

The NTT Guide 2014.

A Guide to the work of the National Taxing Team of the  
Legal Aid Agency.

# Introduction

In this guide we have sets out material which will be of use to legal practitioners involved in recovering discretionary legal aid costs and costs out of central funds relating to criminal proceedings. It does not seek to replace the rules set out in the Criminal Procedure Rules and Practice Direction (Criminal Costs), but gives practical information and guidance for dealing with this area of law.

At the National Taxing Team we are committed to providing an excellent service for our customers. We aim to process claims as efficiently as possible and deal with enquiries promptly.

Our focus will be to improve service to our customers and to provide support to partners within the courts  
The NTT Consistency Group holds regular meetings to ensure that a consistent approach is maintained in our handling of your claims.

Beverley Willstrop

National Taxing Director

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# 1. Advocates

## 1.1 Costs out of central funds

Where the proceedings are commenced **on or after 1st October 2012** the amount of legal costs which can be recovered by the applicant under a defendants costs order will be capped in accordance with the guidance set out in section 2. In particular where legal costs can be included in a defendants costs order (i.e. in proceedings relating to an individual, in a magistrates court or an appeal from the magistrates court to the Crown Court, or in the Crown Court where an application for legal aid has been refused on financial grounds on or after 27<sup>th</sup> January 2014) fees relating to work done by an advocate will be restricted to legal aid rates.

Where an advocate is instructed by a litigator on a private basis for the defence in proceedings commenced **prior to 1st October 2012**, or for a private prosecutor or as a Court Appointee, the assessment of the amount to be allowed to the applicant in respect of advocates' fees in claims for costs out of central funds will be dealt with in accordance with section II of The Taxing Officer's Notes for Guidance.

Paragraph 701(f) of the Bar Code of Conduct requires barristers in independent practice to ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the first of the following: his fees have been paid, any taxation or determination or assessment of costs in the case has been completed, or the time for lodging an appeal against assessment or the determination of that appeal, has expired, and must provide his professional client or licensed access client or other intermediary or lay client with such records or details of the work done as may reasonably be required.

In particular the NTT will expect to see a schedule of work done by an advocate in support of any claim for fees.

The applicant may have to justify the brief fee if it is enhanced to reflect expenses incurred in travel to a distant court, where a local Bar was available to meet the needs of courts in that area.

As a barrister is forbidden by paragraph 407 of the Bar Code of Conduct from receiving or handling client money, a barrister cannot have conduct of a claim for costs out of central funds which includes legal costs incurred by a defendant who has instructed counsel under the Direct Access provisions. Such a claim must be lodged by the defendant in person. The defendant will however require from the barrister so instructed a taxing note and a log of work done, both of which must be lodged in support of the claim.

## **1.2 Legal Aid fees in Confiscation proceedings**

Advocates appearing for a legally aided defendant in confiscation hearings concluded on or after 21 August 2009 where there are more than 50 pages of evidence should claim fees from the National Taxing Team using the claim form ("Advocates Claim-Confiscation Proceedings") from HMCTS FormFinder (see the link on the NTT web page).

Particular attention is directed to the criteria as to the relevant counted pages. These are the papers relevant only to the confiscation proceedings, and not the papers from the substantive proceedings unless specifically included. Where incorrect papers are lodged the claim may be delayed to obtain the correct papers, or it may be returned or reduced.

The National Taxing Team will only determine claims relating to the main confiscation hearing. Advocates cannot include claims for standard appearance fees on their claim for confiscation hearing fees. Any claims for standard appearance fees before or after the main confiscation hearing must be lodged with and dealt with by the Legal Aid Agency who are in the position to know whether all the appearance fees to be included with the original basic fee under the graduated fee scheme, have been claimed.

## **1.3 Other discretionary Legal Aid fees**

After 30th April 2007 the ex post facto regime for the payment of Advocates fees in the Crown Court ended, save for Appeals to the Crown Court, Committals for sentence to the Crown Court, and breaches of Crown Court orders, where it is claimed that the fixed fees provided for those proceedings are inadequate. Any remaining EPF claims must be made on form 5145 (the "red corner" form) from HMCTS FormFinder (see the link on the NTT web page).

Advocates should send with the claim for costs:

- (1) a copy of the Representation Order,
- (2) copies of any written work claimed,
- (3) their log of preparation work done
- (4) a taxing note.

Advocates should note that where these requirements are not complied with the claim may be returned or the determination delayed to obtain the missing documents or information. The Taxing Officer's Notes for

Guidance and the Directions for Determining Officers set out how we will deal with particular issues in a claim.

## **1.4 Advocates Graduated Fee Scheme**

All queries relating to determination of advocates graduated fees should now be directed to the Advocates Fees Team of the Legal Aid Authority.

The National Taxing Team continues to deal with some applications for special and wasted preparation made as part of an advocates claim for graduated fees to the LAA.

## 2. Litigators

### 2.1 Claims for Costs out of Central Funds: General requirements

Under Part II of the Prosecution of Offences Act 1985, acquitted defendants who have privately funded their legal representation, private prosecutors, and court appointees may obtain their reasonable costs out of central funds.

In proceedings commencing on or after 1 October 2012, legal costs may only be included in a **defendant's** costs order in the circumstances set out in section 16A of the Prosecution of Offences Act 1985, as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The procedure to be adopted by defendants and private prosecutors when seeking a costs order from the court is set out in Rules 76.2 and 76.4 of the Criminal Procedure Rules. In the case of **Hitendra Patel and a defendant's costs order** [2012] EWCA Crim 1508 (and see also **R (Virgin Media plc) v Zinga** [2014] EWCA Crim 1824 and **R v Banfield** [2014] EWCA Crim 1824), the Court of Appeal invited all courts to comply strictly with Rule 76.4(4)(b) which provides that where a person wishes the court to make a defendant's costs order that person must outline to the court the type of costs and the amount claimed if that person wishes the court to direct an assessment.

There is no power in the Crown Court or magistrates' courts to make an order for costs out of central funds in the absence of specific statutory provision. These specific provisions are set out in Schedule 2 to the **Practice Direction on Costs in Criminal Proceedings 2013**. The consequences of not amending a legal aid order to reflect the actual legal representation cannot be rectified by awarding costs from central funds. (**Regina v Liverpool Crown Court, ex parte Lord Chancellor** (1994) 158 JP 821).

Where the claim solely relates to the applicant's out of pocket expenses, travelling expenses and subsistence allowance, those claims will continue to be dealt with and paid by the magistrates' court and not by the National Taxing Team.

Where a court has made an order for costs the amount to be paid out of central funds will be either:

- where (i) the court considers it appropriate, and (ii) the person in whose favour the order is made agrees the amount, specified by the court in the order, and paid by the court



- in any other case, determined in accordance with the provisions of the Costs in Criminal Cases (General) Regulations 1986, by a determining officer of the National Taxing Team.

However, where a defendant's costs order is made in proceedings which commenced after 1 October 2012, recovery of legal costs from central funds, either when being fixed by the court, or assessed on determination, will be capped at the rates set out in the relevant Calculation of Legal Costs document available from the NTT web page, and in accordance with the guidance set out in sections 2.2 and 2.3.

Where the costs out of central funds are to be determined, the claim should be lodged with the National Taxing Team within three months of the order being made. The appropriate claim forms can be downloaded from HMCTS FormFinder (see link on the NTT web page).

- Forms 5911 (Litigator acting) or 5913 (Barrister Direct Public Access) are obligatory for all **defence** costs claims relating to proceedings commenced on or after 1 October 2012,
- Other claims for costs out of central funds should follow the precedents annexed to the current practice direction for civil costs, without importing the specific detailed requirements of that direction. FormFinder has a suggested claim form and cover sheet which can be used for such claims.

Inadequately drafted claims which would cause the determining officer undue time and trouble to determine will be returned to the applicant or solicitor. The cost of drafting and preparing a claim for costs out of central funds is not itself a recoverable cost (**Morris v Lord Chancellor** [2000] 1 CostsLR 88).

Unless the claim is lodged under the NTT Fastrak scheme (see section 4 and Appendix 11), the claim for costs should be accompanied by:

- documents required to satisfy the indemnity rule as set out below
- details of the fee earners whose work is claimed i.e. name and professional status
- a narrative setting out the nature of the case, the role of the defendant, the defence case, and any particular difficulties
- a breakdown of the prosecution papers (but not the papers themselves)
- the brief and any instructions to advocates and any advices or other written work prepared by advocates
- the file of correspondence, attendance and telephone notes
- proofs of evidence of the accused and any defence witnesses and copies of any other documents prepared such as schedules of evidence.

- the 'blue books' or any other contemporaneous records or working notes of attendances, conferences, court hearings, and perusals or any other work done
- details of all disbursements and receipted vouchers where appropriate and any related prior authorities
- copies of any reports of experts obtained.

Applicants should note that where these requirements are not complied with, the claim may be rejected or the determination delayed to obtain the missing documents or information.

The indemnity principle remains in full force and remains applicable to claims for costs out of central funds (**Garbutt v Edwards** [2005] EWCA Civ 1206 and **R v Cowie** [2006] 2 Costs LR 375). The SRA Code of Conduct at O(1.13) and IB(1.13-1.21 & 1.27) now deals with costs information which must be given both to private clients and publicly funded clients.

In order to check compliance with the indemnity rule the determining officer will want to examine in every case:

- the original client care letters establishing the terms of the retainer and setting out the charge rates agreed with the client or third party funder
- whether any block fee or fee cap was agreed
- any agreed amendment to the rates
- any overall estimate of costs given for any part of the proceedings
- any changes to the estimate
- and any interim or final bills rendered to the client, whether or not these have actually been paid.

## **2.2 Claims out of Central Funds for defence costs in proceedings commenced on or after 1 October 2012 and in which an application for representation is made on or after 27 January 2014 and is refused subsequently by the Director of Legal Aid Casework**

The provisions of the Costs in Criminal Cases (Legal Costs) (Exceptions) Regulations 2014 which come into force on 27 January 2014, make further changes to the Prosecution of Offences Act 1985 and to the system through which successful defendants in the Crown Court may be awarded amounts from central funds in respect of legal costs incurred.

The guidance and amended statute and regulations in the appendices set out the details of the changes to the system:

- Appendix 1: Guidance in respect of defendants' costs orders in the Crown Court as from 27 January 2014
- Appendix 2: Part II Prosecution of Offences Act 1985 as amended to 27 January 2014
- Appendix 3: Part III Costs in Criminal Cases (General) Regulation 1986 as amended to 27 January 2014

The Calculation of Legal Costs Document 2014 (available from the NTT web page) sets out how amounts payable in respect of legal costs under defendants' costs orders are to be calculated, in proceedings commencing on or after 1 October 2012 and in which an application for representation is made on or after 27 January 2014 which is refused by the Director of Legal Aid Casework on the grounds of financial eligibility. These are the rates determined by the Lord Chancellor in accordance with regulation 7(7) of the Costs in Criminal Cases (General) Regulations 1986 as amended. The document includes the reduced rates to be applied in proceedings commencing on or after 20th March 2014.

It should be noted that these changes only apply to cases in the Crown Court commencing on or after 1 October 2012 in which an application for representation is made on or after 27 January 2014 and is refused by the Director of Legal Aid Casework on the grounds of financial eligibility. They do not apply to the costs of a private prosecutor, or to the costs of an Appointee under section 4A of the Criminal Procedure (Insanity) Act 1964 or under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 provisions.

The general requirements for defendants' costs orders and claims for costs out of central funds as set out in section 2.1 continue to apply.

## **2.3 Claims out of Central Funds for defence costs in the Crown Court and magistrates' courts in proceedings commenced on or after 1 October 2012, and in the Crown Court in which either an application for representation has not been made, or has been made before 27 January 2014**

The provisions of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which came into force on 1 October 2012, made significant changes to the system through which successful defendants and appellants in criminal proceedings may be awarded amounts from central funds in respect of costs incurred.

The guidance and amended statute and regulations in the appendices set out the details of the system.

- Appendix 4: Guidance in respect of defendants' costs orders
- Appendix 5: Prosecution of Offences Act 1985 amended to 1 October 2012
- Appendix 6: Extradition Act 2003 - costs provisions amended to 1 October 2012
- Appendix 7: Costs in Criminal Cases (General) Regulations 1986 amended to 1 October 2012

The Calculation of Legal Costs Document 2012 (available from the NTT web page) sets out how amounts payable in respect of legal costs under defendants' costs orders are to be calculated in proceedings commenced in the Magistrates Court and Crown Court on or after 1 October 2012, and in which (in the Crown Court) either an application for representation has not been made, or has been made before 27 January 2014. These are the rates determined by the Lord Chancellor in accordance with regulation 7(7) of the Costs in Criminal Cases (General) Regulations 1986 as amended. The document includes the reduced rates to be applied in proceedings commencing on or after 20 March 2014.

It should be noted that the changes do not apply to defence costs in proceedings commenced before 1 October 2012, or to the costs of a private prosecutor, or to the costs of an Appointee under section 4A of the Criminal Procedure (Insanity) Act 1964 or under section 38(4) of the Youth Justice and Criminal Evidence Act 1999.

The general requirements for defendants' costs orders and claims for costs out of central funds as set out in section 2.1 continue to apply.

## **2.4 Claims out of Central Funds for defence costs in proceedings commenced prior to 1 October 2012, costs of a private prosecutor, and costs of an Appointee, in the Crown Court and magistrates' courts**

In determining defence costs in proceedings commenced before 1st October 2012, costs of a private prosecutor, and costs of an Appointee, National Taxing Team determining officers will be guided as to the reasonableness of hourly rates claimed, by the composite rates set out in the Senior Court Costs Office Guide to the Summary Assessment of Costs set out in Appendix 8.

These rates usually apply to the location of solicitors' office and not to where the matter is tried. However, where a solicitor not local to the court of trial has been instructed, the determining officer may apply a test of reasonableness as to which rate may be considered as relevant. Where the rate claimed is in excess of the guidance rate indicated in the Senior Court Costs Office guide, further explanation should be provided in the narrative of the claim.

