STATUTORY RULES OF NORTHERN IRELAND

2005 No. 112

LEGAL AID AND ADVICE

The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005

Made - - - -	*9th March 2005*
To be laid before Parliament	
Coming into operation	*4th April 2005*

The Lord Chancellor, 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 him(**2**), and of all other powers enabling him in that behalf, after consultation with the Lord Chief Justice, the Attorney General and the Crown Court Rules Committee and with the approval of the Treasury, and having had regard to the matters specified in Article 37, hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 and shall come into operation on 4th April 2005.

Interpretation

2. In these Rules, unless the context otherwise requires –

"advocate" means –

(a) counsel, or

(b) a solicitor who is exercising his right of audience under section 50 of the Judicature (Northern Ireland) Act 1978(**3**), and who has been certified by the Law Society as an Advanced Advocate, or

(c) a solicitor who is exercising his right of audience under section 50 of the Judicature (Northern Ireland) Act 1978, and who has not been certified by the Law Society as an Advanced Advocate;

"Application Fee" has the meaning given by paragraphs 12(2), 13(3), 14(2) and 16 of Schedule 1;

(**1**) S.I. 1981/228 (N.I. 8)
(**2**) S.I. 1982/159
(**3**) 1978 c. 23

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

"case" means proceedings in the Crown Court against one assisted person –

(a) on one or more counts of a single indictment; or

(b) arising out of a single alleged breach of an order of the Crown Court,

and a case falling within paragraph (b) shall be treated as a separate case from the proceedings in which the order was made;

"Certificate of Exceptionality" in respect of a solicitor has the meaning given by rule 8(4) to (14), and in respect of an advocate has the meaning given by rule 11(4) to (8);

"Class of Offence" has the meaning given by paragraphs 4 and 5 of Schedule 1;

"the Commission" means the Northern Ireland Legal Services Commission established under Article 3 of the Access to Justice (Northern Ireland) Order 2003(**4**);

"costs" means, in the case of a solicitor, the fees and disbursements payable under Article 36 of the Order and, in the case of an advocate, the fees payable under that Article;

"counsel" means counsel assigned under a criminal aid certificate granted under Article 29 of the Order, or counsel who undertook the defence of a person at the request of the judge under Article 36(2) of the Order;

"the Court Service" means the Northern Ireland Court Service established under section 69 of the Judicature (Northern Ireland) Act 1978;

"disbursements" means travelling and witness expenses and other out of pocket expenses incurred by a solicitor in giving legal aid;

"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 29, or deemed to have been granted under Article 36(2), of the Order;

"main hearing" means –

(a) in relation to a case which goes to trial, the trial,

(b) in relation to a Guilty Plea 2 case, the hearing at which pleas are taken or, where there is more than one such hearing, the last such hearing, and

(c) in relation to any proceedings specified in paragraph 2 of Schedule 1, the final hearing;

"Newton hearing" means a hearing at which evidence is heard for the purpose of determining the sentence of a convicted person in accordance with the principles of R v Newton (1982) 77 Cr App R 13;

"the Order" means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**5**);

"Refresher Fee" in respect of a solicitor has the meaning given by rule 8(3), and in respect of an advocate has the meaning given by rule 11(3);

"representative" means a solicitor or an advocate;

"the 1992 Rules" means the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992(**6**);

(**4**) S.I. 2003/435 (N.I. 10)
(**5**) S.I. 1981/228 (N.I. 8)
(**6**) S.R. 1992 No. 314; to which the most recent relevant amendment was made by S.R. 2004 No. 510

"solicitor" means a solicitor assigned under a criminal aid certificate granted under Article 29 of the Order, or a solicitor who undertook the defence of a person at the request of the judge under Article 36(2) of the Order;

"Table of Offences" has the meaning given by paragraphs 4 and 5 of Schedule 1;

"taxing master" means the Master (Taxing Office);

"a Very High Cost Case" is a case in respect of which a Very High Cost Case Certificate has been granted under rule 16 or which went to trial where the trial exceeded 25 days;

"a Very High Cost Case Certificate" has the meaning given by rule 16.

Application and transitional arrangements

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 29, or deemed to have been granted under Article 36(2), of the Order on or after 4th April 2005.

(2) A representative whose fees under a criminal aid certificate granted under Article 29, or deemed to have been granted under Article 36(2), of the Order before 4th April 2005 would otherwise be determined in accordance with the 1992 Rules may apply to the Commission to have his fees determined and paid in accordance with these Rules.

(3) Where the Commission grants an application made under paragraph (2), the representative shall submit his claim in accordance with rule 7 or rule 10 as applicable and, in so doing, he shall forfeit any entitlement to have his fees determined and paid in accordance with the 1992 Rules.

General

4.—(1) Subject to rules 16 and 17, 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, 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.

Interim payment of disbursements

5.—(1) A solicitor may submit a claim to the Commission for payment of a disbursement for which he has incurred liability in criminal proceedings in the Crown Court in accordance with the provisions of this rule.

