1992 No. 314

LEGAL AID, ADVICE AND ASSISTANCE

The Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992

Made . . . . . *10th July 1992*
Coming into operation . . *1st January 1993*
To be laid before Parliament

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The Lord Chancellor, in exercise of the powers conferred by Article 36(3) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**a**)

(**a**) S.I. 1981/228 (N.I. 8)

and now vested in him(**a**) and of all other powers enabling him in that behalf, after consultation with the Lord Chief Justice, the Attorney-General, the Crown Court Rules Committee, the County Court Rules Committee and the Magistrates' Courts Rules Committee and with the approval of the Treasury, and having had regard to the principle of allowing fair remuneration according to the work reasonably undertaken and properly done, hereby makes the following Rules:—

Citation, commencement, revocations and transitional provisions

1.—(1) These Rules may be cited as the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992 and shall come into operation on 1st January 1993.

(2) Subject to paragraph (3), the instruments listed in Schedule 4 shall be revoked to the extent shown in that Schedule.

(3) These Rules shall apply for the determination of costs which are payable in respect of work done on or after 1st January 1993 and costs payable in respect of work done before that date shall be determined by the appropriate authority as if these Rules had not been made.

Interpretation

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

"appropriate authority" has the meaning assigned by rule 3;

"costs" means, in the case of a solicitor, the fees and disbursements payable under Article 36(1) or (2) of the Order and, in the case of counsel, the fees payable under that Article;

"counsel" means counsel assigned under a criminal aid certificate;

"disbursements" means travelling and witness expenses and other out of pocket expenses incurred by a fee-earner 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;

"High Court bail application" means a bail application made to a judge of the High Court or the Court of Appeal pursuant to section 3(2)(*a*) of the Northern Ireland (Emergency Provisions) Act 1991(**b**);

"legal aid" means legal aid given under a criminal aid certificate;

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

"scheduled offence" means an offence specified in Schedule 1 to the Northern Ireland (Emergency Provisions) Act 1991;

"solicitor" means a solicitor assigned under a criminal aid certificate;

"trial judge" means the judge, resident magistrate or other justice of the peace who presided at the hearing at which the defendant was substantively dealt with and in respect of which the costs are payable;

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

(**a**) S.I. 1982/159
(**b**) 1991 c. 24

The appropriate authority

3.—(1) Subject to paragraph (3), the appropriate authority shall be a committee of three persons selected from a panel appointed by the Lord Chancellor.

(2) The panel shall comprise—

(*a*) such number of barristers,

(*b*) such number of solicitors, and

(*c*) such number of other persons,

as the Lord Chancellor may from time to time determine.

(3) A committee shall consist of one barrister, one solicitor and one other person selected by the Secretary of the Law Society from each of the categories mentioned in paragraph (2).

Provided that where one of the persons selected for a committee in accordance with this paragraph is not available the committee may consist of the two other persons selected and those other persons may discharge the business before the committee where they are in agreement, but in the absence of agreement the matter in question shall be referred to a committee of three persons.

(4) The members of the panel shall serve for such period and subject to such conditions as the Lord Chancellor may determine.

(5) There may be paid to the members of a committee such fees or other allowances as the Lord Chancellor may, with the approval of the Treasury, determine.

General

4.—(1) Costs in respect of work done under a criminal aid certificate shall be determined by the appropriate authority in accordance with these Rules and having regard to such directions as may be issued by the Lord Chancellor.

(2) Representation or advice given in proceedings in a magistrates' court before the granting of a criminal aid certificate may be deemed to be work done under that certificate for the purposes of these Rules, if the appropriate authority is satisfied that—

(*a*) there was no undue delay in making the application for a criminal aid certificate; and

(*b*) the representation or advice was given by the solicitor who was subsequently assigned under the criminal aid certificate.

(3) In determining costs the appropriate authority 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 fair remuneration according to the work reasonably underaken and properly done.

Claims for costs by solicitors

5.—(1) Subject to rule 16, 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 the criminal aid certificate relates.

(2) Subject to paragraph (3), a claim for costs shall be submitted to the appropriate authority in such form and manner as the Lord Chancellor may direct and shall be accompanied by the criminal aid certificate and any receipts or other documents in support of any disbursements claimed.

(3) A claim shall—

(*a*) summarise the items of work done by a fee-earner in respect of which fees are claimed according to the classes specified in rule 6(1) or in paragraph 4(2) of Schedule 1 Part II;

(*b*) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person;

(*c*) in the case of Crown Court proceedings, High Court bail applications and appeals to the county court, 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;

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

(4) Where the solicitor claims that—

(*a*) representation or advice given before the granting of the criminal aid certificate should be deemed to be work done under that certificate, or

(*b*) paragraph 3 of Schedule 1 Part I 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 appropriate authority, the solicitor shall specify them.

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

Determination of solicitors' fees

6.—(1) Subject to paragraph (5), the appropriate authority may allow work done by fee-earners in the following classes—

(*a*) preparation, including taking instructions, interviewing witnesses, ascertaining the prosecution case, advising on plea and mode of trial, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing counsel and expert witnesses, conferences, consultations, views and work done in connection with advice on appeal or case stated;

(*b*) advocacy, including applications for bail and other applications to the court;

(*c*) attendance at court where counsel is assigned, including conferences with counsel at court;

(*d*) travelling and waiting;

(*e*) dealing with routine letters written and routine telephone calls.

(2) The appropriate authority shall consider the claim, any further particulars, information or documents submitted by the solicitor under rule 5 and any other relevant information and shall allow—

(*a*) such work as appears to it to have been reasonably undertaken and properly done under the criminal aid certificate (including any representation or advice which is deemed to be work done under that certificate) by a fee-earner, classifying such work according to the classes specified in paragraph (1) as it considers appropriate; and

(*b*) such time in respect of each class of work allowed by it (other than dealing with routine letters written and routine telephone calls) as it considers reasonable;

and, in any proceedings which are specified in paragraph 1(2) of Schedule 1 Part II, the appropriate authority shall proceed in accordance with the provisions of paragraph 3 of that Part of that Schedule.

(3) Subject to paragraphs (2) and (4), the appropriate authority shall allow fees for work allowed by it under this rule in accordance with Schedule 1 Part I; provided that, where any work allowed was done after 30th June 1993, it may allow such fees as appear to it to be fair remuneration for such work having regard to the rates specified in that Part of Schedule 1.

(4) In the case of Crown Court proceedings, High Court bail applications and appeals to the county court, the fees allowed in accordance with Part I of Schedule 1 shall be those appropriate to such of the following grades of fee-earner as the appropriate authority considers reasonable—

(*a*) senior solicitor,

(*b*) solicitor or fee-earner of equivalent experience,

(*c*) an apprentice, or a pupil to a solicitor, or fee-earner of equivalent experience.

(5) This rule applies to work in respect of which standard fees are payable under Part II of Schedule 1 only to the extent that that Part specificially so provides.

Provided that the standard fees payable for the classes of work specified in sub-paragraph 4(2)(*b*)-(*d*) of Schedule 1 Part II shall be those appropriate to such of the grades of fee-earner specified in paragraph (4) of this rule as the appropriate authority considers reasonable.

Determination of solicitors' disbursements

7.—(1) Subject to the provisions of this rule, the appropriate authority shall allow such disbursements claimed under rule 5 as appear to it to have been actually and reasonably incurred; provided that if they are abnormally large by reason of the distance of the court or the assisted person's residence or both from the solicitor's place of business, reimbursement of the expenses may be limited to what would otherwise, having regard to all the circumstances, be a reasonable amount.