With the exception of proceedings under section 82 of the Environmental Protection Act 1990, by the operation of s58A of the Courts and Legal Services Act 1990, and the Conditional Fee Agreements Regulations 2000, criminal proceedings cannot be the subject of an enforceable conditional fee agreement.

Interest cannot be recovered on costs awarded from central funds in a criminal cause or matter (**Westminster City Council v Wingrove** [1991] Crim LR 43).

The costs of an Appointee ie,

- a person appointed by the Crown Court under section 4A of the Criminal Procedure (Insanity) Act 1964 to put the case for the defence
- a legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 to cross-examine a witness

are determined by the National Taxing Team under the terms of Part IIIA of the Costs Regulations.

Where such an appointment is made no additional order for costs by the court is required, but the appointee should obtain a written document from the court setting out the nature and extent of the appointment. This document will be required by the National Taxing Team to enable the claim for costs to be determined.

It should be noted that costs recoverable under Part IIIA of the Costs Regulations are limited to the advocacy work in court and such preparation reasonably required to undertake such advocacy work. Such an Appointment is not authority to recover costs relating to general preparation in the case nor is it an authority to act generally for the defendant in the case.

Section 17(1)(a) of the Prosecution of Offences Act 1985 enables the court to make an order for costs out of central funds in respect of a private prosecutor where the proceedings relate to an indictable offence. This therefore covers proceedings on indictment in the Crown Court and any proceedings relating to an either way offence in the magistrates' court. Such an order made in the magistrates' court would exclude any costs relating to any summary offences dealt with in the same proceedings.

## **2.5 Discretionary claims for Legal Aid costs**

After 14 January 2008 the legal aid ex post facto remuneration scheme for litigators continued only in respect of work in respect of confiscation proceedings which for the time being remains excluded from the Litigator Fee Scheme operated by the Legal Aid Agency. Separate claims for litigators work relating to confiscation

proceedings should continue to be lodged with the NTT on form 5144 (the "yellow corner" form) which can be obtained from the HMCTS FormFinder (see link on the NTT web page).

The hourly rates applicable where the Representation Order is dated on or after 14th January 2008 to 19th March 2014 are set out in the table following paragraph 22 of the Criminal Defence Service (Funding) Order 2007 as amended by article 26 of the Criminal Defence Service (Funding) (Amendment) Order 2007.

The hourly rates applicable where the Representation Order is dated on or after 20th March 2014 are set out in the table following paragraph 27 of the Criminal Legal Aid (Remuneration) Regulations 2013 as amended by paragraph 9 of schedule 1 of the Criminal Legal Aid (Remuneration) Amendment) Regulations 2014.

The current scheme of public funding for proceedings relating to Restraint Orders under the Proceeds of Crime Act 2002 and related legislation is as follows:

- *where no formal charge has been laid and the client is not subject to accusation or investigation:* funding is only available under the civil legal aid scheme
- *where the client has been accused and is subject to investigation but has not yet been formally charged:* funding is available under the Advice and Assistance Scheme only for work outside the court and outside the police station
- *where the client has been formally charged with a criminal offence:* work is covered under representation order for substantive proceedings, or Crown Court may make such an order.

Civil funding in this context is considered to be associated civil work under the Unified Contract (Crime) and may be undertaken by a firm with a criminal franchise. Remuneration will be processed by the LAA and not by the NTT.

## 2.6 Claims for costs between parties in the criminal courts

The assessment of inter partes costs in the criminal courts whether civil or criminal in nature, have not been assimilated into the regime of the Civil Procedure Rules and remain a self-contained code (**HM Revenue & Customs v Viewtopia Ltd** [2006] 2 Costs LR 344). Assessments of inter partes costs in criminal proceedings in the Crown Court and magistrates' court are now conducted pursuant to Part 76 of the Criminal Procedure Rules 2011. The claim should be drafted in accordance with the general form for inter-partes costs. Rule 76.11 now provides the framework by which inter partes costs are assessed:

- within three months of the order being made the claimant must serve the claim for costs on the assessing authority and on the respondent paying party

- within 21 days thereafter, the respondent must serve any objections to the costs claimed, on the applicant and on the assessing authority
- the assessing authority will then determine the costs, resolving any doubt as to what should be allowed in favour of the respondent.

In the scheme of the Criminal Procedure Rules an oral hearing will not be held at the determination stage, but may be held if required by either party at the re-assessment stage.

Assessments of inter partes criminal costs under orders prior to 4 April 2005 and any costs orders made by the Crown Court exercising its civil jurisdiction are conducted under Part IV of the Crown Court Rules 1982.

## 3. Acquitted defendants and private prosecutors

### 3.1 Recovery of legal expenses

Depending on the type of criminal proceedings acquitted defendants or private prosecutors may have:

- a defendants costs order, or order for prosecution costs which is an order for recovery of costs from central funds i.e. money provided by the tax-payer
- an inter-partes costs order, which is an order that the losing party before the court should pay the legal costs

Where legal costs are to be recovered, the litigator (solicitor) acting for the acquitted defendant or private prosecutor should have a bill of costs drafted and lodged with the National Taxing Team in accordance with the guidance given in section 2.

Where proceedings are commenced on or after 1st October 2012 and a defendants costs order for payment out of central funds includes provision for legal costs (in the magistrates court or on appeal from the magistrates court to the Crown Court, or in the Crown Court where an application for legal aid has been refused on financial grounds after 27<sup>th</sup> January 2014) the amount recoverable will be restricted to legal aid rates. Full guidance is given in section 2.

Where no solicitor has acted, and the acquitted defendant has instructed a barrister under the Direct Public Access provisions, a claim must be made in person by the defendant (as the applicant) for any legal fees. Applicants should note that by paragraph 407 of the Bar Code of Conduct a barrister may not receive or handle client money, and therefore cannot have conduct of a claim for costs out of central funds

In such cases the applicant should obtain the relevant central funds claim form and cover sheet (Direct Public Access) from HMCTS FormFinder (see link on NTT web page). The applicant should note the documents required as indicated on the claim form. In particular the applicant will require from the barrister:

- the fee notes
- a taxing note setting out the nature of the case and the work done
- a log of work done.



## **3.2 Recovery of personal expenses**

Where an acquitted defendant has had a legal aid representation order, personal expenses (i.e. non-legal expenses such as travel and subsistence) only can be claimed under a defendant's costs order. Where the order is not made in a fixed sum, the defendant should lodge a claim with the court and not with the National Taxing Team.

Where an acquitted defendant or private prosecutor, who has been privately represented, or who has not been represented and appeared in court in person, obtains a costs order, a separate claim for personal expenses only, should be lodged with the court and not with the National Taxing Team.

Where an acquitted defendant or private prosecutor obtains an order for the opposing party to pay the costs and expenses, the claim for personal expenses should be included in the claim for costs against the paying party.

An acquitted defendant or private prosecutor who obtains an order for costs out of central funds may not make a claim for loss of earnings, and other than a qualified lawyer may not be compensated for time spent in preparing his case.

The rates of car mileage allowed will be those specified in the current Guide to Allowances i.e. a standard rate of 45p per mile and a public transport rate of 25p per mile. The standard rate of mileage is only paid where the use of a private motor vehicle was necessary for example:

- Where no public transport was available
- where a considerable saving of time is made
- where the use of a private motor vehicle was otherwise reasonable (for example, in the case of elderly or disabled persons, or carrying exhibits).

In all other cases the public transport rate of mileage will be applied. Only where standard rate of mileage has been allowed will car parking fees or toll fees actually and reasonably incurred be allowed.

## **3.3 Review of expenses allowed**

These expenses are payable by the court under part V of the Costs Regulations, and excluded from the appeal process set out for legal costs in Part III. The court will however within a reasonable period after the expenses have been determined, upon request informally review the expenses allowed.

## **4. All Claims**

### **4.1 How to submit a claim (including Fastrak) and how payment is made**

Claims for costs should be submitted to the relevant main office of the NTT as shown in the list courts available from the NTT web page, within three months of the end of the proceedings. Unless the claim is submitted under the Fastrak scheme (see below), claims must be accompanied by the supporting material indicated at paragraphs 1.3 or 2.1 above.

Claims for costs out of central funds under Defendants Costs Orders which fulfill the following criteria may be lodged for determination under the NTT DCO Fastrak scheme:

- The order is for the full amount of the costs
- The costs are claimed at LASPO rates on form 5911
- The claim is for profit costs of £2,000 or less
- The claim is clearly marked "Fastrak DCO"
- A copy of the Fastrak DCO checklist is attached (see Appendix 11) and presented as the top document in your claim, and all the documents required on that checklist are enclosed

Discretionary Legal Aid claims from litigators (including claims for costs in respect of confiscation proceedings) which fulfill the following criteria may also be lodged for determination under the NTT Fastrak scheme.

- The claim is for profit costs of £2,000 or less
- The claim is clearly marked "Fastrak Legal Aid"
- A copy of the Fastrak Legal Aid checklist is attached (see Appendix 12) and presented as the top document in your claim, and all the documents required on that checklist are enclosed

Any claim submitted under the Fastrak scheme which does not include the documents and information requested will be removed from the scheme and the normal work targets will apply. Please note that the full file or any documents should not be sent, but the Determining Officer may call for your full file of papers if deemed necessary.

A determination under this scheme remains a determination under the Costs Regulations and the determining officer may allow or disallow items in the claim in the proper exercise of discretion.

Under the Fastrak scheme the NTT will aim to determine the claim within one month of receipt.

All payments authorised by the National Taxing Team will be made by HM Courts & Tribunals Service paying agents on the 5th or 19th day of each month (or the next working day if that date falls on a weekend or public holiday). Payments will generally be made by BACS where details have been provided, directly into your bank account within 3 working days of the payment date.

The remittance advice, issued as part of the payment run, will list all items included in the payment. (Payments via BACS may reach your account more quickly than you receive notification through the post). The payment notification will include the NTT claim reference numbers (as now) and any solicitors/barristers references as quoted on the original claim form.

For general customer service related issues please contact the NTT Customer Service Manager: [Caroline Grisely](#) **Mobile:** 07500 814088

## 4.1 Claims lodged out of time

For legal aid and central funds applications the time limits are:

- claims are to be submitted within 3 months of the conclusion of proceedings
- requests for redetermination are to be submitted within 21 days of receipt of notification of costs payable
- requests for written reasons are to be submitted within 21 days of receiving notification of the decision on redetermination.

In accordance with the regulations, The National Taxing Team may refuse to accept claims or applications lodged outside these time limits.

However, where an applicant without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the National Taxing Team may, in exceptional circumstances, extend the time limit and must consider whether it is reasonable to impose a penalty on the costs payable.

Where the National Taxing Team is considering imposing a penalty it must allow the applicant an opportunity to make representations. Where a penalty has been imposed a representative or applicant may within 21 days of the decision, appeal to a Costs Judge.

The following protocol applies only to claims under the Funding Orders or Legal Aid Regulations. Where such a claim is less than 3 months out of time or a request for redetermination or written reasons is less than 21 days out of time, no penalty will usually be applied.

Where such claims or requests are submitted outside those parameters the National Taxing Team will refuse to determine, redetermine or supply reasons unless there is good reason, or exceptional circumstances for delay. Where there is good reason it is unlikely that any penalty will be imposed.

Where there is no good reason but there are exceptional circumstances a penalty will be imposed in accordance with the following tariff:

- Over 3 months to 6 months out of time - reduction 10%
- Over 6 months to 12 months out of time - reduction 15%
- Over 12 months out of time - reduction 20%

Redeterminations and written reasons will be dealt with following the criteria set out, but subject to the relaxation in time scales already identified.

This protocol does not apply to Standard or Graduated Fees or any other claims determined by the Director of Legal Aid Casework, or to claims for costs to be determined out of central funds, or inter-partes under the Criminal Procedure Rules or otherwise by the National Taxing Team.

For central funds claims lodged out of time, where there is good reason and the delay is not excessive it is unlikely that a penalty will be imposed. The statutory provisions in the Criminal Procedure Rules relating to inter-partes claims are different to those applying to Funding Order claims and claims for costs out of central funds.

The National Taxing Team will therefore extend any relevant time limit if it is reasonable to do so, taking into account any representations of the parties involved.

If there is a likelihood that a claim will be submitted either outside the statutory time limits, application should be made to the relevant National Taxing Team regional office before the appropriate date, to extend the time for submission of the claim.

If a claim is submitted outside the statutory time limit, it must be accompanied by a request for leave to file out of time setting out the reasons for the delay and details of any relevant exceptional circumstances.

Where reasons for the delay are not given, the claim may be rejected in accordance with the regulatory provisions.

Under all three jurisdictions, legal aid claims, central funds claims in the Crown Court only, and inter-partes claims, there is a right of appeal to the Costs Judge against a decision made by the National Taxing Team to refuse to determine a claim or request made out of time, or to impose a penalty.

Any such appeal relating to legal aid and central funds claims must be lodged with the Senior Costs Judge within 21 days of notification of the decision, though the Costs Judge is able to extend that time limit for good reason. Any such appeal relating to the National Taxing Team as assessing authority in inter-partes costs is not subject to a specific time limit.

## **4.2 What to do if you disagree with the costs allowed by the National Taxing Team**

The Costs Regulations do not make provision for redetermination of costs out of central funds incurred in the magistrates' courts. However, the National Taxing Team will continue the previous practice of the magistrates' courts as set out in the Justices Clerks Society Good Practice Guide Taxation of Costs (at page 33) and allow within the discretion of the determining officer an informal scheme of review of amounts allowed, which will be conducted within the general framework of a redetermination in the Crown Court as set out below, and in particular within the same time limits. On the conclusion of such a review, if any issues remain, the determining officer will prepare a detailed letter setting out the reductions made and the reasons. Any further appeal is by way of Judicial Review.

In legal aid and central funds claims in the Crown Court a request for redetermination must:

- be lodged with the National Taxing Team within 21 days of notification of the costs allowed
- be in writing
- specify the items at issue and the grounds of objection
- be accompanied by the relevant documents and information
- state whether or not the applicant wishes to make oral representations in support
- be signed personally by the applicant.

A request to make oral submissions is not a substitute for a proper written notice, and any request for redetermination which does not comply with the regulations may be rejected.

It is proper for a practitioner to request that errors or omissions in their original claim be rectified, and this will be dealt with in the exercise of the determining officer's discretion.

An applicant has a period of 21 days after being informed of the outcome of the redetermination to request written reasons from the determining officer. Such a request must:

- state on which matters written reasons are required
- be signed personally by the applicant

Costs Judges have jurisdiction to hear appeals from the decisions of National Taxing Team determining officers by parties awarded costs out of Central Funds in the Crown Court, solicitors and advocates in legal aid claims, and any parties in inter-partes claims under the Criminal Procedure Rules and the Crown Court Rules.

An appeal is commenced by notice in writing to the Senior Costs Judge within 21 days (for inter-partes claims 14 days) of receipt of written reasons, together with the fee (currently £100) and the supporting material set out at paragraph 5.2.4 and 5.3 of the Practice Direction.

The Notice of Appeal must:

- follow the Form A in Schedule 3 to the Criminal Costs Practice Direction
- identify (i) the individual matters which are being appealed to the Costs Judge
- identify (ii) the amount in dispute in relation to each item
- be signed by advocates personally or by a partner in the appellant firm of Solicitors.

Failure to serve notice on the National Taxing Team may result in the appeal being dismissed without the merits being considered. Appellants must ensure that they have the written reasons of the determining officer in respect of each item they wish to appeal.

Where the determining officer has not given written reasons, the Costs Judge has no jurisdiction on appeal. Although the Costs Judges do have discretion to hear material in support of costs claimed which was not put before the determining officer, this discretion is only exercised in exceptional circumstances.

## Appendix 1

### **Guidance in respect of defendants' costs orders made in relevant proceedings in the Crown Court in which an application for representation is made on or after 27 January 2014 and is refused subsequently by the Director of Legal Aid Casework**

1. The provisions of The Costs in Criminal Cases (Legal Costs) (Exceptions) Regulations 2014 which come into force on 27 January 2014, make changes to section 16A of the Prosecution of Offences Act 1986 ("POA") and further changes the system through which successful defendants in criminal proceedings in the Crown Court may be awarded amounts from central funds in respect of costs incurred by them in those proceedings.

#### **Application of the new system**

2. These changes apply to all relevant proceedings in the Crown Court in which an application for representation is made on or after 27 January 2014 and is refused subsequently by the Director of Legal Aid Casework due to a determination of financial ineligibility ('negative determination'). For these purposes, the relevant proceedings are:

- (a) proceedings in the Crown Court in respect of an offence for which the accused has been sent by a magistrates' court to the Crown Court for trial;
- (b) proceedings in the Crown Court relating to an offence in respect of which a bill of indictment has been preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933(4);
- (c) proceedings in the Crown Court following an order by the Court of Appeal or the Supreme Court for a retrial.

3. Proceedings commenced on or after 1 October 2012, other than those set out within paragraph 2 herein, will continue to be governed by the system for awarding amounts from central funds to successful defendants and appellants in criminal proceedings which is set out in section 16A POA prior to the 2014 amendment, and in accordance with the Calculation of Legal Costs Document dated 9 July 2012. It should be noted that in respect of any such proceedings in the Crown Court legal costs cannot therefore be included in a defendant's costs order other than in proceedings relating to an appeal against conviction or sentence from the magistrates court.

4. Proceedings commenced prior to 1 October 2012 will continue to be governed by the previous system for awarding amounts from central funds to successful defendants and appellants in criminal proceedings set out in section 16 POA prior to the 2012 amendment.

#### **Legal costs**

5. 'Legal costs' are defined in section 16A(10) POA as fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs.

6. Section 16A (2) POA provides that legal costs cannot be included in a defendant's costs order (DCO) other than in certain specified circumstances. The 2013 amendment inserts section 16A(5A) to provide that legal costs can be included in a defendant's costs order made in the Crown Court in the relevant proceedings set out above where new Condition D is satisfied.

7. Condition D is that—

- (a) the accused is an individual,
- (b) the order is made under section 16(2) POA,
- (c) the legal costs were incurred in relevant Crown Court proceedings, and
- (d) the Director of Legal Aid Casework has made a determination of financial ineligibility in relation to the accused and those proceedings

(and condition D continues to be met if the determination is withdrawn)

8. In accordance with amendments made to the Criminal Legal Aid (Financial Resources) Regulations 2013 by the Criminal Legal Aid (Financial Resources) (Amendment) Regulations 2013, the Director of Legal Aid Casework will make a determination of financial ineligibility if the annual disposable household income of the applicant for legally aided representation in Crown Court proceedings is £37,500 or greater.

9. It remains the case that for companies and other legal persons, the effect of section 16A (2)-(5A) POA is that legal costs **cannot** be included in a DCO made in the Crown Court.

#### **Capping of awards in respect of legal costs at legal aid rates**

10. In cases where a DCO may include an amount in respect of legal costs, the amendments to the POA made by Schedule 7 to The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”) give the Lord Chancellor the power by means of rates and scales or other provision, to cap the amount the court or the appropriate authority can award. The Lord Chancellor has exercised this power in the Costs in Criminal Cases (General) (Amendment) Regulations 2012 (“the 2012 Regulations”), which amend the 1986 Regulations, and by issue of a Calculation of Legal Costs Document.

11. The rates and scales to be applied in relevant proceedings in the Crown Court, set out within paragraph 2 herein, are set out in the revised Calculation of Legal Costs Document dated 27 January 2014. These effectively require the court and the appropriate authority to calculate any award of legal costs in a DCO at the equivalent of legal aid rates. In some circumstances the rates may be enhanced in accordance with the relevant section of the Document.

#### **Other requirements where a DCO includes an amount in respect of legal costs**

12. Where the court itself fixes the amount payable under the DCO and it considers that there are circumstances that make it inappropriate for the accused to recover the full amount under section 16(6) POA the court may specify a lesser amount as it considers just and reasonable (see section 16(6A) POA). Where the court does not fix the amount payable, it must describe in the order any reduction required under subsection (6A) POA.

13. Where legal costs are included in a DCO and the court fixes an amount itself, it must calculate the amount using the rates and scales in the Calculation of Legal Costs Document, whether or not (regulation 4A) that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the person.

14. Where legal costs are included in a DCO, and the amount of such costs is assessed by the appropriate authority, the amount must be calculated using the rates in the Calculation of Legal Costs Document, whether or not (regulation 7(6)) that results in the fixing of an amount that the appropriate authority considers reasonably sufficient or necessary to compensate the person.

15. Where legal costs are included in a DCO in accordance with section 16A (9) POA, the amount of such costs must not exceed the rates set out in the Calculation of Legal Costs Document.

16. Where legal costs are included in a DCO in accordance with section 16A (8) POA , the court must make a statement to that effect.



**Other requirements in relation to a DCO**

17. The costs awarded in a DCO are, in accordance with regulation 7(4) of the 1986 Regulations, not to exceed the costs actually incurred.

18. In accordance with regulation 7(3) of the 1986 Regulations, any doubts which the appropriate authority may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant

## Appendix 2

### Prosecution of Offences Act 1985

#### 1985 CHAPTER 23

*[As amended up to and including the Costs in Criminal Cases (Legal Costs) (Exemptions) Regulations 2014*

*This is therefore up to date to 27<sup>th</sup> January 2014]*

### PART II COSTS IN CRIMINAL CASES

#### Award of costs out of central funds

16 Defence costs

17 Prosecution costs

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## Part II

### Costs in Criminal Cases

#### Award of costs out of central funds

##### 16 Defence costs

(1) Where--

- (a) an information laid before a justice of the peace for any area, charging any person with an offence, is not proceeded with;

- (b) a magistrates' court inquiring into an indictable offence as examining justices determines not to commit the accused for trial;
- (c) a magistrates' court dealing summarily with an offence dismisses the information;

that court or, in a case falling within paragraph (a) above, a magistrates' court for that area, may make an order in favour of the accused for a payment to be made out of central funds in respect of his costs (a "defendant's costs order").

(2) Where--

- (a) any person is not tried for an offence for which he has been indicted or sent for trial; or
- (aa) a notice of transfer is given under a relevant transfer provision but a person in relation to whose case it is given is not tried on a charge to which it relates; or
- (b) any person is tried on indictment and acquitted on any count in the indictment;

the Crown Court may make a defendant's costs order in favour of the accused.

(3) Where a person convicted of an offence by a magistrates' court appeals to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence) and, in consequence of the decision on appeal--

- (a) his conviction is set aside; or
- (b) a less severe punishment is awarded;

the Crown Court may make a defendant's costs order in favour of the accused.

(4) Where the Court of Appeal--

- (a) allows an appeal under Part I of the Criminal Appeal Act 1968 against--
  - (i) conviction;
  - (ii) a verdict of not guilty by reason of insanity; or
  - (iii) a finding under the Criminal Procedure (Insanity) Act 1964 that the appellant is under a disability, or that he did the act or made the omission charged against him;
- (aa) directs under section 8(1B) of the Criminal Appeal Act 1968 the entry of a judgment and verdict of acquittal;
- (b) on an appeal under that Part against conviction--
  - (i) substitutes a verdict of guilty of another offence;
  - (ii) in a case where a special verdict has been found, orders a different conclusion on the effect of that verdict to be recorded; or
  - (iii) is of the opinion that the case falls within paragraph (a) or (b) of section 6(1) of that Act (cases where the court substitutes a finding of insanity or unfitness to plead); . . .
- (c) on an appeal under that Part against sentence, exercises its powers under section 11(3) of that Act (powers where the court considers that the appellant should be sentenced differently for an offence for which he was dealt with by the court below); or
- (d) allows, to any extent, an appeal under section 16A of that Act (appeal against order made in cases of insanity or unfitness to plead);

the court may make a defendant's costs order in favour of the accused.

(4A) The court may also make a defendant's costs order in favour of the accused on an appeal under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996 (appeals against orders or rulings at preparatory hearings) or under Part 9 of the Criminal Justice Act 2003.

(5) Where--

- (a) any proceedings in a criminal cause or matter are determined before a Divisional Court of the Queen's Bench Division;
- (b) the Supreme Court determines an appeal, or application for leave to appeal, from such a Divisional Court in a criminal cause or matter;
- (c) the Court of Appeal determines an application for leave to appeal to the Supreme Court under Part II of the Criminal Appeal Act 1968; or
- (d) the Supreme Court determines an appeal, or application for leave to appeal, under Part II of that Act;

the court may make a defendant's costs order in favour of the accused.

(6) A defendant's costs order shall, subject to the following provisions of this section, be for the payment out of central funds, to the person in whose favour the order is made, of such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

*(6A) Where the court considers that there are circumstances that make it inappropriate for the accused to recover the full amount mentioned in subsection (6), a defendant's costs order must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.*

*(6B) Subsections (6) and (6A) have effect subject to—*

- (a) section 16A, and*
- (b) regulations under section 20(1A)(d).*

*(6C) When making a defendant's costs order, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—*

- (a) the accused agrees the amount, or*
- (b) subsection (6A) applies.*

*(6D) Where the court does not fix the amount to be paid out of central funds in the order—*

- (a) it must describe in the order any reduction required under subsection (6A), and*
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.*

(7) ...

(8) ...

(9) ...

(10) Subsection (6) above shall have effect, in relation to any case falling within subsection (1)(a) or (2)(a) above, as if for the words "in the proceedings" there were substituted the words "in or about the defence".

(11) Where a person ordered to be retried is acquitted at his retrial, the costs which may be ordered to be paid out of central funds under this section shall include--

- (a) any costs which, at the original trial, could have been ordered to be so paid under this section if he had been acquitted; and
- (b) if no order was made under this section in respect of his expenses on appeal, any sums for the payment of which such an order could have been made.

(12) In subsection (2)(aa) "relevant transfer provision" means--

- (a) section 4 of the Criminal Justice Act 1987, or

- (b) section 53 of the Criminal Justice Act 1991.

## **16A Legal costs**

*(1) A defendant's costs order may not require the payment out of central funds of an amount that includes an amount in respect of the accused's legal costs, subject to the following provisions of this section.*

*(2) Subsection (1) does not apply where condition A, B C or D is met.*

*(3) Condition A is that the accused is an individual and the order is made under—*

- (a) section 16(1),*
- (b) section 16(3), or*
- (c) section 16(4)(a)(ii) or (iii) or (d).*

*(4) Condition B is that the accused is an individual and the legal costs were incurred in proceedings in a court below which were—*

- (a) proceedings in a magistrates' court, or*
- (b) proceedings on an appeal to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence).*

*(5) Condition C is that the legal costs were incurred in proceedings in the Supreme Court.*

*(5A) Condition D is that—*

- (a) the accused is an individual,*
- (b) the order is made under section 16(2),*
- (c) the legal costs were incurred in relevant Crown Court proceedings, and*
- (d) the Director of Legal Aid Casework has made a determination of financial ineligibility in relation to the accused and those proceedings*

*(and condition D continues to be met if the determination is withdrawn).*

*(6) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—*

- (a) provision amending this section by adding, modifying or removing an exception, and*
- (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.*

*(7) Regulations under subsection (6) may not remove or limit the exception provided by condition C.*

*(8) Where a court makes a defendant's costs order requiring the payment out of central funds of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.*

*(9) Where, in a defendant's costs order, a court fixes an amount to be paid out of central funds that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.*

*(10) In this section—*

*"legal costs" means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;*

*“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;*

*“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;*

*“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.*

*(11) In subsection (5A)—*

*“determination of financial ineligibility”, in relation to an individual and proceedings, means a determination under section 21 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012<sup>(1)</sup> that the individual’s financial resources are such that the individual is not eligible for representation under section 16 of that Act for the purposes of the proceedings;*

*“Director of Legal Aid Casework” means the civil servant designated under section 4(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;*

*“relevant Crown Court proceedings” means any of the following—*

*(a) proceedings in the Crown Court in respect of an offence for which the accused has been sent by a magistrates’ court to the Crown Court for trial;*

*(b) proceedings in the Crown Court relating to an offence in respect of which a bill of indictment has been preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933<sup>(2)</sup>;*

*(c) proceedings in the Crown Court following an order by the Court of Appeal or the Supreme Court for a retrial.*

## **17 Prosecution costs**

(1) Subject to subsection (2) and (2A) below, the court may--

- (a) in any proceedings in respect of an indictable offence; and
- (b) in any proceedings before a Divisional Court of the Queen's Bench Division or the Supreme Court in respect of a summary offence;

order the payment out of central funds of such amount as the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings.

(2) No order under this section may be made in favour of--

- (a) a public authority; or
- (b) a person acting--
  - (i) on behalf of a public authority; or
  - (ii) in his capacity as an official appointed by such an authority.

*(2A) Where the court considers that there are circumstances that make it inappropriate for the prosecution to recover the full amount mentioned in subsection (1), an order under this section must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.*

*(2B) When making an order under this section, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—*

- (a) the prosecutor agrees the amount, or*
- (b) subsection (2A) applies.*

*(2C) Where the court does not fix the amount to be paid out of central funds in the order—*

- (a) it must describe in the order any reduction required under subsection (2A), and*
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.*

*(3) ...*

*(4) ...*

*(5) Where the conduct of proceedings to which subsection (1) above applies is taken over by the Crown Prosecution Service, that subsection shall have effect as if it referred to the prosecutor who had the conduct of the proceedings before the intervention of the Service and to expenses incurred by him up to the time of intervention.*

*(6) In this section "public authority" means--*

- (a) a police force within the meaning of section 3 of this Act;*
- (b) the Crown Prosecution Service or any other government department;*
- (c) a local authority or other authority or body constituted for purposes of--*
  - (i) the public service or of local government; or*
  - (ii) carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or*
- (d) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament.*

### **Award of costs against accused**

#### **18 Award of costs against accused**

*(1) Where--*

- (a) any person is convicted of an offence before a magistrates' court;*
- (b) the Crown Court dismisses an appeal against such a conviction or against the sentence imposed on that conviction; or*
- (c) any person is convicted of an offence before the Crown Court;*

*the court may make such order as to the costs to be paid by the accused to the prosecutor as it considers just and reasonable.*

*(2) Where the Court of Appeal dismisses--*

- (a) an appeal or application for leave to appeal under Part I of the Criminal Appeal Act 1968; or*

- (b) an application by the accused for leave to appeal to the Supreme Court under Part II of that Act or
- (c) an appeal or application for leave to appeal under section 9(11) of the Criminal Justice Act 1987; or
- (d) an appeal or application for leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996;

it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.

(2A) Where the Court of Appeal reverses or varies a ruling on an appeal under Part 9 of the Criminal Justice Act 2003, it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.

(3) The amount to be paid by the accused in pursuance of an order under this section shall be specified in the order.

(4) Where any person is convicted of an offence before a magistrates' court and--

- (a) under the conviction the court orders payment of any sum as a fine, penalty, forfeiture or compensation; and
- (b) the sum so ordered to be paid does not exceed £5;

the court shall not order the accused to pay any costs under this section unless in the particular circumstances of the case it considers it right to do so.

(5) Where any person under the age of eighteen is convicted of an offence before a magistrates' court, the amount of any costs ordered to be paid by the accused under this section shall not exceed the amount of any fine imposed on him.

(6) Costs ordered to be paid under subsection (2) or (2A) above may include the reasonable cost of any transcript of a record of proceedings made in accordance with rules of court made for the purposes of section 32 of the Act of 1968.

### **Other awards**

#### **19 Provision for orders as to costs in other circumstances**

(1) The Lord Chancellor may by regulations make provision empowering magistrates' courts, the Crown Court and the Court of Appeal, in any case where the court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs.

(2) Regulations made under subsection (1) above may, in particular--

- (a) allow the making of such an order at any time during the proceedings;
- (b) make provision as to the account to be taken, in making such an order, of any other order as to costs . . . which has been made in respect of the proceedings or any grant of a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service;
- (c) make provision as to the account to be taken of any such order in the making of any other order as to costs in respect of the proceedings; and
- (d) contain provisions similar to those in section 18(4) and (5) of this Act.

(3) The Lord Chancellor may by regulations make provision for the payment out of central funds, in such circumstances and in relation to such criminal proceedings as may be specified, of such sums as appear to the court to be reasonably necessary--



- (a) to compensate any witness in the proceedings, and any other person who in the opinion of the court necessarily attends for the purpose of the proceedings otherwise than to give evidence, for the expense, trouble or loss of time properly incurred in or incidental to his attendance;
- (b) to cover the proper expenses of an interpreter who is required because of the accused's lack of English;
- (c) to compensate a duly qualified medical practitioner who--
  - (i) makes a report otherwise than in writing for the purpose of section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand for medical examination); or
  - (ii) makes a written report to a court in pursuance of a request within subsection (3B) below;

for the expenses properly incurred in or incidental to his reporting to the court.

- (d) to cover the proper fee or costs of a person appointed by the Crown Court under section 4A of the Criminal Procedure (Insanity) Act 1964 to put the case for the defence.
- (e) to cover the proper fee or costs of a legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 (defence representation for purposes of cross-examination) and any expenses properly incurred in providing such a person with evidence or other material in connection with his appointment.

*(3ZA) In relation to a sum that may be required by a court other than the Supreme Court to be paid out of central funds under regulations under subsection (3)—*

*(a) the requirement under that subsection for the sum to be such sum as the court considers reasonably necessary to cover or compensate for expenses, fees, costs, trouble or losses is subject to regulations made under section 20(1A)(d), and*

*(b) regulations under subsection (3) may make provision accordingly.*

(3A) In subsection (3)(a) above "attendance" means attendance at the court or elsewhere.

(3B) A request is within this subsection if--

- (a) it is a request to a registered medical practitioner to make a written or oral report on the medical condition of an offender or defendant; and
- (b) it is made by a court--
  - (i) for the purpose of determining whether or not to include a mental health treatment requirement in a community order or youth rehabilitation order or make an order under section 37 of the Mental Health Act 1983 (hospital orders and guardianship orders) or otherwise for the purpose of determining the most suitable method of dealing with an offender; or
  - (ii) in exercise of the powers conferred by section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand of a defendant for medical examination).

(3C) For the purposes of subsection (3B)(b)(i)--

"community order" has the same meaning as in Part 12 of the Criminal Justice Act 2003;

"mental health treatment requirement" means--

- (a) in relation to a community order, a mental health treatment requirement under section 207 of the Criminal Justice Act 2003, and
- (b) in relation to a youth rehabilitation order, a mental health treatment requirement under paragraph 20 of Schedule 1 to the Criminal Justice and Immigration Act 2008;

"youth rehabilitation order" has the same meaning as in Part 1 of the Criminal Justice and Immigration Act 2008.

*(3D) Regulations under subsection (3) may make provision generally or only in relation to particular descriptions of persons, expenses, fees, costs, trouble or losses.*

(4) The Court of Appeal may order the payment out of central funds of such sums as appear to it to be reasonably sufficient to compensate an appellant who is not in custody and who appears before it on, or in connection with, his appeal under Part I of the Criminal Appeal Act 1968.

*(4A) Subsection (4) has effect subject to regulations under section 20(1A)(d).*

*(4B) An order under subsection (4) may not require the payment out of central funds of a sum that includes a sum in respect of legal costs (as defined in section 16A), except where regulations made by the Lord Chancellor provide otherwise.*

*(4C) Regulations under subsection (4B) may, in particular, include—*

*(a) provision for an exception to arise where a determination has been made by a person specified in the regulations,*

*(b) provision requiring the court, when it orders the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the order, and*

*(c) provision that the court may not order the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.*

(5) The Lord Chancellor may by regulations provide that any provision made by or under this Part which would not otherwise apply in relation to any category of proceedings in which an offender is before a magistrates' court or the Crown Court shall apply in relation to proceedings of that category, subject to any specified modifications.

## **19A Costs against legal representatives etc**

(1) In any criminal proceedings--

- (a) the Court of Appeal;
- (b) the Crown Court; or
- (c) a magistrates' court,

may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations.

(2) Regulations shall provide that a legal or other representative against whom action is taken by a magistrates' court under subsection (1) may appeal to the Crown Court and that a legal or other representative against whom action is taken by the Crown Court under subsection (1) may appeal to the Court of Appeal.

(3) In this section--

"legal or other representative", in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings;

"regulations" means regulations made by the Lord Chancellor; and

"wasted costs" means any costs incurred by a party--

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative; or
- (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

## **19B Provision for award of costs against third parties**

- (1) The Lord Chancellor may by regulations make provision empowering magistrates' courts, the Crown Court and the Court of Appeal to make a third party costs order if the condition in subsection (3) is satisfied.
- (2) A "third party costs order" is an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings ("the third party").
- (3) The condition is that--
  - (a) there has been serious misconduct (whether or not constituting a contempt of court) by the third party, and
  - (b) the court considers it appropriate, having regard to that misconduct, to make a third party costs order against him.
- (4) Regulations made under this section may, in particular--
  - (a) specify types of misconduct in respect of which a third party costs order may not be made;
  - (b) allow the making of a third party costs order at any time;
  - (c) make provision for any other order as to costs which has been made in respect of the proceedings to be varied on, or taken account of in, the making of a third party costs order;
  - (d) make provision for account to be taken of any third party costs order in the making of any other order as to costs in respect of the proceedings.
- (5) Regulations made under this section in relation to magistrates' courts must provide that the third party may appeal to the Crown Court against a third party costs order made by a magistrates' court.
- (6) Regulations made under this section in relation to the Crown Court must provide that the third party may appeal to the Court of Appeal against a third party costs order made by the Crown Court.

## **Supplemental**

### **20 Regulations**

- (1) The Lord Chancellor may make regulations for carrying this Part into effect .
  - (1A) *The Lord Chancellor may by regulations—*
    - (a) *make provision as to the amounts that may be ordered to be paid out of central funds in pursuance of a costs order, whether by specifying rates or scales or by making other provision as to the calculation of the amounts,*
    - (b) *make provision as to the circumstances in which and conditions under which such amounts may be paid or ordered to be paid,*
    - (c) *make provision requiring amounts required to be paid out of central funds by a costs order to be calculated having regard to regulations under paragraphs (a) and (b),*
    - (d) *make provision requiring amounts required to be paid to a person out of central funds by a relevant costs order to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the person), and*
    - (e) *make provision as to the review of determinations of amounts required to be paid out of central funds by costs orders.*
  - (1B) *In subsection (1A)(d) "relevant costs order" means a costs order other than—*
    - (a) *an order made by any court under section 17, and*

*(b) so much of a costs order made by the Supreme Court as relates to expenses, fees, costs, trouble or losses incurred in proceedings in that court.*

(1C) Regulations under subsection (1A) may, in particular—

*(a) make different provision in relation to amounts to be paid in respect of different expenses, fees, costs, trouble and losses,*

*(b) make different provision in relation to different costs orders and different areas, and*

*(c) make different provision in relation to the fixing of an amount in a costs order and the fixing of an amount by means of a determination.*

(2) The Lord Chancellor may by regulations make provision for the recovery of sums paid by the Legal Services Commission or out of central funds in cases where--

(a) a costs order has been made against a person; and

(b) the person in whose favour the order was made is a legally assisted person or a person in whose favour a defendant's costs order or, as the case may be, an order under section 17 of this Act has been made.

(3) Regulations made under subsection (1A) above may provide that *provision as to the calculation of amounts* payable out of central funds under a costs order (*whether in the form of rates or scales or other provision*) shall be determined by the Lord Chancellor with the consent of the Treasury.

(4) Regulations made under subsection (2) above may, in particular--

(a) require the person mentioned in paragraph (a) of that subsection to pay sums due under the costs order in accordance with directions given by the Lord Chancellor (either generally or in respect of the particular case); and

(b) enable the Lord Chancellor to enforce those directions in cases to which they apply.

(5) . . .

(6) Any regulations under this Part may contain such incidental, supplemental and transitional provisions as the Lord Chancellor considers appropriate.

(7) Before making any regulations under section 19(1), 19A or 19B of this Act which affect the procedure of any court, the Lord Chancellor shall so far as is reasonably practicable consult any rule committee by whom, or on whose advice, rules of procedure for the court may be made or whose concurrence is required to any such rules.

(8) In this section "costs order" means--

(a) an order made under or by virtue of this Part for payment to be made--

(i) out of central funds; or

(ii) by any person; or

(b) an order made in a criminal case by the Supreme Court for the payment of costs by a party to proceedings.

## **21 Interpretation, etc**

(1) In this Part--

"accused" and "appellant", in a case where section 44A of the Criminal Appeal Act 1968 (death of convicted person) applies, include the person approved under that section;

"defendant's costs order" has the meaning given in section 16 of this Act;

. . .

"legally assisted person", in relation to any proceedings, means a person to whom a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service has been granted for the purposes of the proceedings;

"proceedings" includes--

- (a) proceedings in any court below; and
- (b) in relation to the determination of an appeal by any court, any application made to that court for leave to bring the appeal; and

"witness" means any person properly attending to give evidence, whether or not he gives evidence or is called at the instance of one of the parties or of the court, but does not include a person attending as a witness to character only unless the court has certified that the interests of justice required his attendance.

(2) Except as provided by or under this Part no costs shall be allowed on the hearing or determination of, or of any proceedings preliminary or incidental to, an appeal to the Court of Appeal under Part I of the Criminal Appeal Act 1968.

(3) Subject to rules of court made under section 53(1) of the Senior Courts Act 1981 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), the jurisdiction of the Court of Appeal under this Part, or under regulations made under this Part, shall be exercised by the criminal division of that Court; and references in this Part to the Court of Appeal shall be construed as references to that division.

(4) For the purposes of sections 16, 16A and 17 this Act, the costs of any party to proceedings shall be taken to include the expense of compensating any witness for the expenses, trouble or loss of time properly incurred in or incidental to his attendance.

(4A) Where one party to any proceedings is a legally assisted person then--

- (a) for the purposes of sections 16, 16A and 17 of this Act, his costs shall be taken not to the cost of representation funded for him by the Legal Services Commission as part of the Criminal Defence Service; and
- (b) for the purposes of sections 18 to 19B of this Act, his costs shall be taken to include the cost of representation funded for him by the Legal Services Commission as part of the Criminal Defence Service.

(5) Where, in any proceedings in a criminal cause or matter or in either of the cases mentioned in subsection (6) below, an interpreter is required because of the accused's lack of English, the expenses properly incurred on his employment shall not be treated as costs of any party to the proceedings.

(6) The cases are--

- (a) where an information charging the accused with an offence is laid before a justice of the peace . . . but not proceeded with and the expenses are incurred on the employment of the interpreter for the proceedings on the information; and
- (b) where the accused is committed or sent for trial but proceedings against the accused are transferred to the Crown Court for trial but the accused is not tried and the expenses are incurred on the employment of the interpreter for the proceedings in the Crown Court.

## Appendix 3

### Costs in Criminal Cases (General) Regulations 1986

#### Part III

#### Costs out of Central Funds

***[Includes amendment up to the Costs in Criminal Cases (General) (Amendment) (No.2) Regulations 2013  
This is therefore up to date to 27<sup>th</sup> January 2014]***

#### 4 Application and definitions

This Part of these Regulations applies to costs payable out of central funds in pursuance of an order made under or by virtue of Part II of the Act and in this Part of these Regulations--

"applicant" means the person in whose favour a costs order has been made;

"appropriate authority" has the meaning assigned to it by regulation 5;

"costs judge" means a taxing master of the Supreme Court;

"costs order" means an order made under or by virtue of Part II of the Act for the payment of costs out of central funds;

"determination of financial ineligibility", in relation to an individual and proceedings, means a determination under section 21 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 that the individual's financial resources are such that the individual is not eligible for representation under section 16 of that Act for the purposes of the proceedings;

"Director of Legal Aid Casework" means the civil servant designated under section 4(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

"disbursements" do not include any payment made out of central funds to a witness, interpreter, intermediary or medical practitioner in accordance with Part V of these Regulations;

"expenses" means out of pocket expenses, travelling expenses and subsistence allowance;

"presiding judge" means the judge who presided at the hearing in respect of which the costs are payable; and

"relevant Crown Court proceedings" means any of the following—

(a) proceedings in the Crown Court in respect of an offence for which the accused has been sent by a magistrates' court to the Crown Court for trial;

(b) proceedings in the Crown Court relating to an offence in respect of which a bill of indictment has been preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933;

(c) proceedings in the Crown Court following an order by the Court of Appeal or the Supreme Court for a retrial.

#### 4A Costs fixed by the court

*Where the court fixes an amount to be paid to the accused out of central funds in accordance with section 16(6C) of the Act or sections 62A(4) or 135A(4) of the Extradition Act 2003, it must, in relation to any amounts payable in respect of legal costs, calculate such amounts in accordance with the rates or scales or other provision made by the Lord Chancellor pursuant to regulation 7(7), whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the accused.*

## **5 The appropriate authority**

- (1) Costs shall be determined by the appropriate authority in accordance with these Regulations.
- (2) Subject to paragraph (3), the appropriate authority shall be--
  - (a) the registrar of criminal appeals in the case of proceedings in the Court of Appeal,
  - (b) the master of the Crown Office in the case of proceedings in a Divisional Court of the Queen's Bench Division,
  - (c) an officer appointed by the Lord Chancellor in the case of proceedings in the Crown Court or, subject to sub-paragraph (d), a magistrates' court,
  - (d) the justices' clerk in the case of proceedings in a magistrates' court, where the costs consist solely of expenses claimed by the applicant.
- (3) The appropriate authority may appoint or authorise the appointment of determining officers to act on its behalf under these Regulations in accordance with directions given by it or on its behalf.

## **6 Claims for costs**

- (1) Subject to regulation 12, no claim for costs shall be entertained unless it is submitted within three months of the date on which the costs order was made.
- (2) Subject to paragraph (3), a claim for costs shall be submitted to the appropriate authority in such form and manner as . . . it may direct and shall be accompanied by receipts or other evidence of the applicant's payment of the costs claimed, 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 solicitor;
  - (b) state, where appropriate, the dates on which items of work were done, the time taken and the sums claimed, . . .
  - (c) specify any disbursements claimed, including counsel's fees, the circumstances in which they were incurred and the amounts claimed in respect of them and
  - (d) contain either full particulars, including the date and outcome, of any claim for payment in respect of services funded for the applicant as part of the Criminal Defence Service, or a certificate by the solicitor that he has not made, and will not make, any such claim.
- (4) Where there are any special circumstances which should be drawn to the attention of the appropriate authority, the applicant shall specify them.
- (5) The applicant shall supply such further particulars, information and documents as the appropriate authority may require.

## **7 Determination of costs**

(1) *The appropriate authority shall consider the claim and any further particulars, information or documents submitted by the applicant under regulation 6(5), and shall allow costs in respect of—*

- (a) *such work as appears to it to have been actually and reasonably done; and*
- (b) *such disbursements as appear to it to have been actually and reasonably incurred.*

(2) *In calculating costs under paragraph (1) the appropriate authority shall take into account all the relevant circumstances of the case including the nature, importance, complexity and difficulty of the work and the time involved.*

(3) *Any doubts which the appropriate authority may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant.*

(4) *The costs awarded shall not exceed the costs actually incurred.*

(5) *Subject to paragraph (6), the appropriate authority shall allow such legal costs as it considers reasonably sufficient to compensate the applicant for any expenses properly incurred by him in the proceedings.*

(6) *Where the subject of a costs order is an individual and—*

- (a) *the order was made under section 16(1), (3) or (4)(a)(ii) or (iii) or (d) of the Act;*
- (b) *the order was made under section 16 and includes legal costs that were incurred in proceedings in a court below which were—*
  - (i) *proceedings in a magistrates' court;*
  - (ii) *proceedings on an appeal to the Crown Court under section 108 of the Magistrates' Courts Act 1980; or*
- (c) *the order includes an amount in respect of legal costs incurred in proceedings in a magistrates' court under the Extradition Act 2003; or*
- (d) *the order was made under section 16(2) of the Act and—*
  - (i) *the legal costs were incurred in relevant Crown Court proceedings; and*
  - (ii) *the Director of Legal Aid Casework has made a determination of financial ineligibility in relation to the accused and those proceedings*

*the appropriate authority shall calculate amounts payable out of central funds in respect of legal costs to the individual in accordance with the rates or scales or other provision made by the Lord Chancellor pursuant to paragraph (7), whether or not that results in the fixing of an amount that the appropriate authority considers reasonably sufficient or necessary to compensate the individual.*

(7) *The Lord Chancellor shall, with the consent of the Treasury, determine provision (whether in the form of rates or scales or other provision) as to how amounts payable out of central funds in respect of legal costs shall be calculated.*

## **8 Payment of costs**

(1) *When the appropriate authority has determined the costs payable to an applicant in accordance with these Regulations, the appropriate authority shall notify the applicant of the costs payable and authorise payment accordingly.*

(2) *Where the costs payable under paragraph (1) are varied as a result of a redetermination under regulation 9, an appeal to a costs judge under regulation 10, or an appeal to the High Court under regulation 11, then--*

- (a) *where the costs are increased, the appropriate authority shall authorise payment of the increase;*
- (b) *where the costs are decreased, the applicant shall repay the amount of such decrease; and*



- (c) where the payment of the costs of an appeal is ordered under regulation 10(14) or 11(8), the appropriate authority shall authorise such payment to the applicant.

## **9 Redetermination of costs by an appropriate authority**

- (1) An applicant who is dissatisfied with the costs determined under these Regulations by an appropriate authority in respect of proceedings other than proceedings before a magistrates' court may apply to the appropriate authority to redetermine them.
- (2) Subject to regulation 12, the application shall be made, within 21 days of the receipt of notification of the costs payable under regulation 8(1), by giving notice in writing to the appropriate authority specifying the items in respect of which the application is made and the grounds of objection and shall be made in such form and manner as the appropriate authority 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 appropriate authority shall notify the applicant of the time at which it is prepared to hear him or his representative.
- (4) The notice of application shall be accompanied by any particulars, information and documents supplied under regulation 6 and the applicant shall supply such further particulars, information and documents as the appropriate authority may require.
- (5) The appropriate authority shall redetermine the costs, whether by way of increase, decrease or at the level previously determined, in the light of the objections made by the applicant or on his behalf and shall notify the applicant of its decision.
- (6) The applicant may request the appropriate authority to give reasons in writing for its decision and, if so requested, the appropriate authority shall comply with the request.
- (7) Subject to regulation 12, any request under paragraph (6) shall be made within 21 days of receiving notification of the decision.

## **10 Appeals to a costs judge**

- (1) Where the appropriate authority has given its reasons for its decision on a redetermination under regulation 9, an applicant who is dissatisfied with that decision may appeal to a costs judge.
- (2) Subject to regulation 12, an appeal shall be instituted within 21 days of the receipt of the appropriate authority's reasons by giving notice in writing to the Senior Costs Judge specifying the items in respect of which the appeal is brought and the grounds of objection.
- (3) The appellant shall send a copy of any notice given under paragraph (2) to the appropriate authority.
- (4) The notice of appeal shall be accompanied by--
- (a) a copy of the written notice given under regulation 9(2);
  - (b) any particulars, information and documents supplied to the appropriate authority under regulation 9, and
  - (c) the appropriate authority's reasons for its decision given under regulation 9(6).
- (5) The notice of appeal shall state whether the appellant wishes to appear or to be represented or whether he will accept a decision given in his absence.
- (6) The Senior Costs Judge may, and if so directed by the Lord Chancellor either generally or in particular case shall, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.

(7) 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 Senior Costs Judge and the appellant.

(8) Any written representations made on behalf of the Lord Chancellor under paragraph (7) shall be sent to the Senior Costs Judge and to the appellant and, in the case of oral representations, the Senior Costs Judge and the appellant shall be informed of the grounds on which such representations will be made.

(9) The appellant shall be permitted a reasonable opportunity to make representations in reply.

(10) The costs judge shall inform the appellant (or his representative) and the Lord Chancellor, where representations have been or are to be made on his behalf, of the date of any hearing and, subject to the provisions of this regulation, may give directions as to the conduct of the appeal.

(11) The costs judge may consult the presiding judge, and the appropriate authority or the determining officer who redetermined the costs on its behalf as the case may be, and may require the appellant to provide any further information which he requires for the purpose of the appeal and, unless the costs judge otherwise directs, no further evidence shall be received on the hearing of the appeal and no ground of objection shall be valid which was not raised on the redetermination under regulation 9.

(12) The costs judge shall have the same powers as the appropriate authority under these Regulations and, in the exercise of such powers, may alter the redetermination of the appropriate authority in respect of any sum allowed, whether by increase or decrease, as he thinks fit.

(13) The costs judge shall communicate his decision and the reasons for it in writing to the appellant, the Lord Chancellor, and the appropriate authority or the determining officer who redetermined the costs on its behalf as the case may be.

(14) Save where he confirms or decreases the sums redetermined under regulation 9, the costs judge may allow the appellant a sum in respect of part or all of any reasonable costs (including any fee payable in respect of an appeal) incurred by him in connection with the appeal.

## **11 Appeals to the High Court**

(1) An applicant who is dissatisfied with the decision of a costs judge on an appeal under regulation 10 may apply to a taxing master to certify a point of principle of general importance.

(2) Subject to regulation 12, an application under paragraph (1) shall be made within 21 days of notification of a cost judge's decision under regulation 10(13).

(3) Where a costs judge certifies a point of principle of general importance, the applicant may appeal to the High Court against the decision of a costs judge on an appeal under regulation 10, and the Lord Chancellor shall be a respondent to the appeal.

(4) Subject to regulation 12, an appeal under paragraph (3) shall be instituted within 21 days of receiving a cost judge's certificate under paragraph (1).

(5) Where the Lord Chancellor is dissatisfied with the decision of a costs judge on an appeal under regulation 10 he may, if no appeal has been made by the applicant under paragraph (3), appeal to the High Court against that decision and the applicant shall be a respondent to the appeal.

(6) Subject to regulation 12, an appeal under paragraph (5) shall be instituted within 21 days of receiving notification of the cost judge's decision under regulation 10(13).

(7) An appeal under paragraph (3) and (5) shall be brought in the Queen's Bench Division, follow the procedure set out in Part 52 of the Civil Procedure Rules 1998, and shall be heard and determined by a single judge whose decision shall be final.

(8) The judge shall have the same powers as the appropriate authority and a costs judge under these Regulations and may reverse, affirm or amend the decision appealed against or make such other order as he thinks fit.

## **12 Time limits**

(1) Subject to paragraph (2), the time limit within which there must be made or instituted--

- (a) a claim for costs by an applicant under regulation 6, an application for a redetermination under regulation 9, or a request for an appropriate authority to give reasons for its decision on a redetermination under regulation 9;
- (b) an appeal to a costs judge under regulation 10 or an application for a certificate under regulation 11; or
- (c) an appeal to the High Court under regulation 11;

may, for good reason, be extended by the appropriate authority, the Senior Costs Judge or the High Court, as the case may be.

(2) Where an applicant without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the appropriate authority, the Senior Costs Judge or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the costs; provided that the costs shall not be reduced unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.

(3) An applicant may appeal to the Senior Costs Judge against a decision made under this regulation by an appropriate authority in respect of proceedings other than proceedings before a magistrates' court and such an appeal shall be instituted within 21 days of the decision being given by giving notice in writing to the Senior Costs Judge specifying the grounds of appeal.

## **13 Supreme Court**

(1) In the case of proceedings in the Supreme Court, the costs payable to any person under section 16(5) or 17(1) of the Act shall be determined by such officer as may be prescribed by order of the Supreme Court.

(2) Subject to paragraph (1), this Part of these Regulations shall not apply to proceedings in the Supreme Court.

## Appendix 4

### Guidance in respect of defendants' costs orders made in proceedings that commence on or after 1 October 2012

1. The provisions of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"), which come into force on 1 October 2012, make significant changes to the system through which successful defendants and appellants in criminal proceedings may be awarded amounts from central funds in respect of costs incurred by them in those proceedings.