(2) A claim for payment may be made where –

(a) the disbursement falls within any guidance issued by the Commission in respect of criminal proceedings in the Crown Court, or the solicitor has obtained prior authority from the Commission to incur the expenditure;

(b) the total liability for such disbursement exceeds £500; and

(c) the solicitor has discharged such liability.

(3) Without prejudice to rule 9(4), a claim under paragraph (1) shall not exceed £2,500 or the maximum fee authorised under the prior authority, whichever is the greater.

(4) A claim for payment under paragraph (1) may be made at any time before the solicitor submits a claim for costs under rule 7(2).

(5) A claim under paragraph (1) shall be submitted to the Commission in such form and manner as it may direct and shall be accompanied by the authority to incur the expenditure (if applicable) and any invoices or other documents in support of the claim.

(6) The Commission shall allow the disbursement, subject to the limit in paragraph (3), if it appears to have been reasonably incurred and discharged in accordance with the guidance or prior authority.

(7) Where the Commission allows the disbursement, it shall notify the solicitor and authorise payment to him accordingly.

(8) Rules 13 to 15 (redetermination etc.) shall not apply to a payment under this rule.

Interim disbursements and final determination of costs

6.—(1) On a final determination of costs, rules 7(2) and (3)(e) and 9 shall apply notwithstanding that a payment has been made under rule 5.

(2) Where the amount found to be due under rule 9 in respect of a disbursement is less than the amount paid under rule 5 ("the interim disbursement"), the Commission shall deduct the difference from the sum otherwise payable to the solicitor on the determination of costs, and where the amount due under rule 9 exceeds the interim disbursement, the Commission shall add the difference to the amount otherwise payable to the solicitor.

Claims for costs by solicitors

7.—(1) Subject to rule 19, no claim by a solicitor for costs in respect of work done under a criminal aid certificate shall be entertained unless he submits it within three months of the conclusion of the proceedings to which the criminal aid certificate relates or within three months of his receipt of a copy of the certificate, whichever is the later.

(2) Subject to paragraph (3), 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.

(3) A claim 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 rule 8(3);

(b) state 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;

(c) specify, where appropriate, the fee-earner who undertook each of the items of work claimed;

(d) give particulars of any work done in relation to more than one indictment or a retrial; and

(e) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.

(4) Where a solicitor claims that rule 8(4) should be applied in relation to an item of work, he shall give full particulars in support of his claim.

(5) Where there are any special circumstances which should be drawn to the attention of the Commission, the solicitor shall specify them.

(6) The solicitor shall supply such further particulars, information and documents as the Commission may require.

Determination of solicitors' fees

8.—(1) The Commission shall consider the claim, any further particulars, information or documents submitted by the solicitor under rule 7 and any other relevant information and shall allow such work as appears to it to have been reasonably undertaken and properly done.

(2) Subject to the provisions of this rule, the Commission shall allow fees for work allowed by it under this rule in accordance with Schedule 1.

(3) The Commission may, except in relation to work for which a Guilty Plea 1 Fee is payable or a fixed fee is allowed under paragraph (15), allow any of the following classes of fee to the solicitor in respect of work allowed by it under this rule –

(a) a Basic Trial Fee or Guilty Plea 2 Fee, as applicable, for preparation and, where appropriate, the first day's hearing including, where they took place on that day, short consultations, applications and appearances (including bail applications), views and any other preparation;

(b) a Refresher Fee for any day or part of a day during which a hearing continued, including, where they took place on that day, short consultations, applications and appearances (including bail applications), views and any other preparation;

(c) subsidiary fees for attendance at applications and appearances (including bail applications and adjournments for sentence) not covered by sub-paragraph (a) or (b).

(4) Where a solicitor considers that, owing to the exceptional circumstances of the case (or part of the case which is the subject-matter of the application), the amount payable by way of fees in accordance with paragraphs (2) and (3) would not provide reasonable remuneration for some or all of the work involved, he may apply to the Commission for a Certificate of Exceptionality and the Commission may, in its discretion, grant such application in accordance with paragraph (7).

(5) An application under paragraph (4) shall be made by the solicitor prior to the commencement of the trial; provided that, if satisfied that it was not reasonably practicable for the solicitor to do so, the Commission may accept such application after the conclusion of the proceedings.

(6) When applying for a Certificate of Exceptionality under paragraph (4), the solicitor shall specify –

(a) the basis upon which the application is made;

(b) the nature of the work which is the subject-matter of the application; and

(c) the number of additional hours sought for each piece of work which is the subject-matter of the application.

(7) When considering an application for a Certificate of Exceptionality, the Commission shall have regard, among the matters which are relevant, to –

(a) whether the issues involved are significantly more complex than other cases involving the same offence or Class of Offence;

(b) whether the volume of evidence (including any un-used evidentiary material) is significantly greater than that in other cases involving the same offence or Class of Offence;

(c) any novel issues of law which are involved in the case; and

(d) any new precedents established in the case,

and if it decides that there are no such exceptional circumstances, the standard fee provided for in Schedule 1 shall apply and no additional funding or other uplift shall be payable.

(8) Where the Commission grants a Certificate of Exceptionality, it shall authorise additional hours, at the rate specified in paragraph (14), up to a specified maximum to cover such additional work as it will approve under the Certificate.