to make such an order, except on a point of law.

(6) In this Article “costs” means costs as between party and party, and includes the costs of applying for an order under this Article.

(7) For the purposes of this Article proceedings shall be treated as finally decided in favour of the unassisted party—

- (a) if no appeal lies against the decision in his favour,
- (b) if an appeal lies against the decision with leave, and the time limited for applications for leave expires without leave being granted, or

- (c) if leave to appeal against the decision is granted or is not required, and no appeal is brought within the time limited for appeal,

and where an appeal against the decision is brought out of time the court by which the appeal (or any further appeal in those proceedings) is determined may make an order for the repayment by the unassisted party to the Commission of the whole or any part of any sum previously paid to him under this Article in respect of those proceedings.

(8) Where a court decides any proceedings in favour of the unassisted party and an appeal lies (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under this Article forthwith, but if an order is made forthwith it shall not take effect—

- (a) where leave to appeal is required, unless the time limited for applications for leave to appeal expires without leave being granted;
- (b) where leave to appeal is granted or is not required, unless the time limited for appeal expires without an appeal being brought.

(9) Where a party begins to receive civil legal services after the proceedings have been instituted, or ceases to receive such services before they are finally decided, or otherwise receives such services in connection with part only of the proceedings, the reference in paragraph (2) to the costs incurred by the unassisted party in the proceedings shall be construed as a reference to so much of those costs as is attributable to that part.

- (10) For the purposes of this Article “court” includes a tribunal.