#### Application of the new system

2. The new system applies to all proceedings that commence on or after 1 October 2012. For these purposes proceedings commence:

- (a) in a magistrates' court, when a warrant, requisition or summons relating to the proceedings is issued;
- (b) on an appeal to the Crown Court, when a notice of appeal is served;
- (c) in the case of other proceedings in the Crown Court, when they are committed, transferred or sent to that court;
- (d) in the High Court, when an application for leave to appeal by way of case stated is made or (in the absence of such an application) when notice of appeal is given;
- (e) in the Court of Appeal, when an application for leave to appeal is made or (in the absence of such an application) when notice of appeal is given;
- (f) in the Supreme Court, when an application for leave to appeal is made.

3. Proceedings commenced prior to 1 October 2012 will continue to be governed by the current system for awarding amounts from central funds to successful defendants and appellants in criminal proceedings in respect of costs incurred by them in those proceedings.

#### Legal costs

4. 'Legal costs' are defined in new section 16A(10) of the Prosecution of Offences Act 1985 ("POA") (see at Annex A Part II of the POA as amended by Schedule 7 to LASPO, with LASPO amendments in italics) as fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs.

5. New section 16A(2) of the POA provides that legal costs **cannot** be included in a defendant's costs order (DCO) other than in certain specified circumstances, as set out in new section 16A(3)-(5) of the POA.

6. The specific circumstances where a DCO may still include an amount in respect of legal costs are:

- where the accused is an individual and the order is made under section 16(1), 16(3), or section 16(4)(a)(ii) or (iii) or (d) of the POA;
- where the accused is an individual and the legal costs were incurred in proceedings in a court below, which were either proceedings in a magistrates' court, or proceedings on appeal to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence); or
- where the legal costs were incurred in proceedings in the Supreme Court.

7. For companies and other legal persons, the effect of new section 16A(2)-(5) of the POA is that legal costs **cannot** be included in a DCO, except where the legal costs were incurred in proceedings in the Supreme Court.

8. For individuals, the effect of new section 16A(2)-(5) of the POA is as follows:

#### *Magistrates' court*

Legal costs can be included in a DCO made in the magistrates' court.

#### *Crown Court*

In the Crown Court, legal costs can only be included in a DCO made in appeal proceedings against a conviction or sentence of the magistrates' court. In relation to Crown Court proceedings on indictment, legal costs cannot be included in a DCO.

#### *Court of Appeal*

In the Court of Appeal, legal costs cannot be included in a DCO except in limited circumstances relating to unfitness to plead and insanity, namely where the Court of Appeal—

(a) allows an appeal under Part I of the Criminal Appeal Act 1968 against—

(i) a verdict of not guilty by reason of insanity, or

(ii) a finding under the Criminal Procedure (Insanity) Act 1964 that the appellant is under a disability, or that he did the act or made the omission charged against him,  
or

(b) allows, to any extent, an appeal under section 16A of that Act (appeal against order made in cases of insanity or unfitness to plead).

Legal costs can also be included in a DCO made by the Court of Appeal where the costs were incurred in a court below that was either a magistrates' court, or the Crown Court dealing with an appeal against a magistrates' court conviction or sentence.

#### *Supreme Court*

Legal costs can be included in a DCO made by the Supreme Court, but only in relation to the costs incurred in the Supreme Court. Legal costs can also be included in a DCO made by the Supreme Court where the costs were incurred in a court below that was either a magistrates' court, or the Crown Court dealing with an appeal against a magistrates' court conviction or sentence.

#### **Extradition Act 2003 Proceedings**

9. Schedule 7 to LASPO amends the Extradition Act 2003 in a similar way to the POA (see at Annex B the costs provisions of the Extradition Act 2003 as amended by Schedule 7 to LASPO, with LASPO amendments in *italics*). The effect of these amendments is that a court order awarding money from central funds to successful defendants and appellants in proceedings under that Act may only include an amount in respect of legal costs if the costs were incurred in the magistrates' court or the Supreme Court.

#### **Capping of awards in respect of legal costs at legal aid rates**

10. In cases where a DCO may still include an amount in respect of legal costs, the amendments to the POA made by Schedule 7 to LASPO give the Lord Chancellor the power to cap the amount the court can award by means of rates and scales or other provision. The Lord Chancellor has exercised this power in the Costs in Criminal Cases (General) (Amendment) Regulations 2012 ("2012 Regulations"), which amend the Costs in Criminal Cases (General) Regulations 1986 ("1986 Regulations") (see at Annex C the 1986 Regulations as amended by the 2012 Regulations, with the 2012 amendments in *italics*).

11. The rates and scales and other provisions in the accompanying document effectively require the court to calculate any award of legal costs in a DCO at the equivalent of legal aid rates. They apply to DCOs made pursuant to section 16A of the POA, as amended by LASPO, as well as to orders made under new sections 62B or 135B of the Extradition Act 2003. In some circumstances, the rates can be enhanced, but only as set out in the relevant section of the accompanying document.

#### **Other requirements where a DCO includes an amount in respect of legal costs**

12. Where the court itself fixes the amount payable under the DCO and it considers that there are circumstances that make it inappropriate for the accused to recover the full amount mentioned in subsection (6) the court may specify a lesser amount as it considers just and reasonable. See section 16(6A). Where the court does not fix the amount payable, it may describe in the order any reduction required under subsection (6A).

13. Where legal costs are included in a DCO and the court fixes an amount itself, it must calculate the amount using the rates and scales in the accompanying document, whether or not that results in the fixing of an amount

that the court considers reasonably sufficient or necessary to compensate the person, as per new regulation 4A of the 1986 Regulations, as inserted by the 2012 Regulations.

14. Where legal costs are included in a DCO, and the amount of such costs is assessed by the appropriate authority, the amount must be calculated using the rates in the accompanying document, whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the person, as per new regulation 7(6) of the 1986 Regulations, as inserted by the 2012 Regulations.

15. Where legal costs are included in a DCO, the amount of such costs must not exceed the rates set out in the accompanying document, as per new section 16A(9) of the POA.

16. Where legal costs are included in a DCO, the court must make a statement to that effect, as per new section 16A(8) of the POA.

**Other requirements in relation to a DCO**

17. The costs awarded in a DCO are not to exceed the costs actually incurred, as per new regulation 7(4) of the 1986 Regulations, as inserted by the 2012 Regulations.

18. Any doubts which the appropriate authority may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant. See regulation 7(3) as amended.

## Appendix 5

### Prosecution of Offences Act 1985

1985 CHAPTER 23

*[as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012]*

#### PART II COSTS IN CRIMINAL CASES

##### Award of costs out of central funds

16 Defence costs

17 Prosecution costs

##### Award of costs against accused

18 Award of costs against accused

##### Other awards

19 Provision for orders as to costs in other circumstances

19A Costs against legal representatives etc

19B Provision for award of costs against third parties

##### Supplemental

20 Regulations

21 Interpretation, etc

#### Part II

##### Costs in Criminal Cases

##### Award of costs out of central funds

##### 16 Defence costs

(1) Where--

(a) an information laid before a justice of the peace for any area, charging any person with an offence, is not proceeded with;

(b) a magistrates' court inquiring into an indictable offence as examining justices determines not to commit the accused for trial;

(c) a magistrates' court dealing summarily with an offence dismisses the information;

that court or, in a case falling within paragraph (a) above, a magistrates' court for that area, may make an order in favour of the accused for a payment to be made out of central funds in respect of his costs (a "defendant's costs order").

(2) Where--

- (a) any person is not tried for an offence for which he has been indicted or sent for trial; or
- (aa) a notice of transfer is given under a relevant transfer provision but a person in relation to whose case it is given is not tried on a charge to which it relates; or
- (b) any person is tried on indictment and acquitted on any count in the indictment;

the Crown Court may make a defendant's costs order in favour of the accused.

(3) Where a person convicted of an offence by a magistrates' court appeals to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence) and, in consequence of the decision on appeal--

- (a) his conviction is set aside; or
- (b) a less severe punishment is awarded;

the Crown Court may make a defendant's costs order in favour of the accused.

(4) Where the Court of Appeal--

- (a) allows an appeal under Part I of the Criminal Appeal Act 1968 against--
  - (i) conviction;
  - (ii) a verdict of not guilty by reason of insanity; or
  - (iii) a finding under the Criminal Procedure (Insanity) Act 1964 that the appellant is under a disability, or that he did the act or made the omission charged against him;
- (aa) directs under section 8(1B) of the Criminal Appeal Act 1968 the entry of a judgment and verdict of acquittal;
- (b) on an appeal under that Part against conviction--
  - (i) substitutes a verdict of guilty of another offence;
  - (ii) in a case where a special verdict has been found, orders a different conclusion on the effect of that verdict to be recorded; or
  - (iii) is of the opinion that the case falls within paragraph (a) or (b) of section 6(1) of that Act (cases where the court substitutes a finding of insanity or unfitness to plead); . . .
- (c) on an appeal under that Part against sentence, exercises its powers under section 11(3) of that Act (powers where the court considers that the appellant should be sentenced differently for an offence for which he was dealt with by the court below); or
- (d) allows, to any extent, an appeal under section 16A of that Act (appeal against order made in cases of insanity or unfitness to plead);

the court may make a defendant's costs order in favour of the accused.

(4A) The court may also make a defendant's costs order in favour of the accused on an appeal under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996 (appeals against orders or rulings at preparatory hearings) or under Part 9 of the Criminal Justice Act 2003.

(5) Where--



- (a) any proceedings in a criminal cause or matter are determined before a Divisional Court of the Queen's Bench Division;
- (b) the Supreme Court determines an appeal, or application for leave to appeal, from such a Divisional Court in a criminal cause or matter;
- (c) the Court of Appeal determines an application for leave to appeal to the Supreme Court under Part II of the Criminal Appeal Act 1968; or
- (d) the Supreme Court determines an appeal, or application for leave to appeal, under Part II of that Act;

the court may make a defendant's costs order in favour of the accused.

(6) A defendant's costs order shall, subject to the following provisions of this section, be for the payment out of central funds, to the person in whose favour the order is made, of such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

*(6A) Where the court considers that there are circumstances that make it inappropriate for the accused to recover the full amount mentioned in subsection (6), a defendant's costs order must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.*

*(6B) Subsections (6) and (6A) have effect subject to—*

- (a) section 16A, and*
- (b) regulations under section 20(1A)(d).*

*(6C) When making a defendant's costs order, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—*

- (a) the accused agrees the amount, or*
- (b) subsection (6A) applies.*

*(6D) Where the court does not fix the amount to be paid out of central funds in the order—*

- (a) it must describe in the order any reduction required under subsection (6A), and*
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.*

(7) ...

(8) ...

(9) ...

(10) Subsection (6) above shall have effect, in relation to any case falling within subsection (1)(a) or (2)(a) above, as if for the words "in the proceedings" there were substituted the words "in or about the defence".

(11) Where a person ordered to be retried is acquitted at his retrial, the costs which may be ordered to be paid out of central funds under this section shall include--

- (a) any costs which, at the original trial, could have been ordered to be so paid under this section if he had been acquitted; and
- (b) if no order was made under this section in respect of his expenses on appeal, any sums for the payment of which such an order could have been made.

(12) In subsection (2)(aa) "relevant transfer provision" means--

- (a) section 4 of the Criminal Justice Act 1987, or
- (b) section 53 of the Criminal Justice Act 1991.

## **16A Legal costs**

*(1) A defendant's costs order may not require the payment out of central funds of an amount that includes an amount in respect of the accused's legal costs, subject to the following provisions of this section.*

*(2) Subsection (1) does not apply where condition A, B or C is met.*

*(3) Condition A is that the accused is an individual and the order is made under—*

*(a) section 16(1),*

*(b) section 16(3), or*

*(c) section 16(4)(a)(ii) or (iii) or (d).*

*(4) Condition B is that the accused is an individual and the legal costs were incurred in proceedings in a court below which were—*

*(a) proceedings in a magistrates' court, or*

*(b) proceedings on an appeal to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence).*

*(5) Condition C is that the legal costs were incurred in proceedings in the Supreme Court.*

*(6) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—*

*(a) provision amending this section by adding, modifying or removing an exception, and*

*(b) provision for an exception to arise where a determination has been made by a person specified in the regulations.*

*(7) Regulations under subsection (6) may not remove or limit the exception provided by condition C.*

*(8) Where a court makes a defendant's costs order requiring the payment out of central funds of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.*

*(9) Where, in a defendant's costs order, a court fixes an amount to be paid out of central funds that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.*

*(10) In this section—*

*"legal costs" means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;*

*"advocacy services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;*

*"expert witness costs" means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;*

*"litigation services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.*

## **17 Prosecution costs**

*(1) Subject to subsection (2) and (2A) below, the court may--*

*(a) in any proceedings in respect of an indictable offence; and*

*(b) in any proceedings before a Divisional Court of the Queen's Bench Division or the Supreme Court in respect of a summary offence;*

order the payment out of central funds of such amount as the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings.

(2) No order under this section may be made in favour of--

- (a) a public authority; or
- (b) a person acting--
  - (i) on behalf of a public authority; or
  - (ii) in his capacity as an official appointed by such an authority.

*(2A) Where the court considers that there are circumstances that make it inappropriate for the prosecution to recover the full amount mentioned in subsection (1), an order under this section must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.*

*(2B) When making an order under this section, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—*

- (a) the prosecutor agrees the amount, or*
- (b) subsection (2A) applies.*

*(2C) Where the court does not fix the amount to be paid out of central funds in the order—*

- (a) it must describe in the order any reduction required under subsection (2A), and*
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.*

(3) ...

(4) ...

(5) Where the conduct of proceedings to which subsection (1) above applies is taken over by the Crown Prosecution Service, that subsection shall have effect as if it referred to the prosecutor who had the conduct of the proceedings before the intervention of the Service and to expenses incurred by him up to the time of intervention.

(6) In this section "public authority" means--

- (a) a police force within the meaning of section 3 of this Act;
- (b) the Crown Prosecution Service or any other government department;
- (c) a local authority or other authority or body constituted for purposes of--
  - (i) the public service or of local government; or
  - (ii) carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or
- (d) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament.

