STATUTORY RULES OF NORTHERN IRELAND

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*
To be laid before Parliament	
Coming into operation	*30th September 2009*

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(**1**), and now vested in the Lord Chancellor(**2**).

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(**3**);

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

(**1**) S.I. 1981/228 (N.I. 8)
(**2**) S.I. 1982/159
(**3**) S.I. 2003/435 (N.I. 10)

"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(**4**);

"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;

"the 1998 Order" means the Criminal Justice (Children) (Northern Ireland) Order 1998(**5**);

"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(**6**).

(**4**) 1978 c. 23
(**5**) S.I. 1998/1504 (N.I. 9)
(**6**) 2003 c. 41

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.

(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: