STATUTORY RULES OF NORTHERN IRELAND

2009 No. 267

LEGAL AID AND ADVICE

The Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2009

Made - - - -	*9th July 2009*
To be laid before Parliament	
Coming into operation	*28th September 2009*

The Lord Chancellor makes the following Rules in exercise of the powers conferred by Article 36(3) of Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**1**), and now vested in him(**2**).

In accordance with Article 36(3) of that Order, the Lord Chancellor has consulted with the Lord Chief Justice and the Attorney General and he 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, commencement and application

1. These Rules may be cited as the Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2009 and shall come into operation on 28th September 2009.

2. In these Rules a reference to a rule or Schedule by number alone is a reference to the rule or Schedule so numbered in or to the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005(**3**).

3.—(1) Subject to paragraph (2), these Rules apply to cases in which the Commission grants a Very High Cost Case Certificate under rule 16A, or the taxing master grants such a certificate under rule 16C, on or after 28th September 2009.

(2) Rule 9 of these Rules applies to all cases in which the Commission (or the taxing master, as applicable) has granted a Very High Cost Case Certificate whether before or after the commencement of these Rules, except those in which a determination has been made under rule 17 before 20th July 2009.

(**1**) S.I. 1981/228 (N.I. 8)
(**2**) S.I. 1982/159
(**3**) S.R. 2005 No. 112

4. Subject to rule 3(2) of these Rules, the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 continue to apply as if these Rules had not been made in respect of cases in which the Commission grants a Very High Cost Case Certificate before 28th September 2009.

Amendments to the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005

5. The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 are amended as follows.

6. In rule 2—

(a) for the definition of 'a Very High Cost Case', substitute—

> ""a Very High Cost Case" is a case in respect of which a Very High Cost Case Certificate has been granted, either by the Commission under rule 16A or the taxing master under rule 16C, or which went to trial where the trial exceeded 25 days;"

(b) for the definition of 'a Very High Cost Case Certificate', substitute—

> ""a Very High Cost Case Certificate" has the meaning given by rules 16 to 16C.".

7. For rule 16, substitute—

"**16.**—(1) Where a representative of an assisted person considers—

(a) that a case is likely to proceed to trial, and

(b) that owing to the circumstances of the case, if it proceeds to trial, that trial would be likely to exceed 25 days,

he may apply to the Commission for a Very High Cost Case Certificate.

(2) An application under paragraph (1) may be made by a representative on his own behalf or on behalf of himself and another representative of the assisted person.

(3) Subject to paragraph (4) and to rule 19, an application under paragraph (1) shall be made within 14 days after the assisted person has been committed for trial, and 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) Where there has been a change in the assisted person's representatives after the period stipulated in paragraph (3), subject to rule 19, an application by the new representative under paragraph (1) shall be made within 14 days of the transfer of the criminal aid certificate to the new solicitor or the instruction of the new advocate, as applicable.

16A.—(1) The Commission may grant an application for a Very High Cost Case Certificate only if it is satisfied that both of the grounds referred to in rule 16(1) are met.

(2) Subject to paragraph (1), the Commission shall grant a Very High Cost Case Certificate to each representative on whose behalf the application was made.

(3) If it is not satisfied that both of the grounds referred to in rule 16(1) are met, the Commission shall refuse the application or, if it considers it appropriate to do so, it may defer its decision on the application.

(4) The Commission shall communicate its decision made under this rule, together with its reasons for refusing the application or deferring its decision, as applicable, in writing to the representative (or each representative, as applicable).

16B.—(1) Where the Commission certifies a case as being a Very High Cost Case, it shall require the representative (or each representative, as applicable)—

(a) to record contemporaneously the number of hours he 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;

(b) to maintain such records in a permanently accessible format; and

(c) to 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.

(2) The periodic reports provided to the Commission under paragraph (1)(c) shall, if so directed by the Commission, include copies of the records maintained by the representative under paragraph (1)(b).

(3) If a representative fails to comply with paragraph (1) without good reason, the Commission may revoke the Certificate granted to that representative, provided that the Certificate shall not be revoked unless the representative has been permitted a reasonable opportunity to show cause orally or in writing why the Certificate should not be revoked.

(4) Where a Very High Cost Case Certificate granted to a representative has been revoked under paragraph (3), that representative's fees shall be determined under rule 8 or 11, as appropriate, as if the Certificate had never been granted unless the actual duration of the trial exceeded 25 days.

16C.—(1) A representative may appeal to the taxing master against a decision made by the Commission under rule 16A or 16B and, subject to rule 19, such an appeal shall be instituted within 21 days of receiving notification of the decision by giving notice in writing to the taxing master.

(2) The provisions of rule 14(3) to (13) shall apply with the necessary modifications to an appeal brought under paragraph (1).

(3) The decision of the taxing master on an appeal under paragraph (2) shall be final.".

8. For rule 17, substitute—

"**Very High Cost Cases – Determination of representatives' fees**

17.—(1) This rule applies to the determination of costs—

(a) where the costs are claimed by a representative to whom a Very High Cost Case Certificate has been granted under either rule 16A or 16C, and that certificate has not been revoked under rule 16B; or

(b) in any other case which went to trial where the trial exceeded 25 days.

(2) Cost payable under this rule shall be assessed and determined by the taxing master in accordance with this rule and having regard to such directions and guidance as may be issued by the Lord Chancellor.

(3) When determining the costs payable to a representative under paragraph (2), the taxing master shall—

(a) assess the fees based only on the hours recorded in the contemporaneous records maintained by the representative; 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.

(4) The taxing master may consult the trial judge or the Commission and may require the representative to provide any further information which he requires for the purpose of the determination under paragraph (3).

(5) The provisions of rules 4, 7, 8(1), 9, 10, 11(1) and 12 shall apply with the necessary modifications to the costs payable under this rule.".

9. After rule 17, insert—

"**Very High Cost Cases – Review by the taxing master**

17A.—(1) Where, under rule 17, the taxing master has determined the costs in a lesser amount than that claimed by the representative, the representative may apply to the master to review his decision.

(2) Subject to rule 19, the application shall be made, within 21 days of receiving notification of the costs payable under rule 12(1), by giving notice in writing to the taxing master specifying the matters in respect of which the application is made and the grounds of objection and shall be made in such form and manner as the master may direct.

(3) The notice of application shall state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the taxing master shall notify the applicant of the time at which he is prepared to hear the applicant or his representative.

(4) 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 application together with copies of such other documents as the Lord Chancellor may require.

(5) With a view to ensuring that the public interest is taken into account, the Lord Chancellor may arrange for written or oral representations to be made on his behalf and, if he intends to do so, he shall inform the taxing master and the applicant.

(6) Any written representations made on behalf of the Lord Chancellor under paragraph (5) shall be sent to the taxing master and the applicant and, in the case of oral representations, the taxing master and the applicant shall be informed of the grounds on which such representations will be made.

(7) The applicant shall be permitted a reasonable opportunity to make representations in reply.

(8) The taxing master may consult the trial judge or the Commission and may require the applicant to provide any further information which he requires for the purpose of the review and, unless the taxing master otherwise directs, no further evidence shall be received on the hearing of the review and no ground of objection shall be valid which was not raised in the notice of application given under paragraph (2).

(9) The taxing master shall review his decision under rule 17 and may confirm it or vary it and certify the costs in any greater or lesser amount as he thinks fit.

(10) The taxing master shall communicate his decision and the reasons for it in writing to the applicant, the Lord Chancellor and the Commission.

Very High Cost Cases – Appeals to the High Court

17B.—(1) A representative who is dissatisfied with the decision of the taxing master on a review under rule 17A may, with the leave of the court, appeal to the High Court against that decision and the Lord Chancellor shall be a respondent to such an appeal.

(2) Subject to rule 19, an application for leave under paragraph (1) shall be made within 21 days of receiving notification of the taxing master's decision under rule 17A(10).

(3) Subject to rule 19, an appeal under this rule shall be instituted within 21 days of leave being granted under paragraph (1).

(4) Where the Lord Chancellor is dissatisfied with the decision of the taxing master on a review under rule 17A, he may, if no appeal has been made by the representative under paragraph (3), appeal to the High Court against that decision, and the representative shall be a respondent to the appeal.

(5) Subject to rule 19, an appeal under paragraph (4) shall be instituted within 21 days of receiving notification of the taxing master's decision under rule 17A(10).

(6) The decision of the High Court on an appeal under paragraphs (3) or (5) shall be final.

(7) The judge shall have the same powers as the taxing master under rules 17 and 17A, and may reverse, affirm or amend the decision appealed against or make such other order as he thinks fit.".

10. For Schedule 2, substitute the Schedule to these Rules.

Signed by authority of the Lord Chancellor

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

Dated 9th July 2009

We approve

Tony Cunningham
Frank Roy
Two of the Lords Commissioners
of Her Majesty's Treasury

Dated 14th July 2009