
STATUTORY INSTRUMENTS

2010 No. 60

The Criminal Procedure Rules 2010

PART 76

COSTS

SECTION 4: OTHER COSTS ORDERS

Costs against a legal representative

76.9.—(1) This rule applies where—

- (a) a party has incurred costs—
 - (i) as a result of an improper, unreasonable or negligent act or omission by a legal or other representative or representative’s employee, or
 - (ii) which it has become unreasonable for that party to have to pay because of such an act or omission occurring after those costs were incurred; and
- (b) the court can—
 - (i) order the representative responsible to pay such costs, or
 - (ii) prohibit the payment of costs to that representative.
- (2) In this rule, costs include costs funded by the Legal Services Commission.
- (3) The court may make an order—
 - (a) on application by the party who incurred such costs; or
 - (b) on its own initiative.
- (4) A party who wants the court to make an order must—
 - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar),
 - (ii) the representative responsible,
 - (iii) each other party, and
 - (iv) any other person directly affected;
 - (c) in that application specify—
 - (i) the representative responsible,
 - (ii) the relevant act or omission,
 - (iii) the reasons why that act or omission meets the criteria for making an order,
 - (iv) the amount claimed, and
 - (v) those on whom the application has been served.

- (5) Where the court considers making an order on its own initiative, it must—
- (a) identify the representative against whom it proposes making that order; and
 - (b) specify—
 - (i) the relevant act or omission,
 - (ii) the reasons why that act or omission meets the criteria for making an order, and
 - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A representative who wants to oppose an order must—
- (a) make representations as soon as practicable; and
 - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order—
- (a) the general rule is that it will do so without waiting until the end of the case, but it may postpone making the order; and
 - (b) it must assess the amount itself.
- (8) Instead of making an order, the court may make adverse observations about the representative’s conduct for use in an assessment where—
- (a) a party’s costs are—
 - (i) funded by the Legal Services Commission, or
 - (ii) to be paid out of central funds; or
 - (b) there is to be an assessment under rule 76.11.

[Note. See—

- (a) rule 76.2;
- (b) section 19A of the Prosecution of Offences Act 1985(1);
- (c) article 17 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(2); and
- (d) article 27 of The Criminal Defence Service (Funding) Order 2007(3).

The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.

Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against a costs order to which this rule applies.]

Costs against a third party

- 76.10.**—(1) This rule applies where—
- (a) there has been serious misconduct by a person who is not a party; and
 - (b) the court can order that person to pay a party’s costs.
- (2) In this rule, costs include costs funded by the Legal Services Commission.
- (3) The court may make an order—
- (a) on application by the party who incurred the costs; or
 - (b) on its own initiative.

(1) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(2) S.I. 2008/1863.

(3) S.I. 2007/1174; article 27 was amended by articles 6 and 22 of The Criminal Defence Service (Funding) (Amendment) Order S.I. 2007/3552 except in relation to proceedings classified as “Very High Cost” cases.

- (4) A party who wants the court to make an order must—
 - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar),
 - (ii) the person responsible,
 - (iii) each other party, and
 - (iv) any other person directly affected;
 - (c) in that application specify—
 - (i) the person responsible,
 - (ii) the relevant misconduct,
 - (iii) the reasons why the criteria for making an order are met,
 - (iv) the amount claimed, and
 - (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
 - (a) identify the person against whom it proposes making that order; and
 - (b) specify—
 - (i) the relevant misconduct,
 - (ii) the reasons why the criteria for making an order are met, and
 - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A person who wants to oppose an order must—
 - (a) make representations as soon as practicable; and
 - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order—
 - (a) the general rule is that it will do so at the end of the case, but it may do so earlier; and
 - (b) it must assess the amount itself.

[Note. See—

- (a) rule 76.2;
- (b) section 19B of the Prosecution of Offences Act 1985 and regulation 3F of The Costs in Criminal Cases (General) Regulations 1986; and
- (c) article 18 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008.

The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.

Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against a costs order to which this rule applies.]