## **Award of costs against accused**

### **18 Award of costs against accused**

(1) Where--

- (a) any person is convicted of an offence before a magistrates' court;
- (b) the Crown Court dismisses an appeal against such a conviction or against the sentence imposed on that conviction; or
- (c) any person is convicted of an offence before the Crown Court;

the court may make such order as to the costs to be paid by the accused to the prosecutor as it considers just and reasonable.

(2) Where the Court of Appeal dismisses--

- (a) an appeal or application for leave to appeal under Part I of the Criminal Appeal Act 1968; or
- (b) an application by the accused for leave to appeal to the Supreme Court under Part II of that Act or
- (c) an appeal or application for leave to appeal under section 9(11) of the Criminal Justice Act 1987; or
- (d) an appeal or application for leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996;

it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.

(2A) Where the Court of Appeal reverses or varies a ruling on an appeal under Part 9 of the Criminal Justice Act 2003, it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.

(3) The amount to be paid by the accused in pursuance of an order under this section shall be specified in the order.

(4) Where any person is convicted of an offence before a magistrates' court and--

- (a) under the conviction the court orders payment of any sum as a fine, penalty, forfeiture or compensation; and
- (b) the sum so ordered to be paid does not exceed £5;

the court shall not order the accused to pay any costs under this section unless in the particular circumstances of the case it considers it right to do so.

(5) Where any person under the age of eighteen is convicted of an offence before a magistrates' court, the amount of any costs ordered to be paid by the accused under this section shall not exceed the amount of any fine imposed on him.

(6) Costs ordered to be paid under subsection (2) or (2A) above may include the reasonable cost of any transcript of a record of proceedings made in accordance with rules of court made for the purposes of section 32 of the Act of 1968.

## Other awards

### 19 Provision for orders as to costs in other circumstances

- (1) The Lord Chancellor may by regulations make provision empowering magistrates' courts, the Crown Court and the Court of Appeal, in any case where the court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs.
- (2) Regulations made under subsection (1) above may, in particular--
- (a) allow the making of such an order at any time during the proceedings;
  - (b) make provision as to the account to be taken, in making such an order, of any other order as to costs . . . which has been made in respect of the proceedings or any grant of a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service;
  - (c) make provision as to the account to be taken of any such order in the making of any other order as to costs in respect of the proceedings; and
  - (d) contain provisions similar to those in section 18(4) and (5) of this Act.
- (3) The Lord Chancellor may by regulations make provision for the payment out of central funds, in such circumstances and in relation to such criminal proceedings as may be specified, of such sums as appear to the court to be reasonably necessary--
- (a) to compensate any witness in the proceedings, and any other person who in the opinion of the court necessarily attends for the purpose of the proceedings otherwise than to give evidence, for the expense, trouble or loss of time properly incurred in or incidental to his attendance;
  - (b) to cover the proper expenses of an interpreter who is required because of the accused's lack of English;
  - (c) to compensate a duly qualified medical practitioner who--
    - (i) makes a report otherwise than in writing for the purpose of section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand for medical examination); or
    - (ii) makes a written report to a court in pursuance of a request within subsection (3B) below;
- for the expenses properly incurred in or incidental to his reporting to the court.
- (d) to cover the proper fee or costs of a person appointed by the Crown Court under section 4A of the Criminal Procedure (Insanity) Act 1964 to put the case for the defence.
  - (e) to cover the proper fee or costs of a legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 (defence representation for purposes of cross-examination) and any expenses properly incurred in providing such a person with evidence or other material in connection with his appointment.
- (3ZA) In relation to a sum that may be required by a court other than the Supreme Court to be paid out of central funds under regulations under subsection (3)—*
- (a) the requirement under that subsection for the sum to be such sum as the court considers reasonably necessary to cover or compensate for expenses, fees, costs, trouble or losses is subject to regulations made under section 20(1A)(d), and*
  - (b) regulations under subsection (3) may make provision accordingly.*
- (3A) In subsection (3)(a) above "attendance" means attendance at the court or elsewhere.
- (3B) A request is within this subsection if--
- (a) it is a request to a registered medical practitioner to make a written or oral report on the medical condition of an offender or defendant; and

(b) it is made by a court--

- (i) for the purpose of determining whether or not to include a mental health treatment requirement in a community order or youth rehabilitation order or make an order under section 37 of the Mental Health Act 1983 (hospital orders and guardianship orders) or otherwise for the purpose of determining the most suitable method of dealing with an offender; or
- (ii) in exercise of the powers conferred by section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand of a defendant for medical examination).

(3C) For the purposes of subsection (3B)(b)(i)--

"community order" has the same meaning as in Part 12 of the Criminal Justice Act 2003;

"mental health treatment requirement" means--

- (a) in relation to a community order, a mental health treatment requirement under section 207 of the Criminal Justice Act 2003, and
- (b) in relation to a youth rehabilitation order, a mental health treatment requirement under paragraph 20 of Schedule 1 to the Criminal Justice and Immigration Act 2008;

"youth rehabilitation order" has the same meaning as in Part 1 of the Criminal Justice and Immigration Act 2008.

*(3D) Regulations under subsection (3) may make provision generally or only in relation to particular descriptions of persons, expenses, fees, costs, trouble or losses.*

(4) The Court of Appeal may order the payment out of central funds of such sums as appear to it to be reasonably sufficient to compensate an appellant who is not in custody and who appears before it on, or in connection with, his appeal under Part I of the Criminal Appeal Act 1968.

*(4A) Subsection (4) has effect subject to regulations under section 20(1A)(d).*

*(4B) An order under subsection (4) may not require the payment out of central funds of a sum that includes a sum in respect of legal costs (as defined in section 16A), except where regulations made by the Lord Chancellor provide otherwise.*

*(4C) Regulations under subsection (4B) may, in particular, include—*

- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,*
- (b) provision requiring the court, when it orders the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the order, and*
- (c) provision that the court may not order the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.*

(5) The Lord Chancellor may by regulations provide that any provision made by or under this Part which would not otherwise apply in relation to any category of proceedings in which an offender is before a magistrates' court or the Crown Court shall apply in relation to proceedings of that category, subject to any specified modifications.

## **19A Costs against legal representatives etc**

(1) In any criminal proceedings--

- (a) the Court of Appeal;
- (b) the Crown Court; or
- (c) a magistrates' court,

may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations.

(2) Regulations shall provide that a legal or other representative against whom action is taken by a magistrates' court under subsection (1) may appeal to the Crown Court and that a legal or other representative against whom action is taken by the Crown Court under subsection (1) may appeal to the Court of Appeal.

(3) In this section--

"legal or other representative", in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings;

"regulations" means regulations made by the Lord Chancellor; and

"wasted costs" means any costs incurred by a party--

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative; or

(b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

### **19B Provision for award of costs against third parties**

(1) The Lord Chancellor may by regulations make provision empowering magistrates' courts, the Crown Court and the Court of Appeal to make a third party costs order if the condition in subsection (3) is satisfied.

(2) A "third party costs order" is an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings ("the third party").

(3) The condition is that--

(a) there has been serious misconduct (whether or not constituting a contempt of court) by the third party, and

(b) the court considers it appropriate, having regard to that misconduct, to make a third party costs order against him.

(4) Regulations made under this section may, in particular--

(a) specify types of misconduct in respect of which a third party costs order may not be made;

(b) allow the making of a third party costs order at any time;

(c) make provision for any other order as to costs which has been made in respect of the proceedings to be varied on, or taken account of in, the making of a third party costs order;

(d) make provision for account to be taken of any third party costs order in the making of any other order as to costs in respect of the proceedings.

(5) Regulations made under this section in relation to magistrates' courts must provide that the third party may appeal to the Crown Court against a third party costs order made by a magistrates' court.

(6) Regulations made under this section in relation to the Crown Court must provide that the third party may appeal to the Court of Appeal against a third party costs order made by the Crown Court.

## **Supplemental**

### **20 Regulations**

(1) The Lord Chancellor may make regulations for carrying this Part into effect .

(1A) *The Lord Chancellor may by regulations—*

- (a) make provision as to the amounts that may be ordered to be paid out of central funds in pursuance of a costs order, whether by specifying rates or scales or by making other provision as to the calculation of the amounts,*
- (b) make provision as to the circumstances in which and conditions under which such amounts may be paid or ordered to be paid,*
- (c) make provision requiring amounts required to be paid out of central funds by a costs order to be calculated having regard to regulations under paragraphs (a) and (b),*
- (d) make provision requiring amounts required to be paid to a person out of central funds by a relevant costs order to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the person), and*
- (e) make provision as to the review of determinations of amounts required to be paid out of central funds by costs orders.*

(1B) *In subsection (1A)(d) “relevant costs order” means a costs order other than—*

- (a) an order made by any court under section 17, and*
- (b) so much of a costs order made by the Supreme Court as relates to expenses, fees, costs, trouble or losses incurred in proceedings in that court.*

(1C) *Regulations under subsection (1A) may, in particular—*

- (a) make different provision in relation to amounts to be paid in respect of different expenses, fees, costs, trouble and losses,*
- (b) make different provision in relation to different costs orders and different areas, and*
- (c) make different provision in relation to the fixing of an amount in a costs order and the fixing of an amount by means of a determination.*

(2) The Lord Chancellor may by regulations make provision for the recovery of sums paid by the Legal Services Commission or out of central funds in cases where--

- (a) a costs order has been made against a person; and
- (b) the person in whose favour the order was made is a legally assisted person or a person in whose favour a defendant's costs order or, as the case may be, an order under section 17 of this Act has been made.

(3) Regulations made under subsection (1A) above may provide that *provision as to the calculation of amounts* payable out of central funds under a costs order (*whether in the form of rates or scales or other provision*) shall be determined by the Lord Chancellor with the consent of the Treasury.

(4) Regulations made under subsection (2) above may, in particular--

- (a) require the person mentioned in paragraph (a) of that subsection to pay sums due under the costs order in accordance with directions given by the Lord Chancellor (either generally or in respect of the particular case); and
- (b) enable the Lord Chancellor to enforce those directions in cases to which they apply.

(5) . . .

(6) Any regulations under this Part may contain such incidental, supplemental and transitional provisions as the Lord Chancellor considers appropriate.

(7) Before making any regulations under section 19(1), 19A or 19B of this Act which affect the procedure of any court, the Lord Chancellor shall so far as is reasonably practicable consult any rule committee by whom, or on whose advice, rules of procedure for the court may be made or whose concurrence is required to any such rules.

(8) In this section "costs order" means--



- (a) an order made under or by virtue of this Part for payment to be made--
  - (i) out of central funds; or
  - (ii) by any person; or
- (b) an order made in a criminal case by the Supreme Court for the payment of costs by a party to proceedings.

## 21 Interpretation, etc

### (1) In this Part--

"accused" and "appellant", in a case where section 44A of the Criminal Appeal Act 1968 (death of convicted person) applies, include the person approved under that section;

"defendant's costs order" has the meaning given in section 16 of this Act;

...

"legally assisted person", in relation to any proceedings, means a person to whom a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service has been granted for the purposes of the proceedings;

"proceedings" includes--

- (a) proceedings in any court below; and
- (b) in relation to the determination of an appeal by any court, any application made to that court for leave to bring the appeal; and

"witness" means any person properly attending to give evidence, whether or not he gives evidence or is called at the instance of one of the parties or of the court, but does not include a person attending as a witness to character only unless the court has certified that the interests of justice required his attendance.

(2) Except as provided by or under this Part no costs shall be allowed on the hearing or determination of, or of any proceedings preliminary or incidental to, an appeal to the Court of Appeal under Part I of the Criminal Appeal Act 1968.

(3) Subject to rules of court made under section 53(1) of the Senior Courts Act 1981 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), the jurisdiction of the Court of Appeal under this Part, or under regulations made under this Part, shall be exercised by the criminal division of that Court; and references in this Part to the Court of Appeal shall be construed as references to that division.

(4) For the purposes of sections 16, 16A and 17 this Act, the costs of any party to proceedings shall be taken to include the expense of compensating any witness for the expenses, trouble or loss of time properly incurred in or incidental to his attendance.

(4A) Where one party to any proceedings is a legally assisted person then--

- (a) for the purposes of sections 16, 16A and 17 of this Act, his costs shall be taken not to the cost of representation funded for him by the Legal Services Commission as part of the Criminal Defence Service; and
- (b) for the purposes of sections 18 to 19B of this Act, his costs shall be taken to include the cost of representation funded for him by the Legal Services Commission as part of the Criminal Defence Service.

(5) Where, in any proceedings in a criminal cause or matter or in either of the cases mentioned in subsection (6) below, an interpreter is required because of the accused's lack of English, the expenses properly incurred on his employment shall not be treated as costs of any party to the proceedings.

(6) The cases are--

- (a) where an information charging the accused with an offence is laid before a justice of the peace . . . but not proceeded with and the expenses are incurred on the employment of the interpreter for the proceedings on the information; and
- (b) where the accused is committed or sent for trial but proceedings against the accused are transferred to the Crown Court for trial but the accused is not tried and the expenses are incurred on the employment of the interpreter for the proceedings in the Crown Court.

## Appendix 6

### Extradition Act 2003 – costs provisions

*[as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012]*

#### **60 Costs where extradition ordered**

(1) This section applies if any of the following occurs in relation to a person in respect of whom a Part 1 warrant is issued—

- (a) an order for the person's extradition is made under this Part;
- (b) the High Court dismisses an appeal under section 26;
- (c) the High Court or the Supreme Court dismisses an application for leave to appeal to the Supreme Court under section 32, if the application is made by the person;
- (d) the Supreme Court dismisses an appeal under section 32, if the appeal is brought by the person.

(2) In a case falling within subsection (1)(a), the appropriate judge may make such order as he considers just and reasonable with regard to the costs to be paid by the person.

(3) In a case falling within subsection (1)(b), (c) or (d), the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person.

(4) An order for costs under this section—

- (a) must specify their amount;
- (b) may name the person to whom they are to be paid.

#### **61 Costs where discharge ordered**

(1) This section applies if any of the following occurs in relation to a person in respect of whom a Part 1 warrant is issued—

- (a) an order for the person's discharge is made under this Part;
- (b) the person is taken to be discharged under this Part;
- (c) the High Court dismisses an appeal under section 28;
- (d) the High Court or the Supreme Court dismisses an application for leave to appeal to the Supreme Court under section 32, if the application is made by the authority which issued the warrant;
- (e) the Supreme Court dismisses an appeal under section 32, if the appeal is brought by the authority which issued the warrant.

(2) In a case falling within subsection (1)(a), an order under subsection (5) in favour of the person may be made by—

- (a) the appropriate judge, if the order for the person's discharge is made by him;
- (b) the High Court, if the order for the person's discharge is made by it;
- (c) the Supreme Court, if the order for the person's discharge is made by it.

(3) In a case falling within subsection (1)(b), the appropriate judge may make an order under subsection (5) in favour of the person.

(4) In a case falling within subsection (1)(c), (d) or (e), the court by which the application or appeal is dismissed may make an order under subsection (5) in favour of the person.

(5) An order under this subsection in favour of a person is an order for a payment of the appropriate amount to be made to the person out of money provided by Parliament.

*(5A) In England and Wales, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with sections 62A and 62B.*

*(5B) In Scotland and Northern Ireland, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with subsections (6) to (9).*

(6) The appropriate amount is such amount as the judge or court making the order under subsection (5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by him in the proceedings under this Part.

(7) But if the judge or court making an order under subsection (5) is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (6), the judge or court must—

- (a) assess what amount would in his or its opinion be just and reasonable;
- (b) specify that amount in the order as the appropriate amount.

(8) Unless subsection (7) applies, the appropriate amount—

- (a) must be specified in the order, if the court considers it appropriate for it to be so specified and the person in whose favour the order is made agrees the amount;
- (b) must be determined in accordance with regulations made by the Lord Chancellor for the purposes of this section, in any other case.

(9) In relation to proceedings in Northern Ireland (including proceedings in the Supreme Court on an appeal, or on an application for leave to appeal, from proceedings in Northern Ireland)—

- (a) subsection (5) has effect as if for “out of money provided by Parliament” there were substituted “by the Department of Justice in Northern Ireland”;
- (b) the power to make regulations under subsection (8)(b) is exercisable by the Department of Justice in Northern Ireland (and not by the Lord Chancellor).

## **62 Costs where discharge ordered: supplementary**

(1) ...

(2) ...

(3) In Northern Ireland, section 7 of the Costs in Criminal Cases Act (Northern Ireland) 1968 (c.10) (rules relating to costs) applies in relation to section 61 as that section applies in relation to sections 2 to 5 of that Act.

### **62A Appropriate amount: England and Wales**

*(1) For the purposes of an order under section 61(5), the appropriate amount is such amount as the judge or court making the order considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by the person in the proceedings under this Part.*

*(2) But if the judge or court considers that there are circumstances that make it inappropriate for the person to recover the full amount mentioned in subsection (1), the order under section 61(5) must be for the payment out of money provided by Parliament of such lesser amount as the judge or court considers just and reasonable.*

(3) Subsections (1) and (2) have effect subject to—

- (a) section 62B, and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).

(4) When making an order under section 61(5), the judge or court must fix the amount to be paid out of money provided by Parliament in the order if the judge or court considers it appropriate to do so and—

- (a) the person in whose favour the order is made agrees the amount, or
- (b) subsection (2) applies.

(5) Where the judge or court does not fix the amount to be paid out of money provided by Parliament in the order—  
(a) the judge or court must describe in the order any reduction required under subsection (2), and  
(b) the amount must be fixed by means of a determination made by or on behalf of the judge or court in accordance with procedures specified in regulations made by the Lord Chancellor.

(6) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of money provided by Parliament in pursuance of an order under section 61 as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.

(7) This section extends to England and Wales only.

#### **62B Legal costs: England and Wales**

(1) An order under section 61(5) may not require the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs incurred by the person in whose favour the order is made, subject to the following provisions of this section.

(2) Subsection (1) does not apply in relation to legal costs incurred in—  
(a) proceedings in a magistrates' court, or  
(b) proceedings in the Supreme Court.

(3) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—  
(a) provision amending this section by adding, modifying or removing an exception, and  
(b) provision for an exception to arise where a determination has been made by a person specified in the regulations.

(4) Regulations under subsection (3) may not remove or limit the exception provided by subsection (2)(b).

(5) Where a judge or court makes an order under section 61(5) requiring the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.

(6) Where, in an order under section 61(5), a judge or court fixes an amount to be paid out of money provided by Parliament that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.

(7) In this section—

“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.

(8) This section extends to England and Wales only.

### **133 Costs where extradition ordered**

(1) This section applies if any of the following occurs in relation to a person whose extradition is requested under this Part—

- (a) an order for the person's extradition is made under this Part;
- (b) the High Court dismisses an appeal under section 103 or 108;
- (c) the High Court or the Supreme Court dismisses an application for leave to appeal to the Supreme Court under section 114, if the application is made by the person;
- (d) the Supreme Court dismisses an appeal under section 114, if the appeal is brought by the person.

(2) In a case falling within subsection (1)(a), the appropriate judge may make such order as he considers just and reasonable with regard to the costs to be paid by the person.

(3) In a case falling within subsection (1)(b) by virtue of section 104(7), the judge who decides the question that is (or all the questions that are) the subject of a direction under section 104(1)(b) may make such order as he considers just and reasonable with regard to the costs to be paid by the person.

(4) In any other case falling within subsection (1)(b), the High Court may make such order as it considers just and reasonable with regard to the costs to be paid by the person.

(5) In a case falling within subsection (1)(c) or (d), the court by which the application or appeal is dismissed may make such order as it considers just and reasonable with regard to the costs to be paid by the person.

(6) An order for costs under this section—

- (a) must specify their amount;
- (b) may name the person to whom they are to be paid.

### **134 Costs where discharge ordered**

(1) This section applies if any of the following occurs in relation to a person whose extradition to a category 2 territory is requested under this Part—

- (a) an order for the person's discharge is made under this Part;
- (b) the person is taken to be discharged under this Part;
- (c) the High Court dismisses an appeal under section 105 or 110;
- (d) the High Court or the Supreme Court dismisses an application for leave to appeal to the Supreme Court under section 114, if the application is made on behalf of the category 2 territory;
- (e) the Supreme Court dismisses an appeal under section 114, if the appeal is brought on behalf of the category 2 territory.

(2) In a case falling within subsection (1)(a), an order under subsection (5) in favour of the person may be made by—

- (a) the appropriate judge, if the order for the person's discharge is made by him or by the Secretary of State;
- (b) the High Court, if the order for the person's discharge is made by it;
- (c) the Supreme Court if the order for the person's discharge is made by it.

(3) In a case falling within subsection (1)(b), the appropriate judge may make an order under subsection (5) in favour of the person.

(4) In a case falling within subsection (1)(c), (d) or (e), the court by which the application or appeal is dismissed may make an order under subsection (5) in favour of the person.

(5) An order under this subsection in favour of a person is an order for a payment of the appropriate amount to be made to the person out of money provided by Parliament.

*(5A) In England and Wales, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with sections 135A and 135B.*

*(5B) In Scotland and Northern Ireland, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with subsections (6) to (9).*

(6) The appropriate amount is such amount as the judge or court making the order under subsection (5) considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by him in the proceedings under this Part.

(7) But if the judge or court making an order under subsection (5) is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in subsection (6), the judge or court must—

- (a) assess what amount would in his or its opinion be just and reasonable;
- (b) specify that amount in the order as the appropriate amount.

(8) Unless subsection (7) applies, the appropriate amount—

- (a) must be specified in the order, if the court considers it appropriate for it to be so specified and the person in whose favour the order is made agrees the amount;
- (b) must be determined in accordance with regulations made by the Lord Chancellor for the purposes of this section, in any other case.

(9) In relation to proceedings in Northern Ireland (including proceedings in the Supreme Court on an appeal, or on an application for leave to appeal, from proceedings in Northern Ireland)—

- (a) subsection (5) has effect as if for “out of money provided by Parliament” there were substituted “by the Department of Justice in Northern Ireland”;
- (b) the power to make regulations under subsection (8)(b) is exercisable by the Department of Justice in Northern Ireland (and not by the Lord Chancellor).

### **135 Costs where discharge ordered: supplementary**

(1) ....

(2) ....

(3) In Northern Ireland, section 7 of the Costs in Criminal Cases Act (Northern Ireland) 1968 (c.10) (rules relating to costs) applies in relation to section 134 as that section applies in relation to sections 2 to 5 of that Act.

### **135A Appropriate amount: England and Wales**

*(1) For the purposes of an order under section 134(5), the appropriate amount is such amount as the judge or court making the order considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by the person in the proceedings under this Part.*

*(2) But if the judge or court considers that there are circumstances that make it inappropriate for the person to recover the full amount mentioned in subsection (1), the order under section 134(5) must be for the payment out of money provided by Parliament of such lesser amount as the judge or court considers just and reasonable.*

(3) Subsections (1) and (2) have effect subject to—

- (a) section 135B, and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).

(4) When making an order under section 134(5), the judge or court must fix the amount to be paid out of money provided by Parliament in the order if the judge or court considers it appropriate to do so and—

- (a) the person in whose favour the order is made agrees the amount, or
- (b) subsection (2) applies.

(5) Where the judge or court does not fix the amount to be paid out of money provided by Parliament in the order—

- (a) the judge or court must describe in the order any reduction required under subsection (2), and
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.

(6) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of money provided by Parliament in pursuance of an order under section 134 as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.

(7) This section extends to England and Wales only.

### **135B Legal costs: England and Wales**

(1) An order under section 134(5) may not require the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs incurred by the person in whose favour the order is made, subject to the following provisions of this section.

(2) Subsection (1) does not apply in relation to legal costs incurred in—

- (a) proceedings in a magistrates' court, or
- (b) proceedings in the Supreme Court.

(3) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—

- (a) provision amending this section by adding, modifying or removing an exception, and
- (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.

(4) Regulations under subsection (3) may not remove or limit the exception provided by subsection (2)(b).

(5) Where a judge or court makes an order under section 134(5) requiring the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.

(6) Where, in an order under section 134(5), a judge or court fixes an amount to be paid out of money provided by Parliament that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.

(7) In this section—

“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.

(8) This section extends to England and Wales only.

### **223 Orders and regulations**

(1) References in this section to subordinate legislation are to—

- (a) an order of the Secretary of State under this Act (other than an order within subsection (2));
- (b) an order of the Treasury under this Act;
- (c) regulations under this Act.



- (2) The orders referred to in subsection (1)(a) are—
- (a) an order for a person's extradition or discharge;
  - (b) an order deferring proceedings on a warrant or request;
  - (c) an order deferring a person's extradition in pursuance of a warrant or request.
- (3) Subordinate legislation—
- (a) may make different provision for different purposes;
  - (b) may include supplementary, incidental, saving or transitional provisions.
- (4) A power to make subordinate legislation is exercisable by statutory instrument (subject to subsection (10)).
- (5) No order mentioned in subsection (6) may be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) The orders are—
- (a) an order under any of these provisions—
    - section 1(1);
    - section 62B(3)*;
    - section 69(1);
    - section 71(4);
    - section 73(5);
    - section 74(11)(b);
    - section 84(7);
    - section 86(7);
    - section 135B(3)*;
    - section 142(9);
    - section 173(4);
    - section 215(2);
  - (b) an order under section 219(2) which contains any provision (whether alone or with other provisions) amending or repealing any Act or provision of an Act.
- (7) A statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament if it contains subordinate legislation other than an order mentioned in subsection (6) or an order under section 221.
- (8) A territory may be designated by being named in an order made by the Secretary of State under this Act or by falling within a description set out in such an order.
- (9) An order made by the Secretary of State under section 1(1) or 69(1) may provide that this Act has effect in relation to a territory designated by the order with specified modifications.
- (10) The power of the Department of Justice in Northern Ireland to make regulations under section 61(8)(b) or 134(8)(b) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
- (11) Regulations made by the Department of Justice are subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954).

## Appendix 7

### Costs in Criminal Cases (General) Regulations 1986

*[Includes amendment up to the Costs in Criminal Cases (General) (Amendment ) Regulations 2012]*

#### Part III

#### Costs out of Central Funds

#### 4 Application and definitions

This Part of these Regulations applies to costs payable out of central funds in pursuance of an order made under or by virtue of Part II of the Act and in this Part of these Regulations--

"applicant" means the person in whose favour a costs order has been made;

"appropriate authority" has the meaning assigned to it by regulation 5;

"costs judge" means a taxing master of the Supreme Court;

"costs order" means an order made under or by virtue of Part II of the Act for the payment of costs out of central funds;

"disbursements" do not include any payment made out of central funds to a witness, interpreter, intermediary or medical practitioner in accordance with Part V of these Regulations;

"expenses" means out of pocket expenses, travelling expenses and subsistence allowance;

"presiding judge" means the judge who presided at the hearing in respect of which the costs are payable;  
and

...

#### 4A Costs fixed by the court

*Where the court fixes an amount to be paid to the accused out of central funds in accordance with section 16(6C) of the Act or sections 62A(4) or 135A(4) of the Extradition Act 2003, it must, in relation to any amounts payable in respect of legal costs, calculate such amounts in accordance with the rates or scales or other provision made by the Lord Chancellor pursuant to regulation 7(7), whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the accused.*

#### 5 The appropriate authority

- (1) Costs shall be determined by the appropriate authority in accordance with these Regulations.
- (2) Subject to paragraph (3), the appropriate authority shall be--
  - (a) the registrar of criminal appeals in the case of proceedings in the Court of Appeal,
  - (b) the master of the Crown Office in the case of proceedings in a Divisional Court of the Queen's Bench Division,
  - (c) an officer appointed by the Lord Chancellor in the case of proceedings in the Crown Court or, subject to sub-paragraph (d), a magistrates' court,
  - (d) the justices' clerk in the case of proceedings in a magistrates' court, where the costs consist solely of expenses claimed by the applicant.

(3) The appropriate authority may appoint or authorise the appointment of determining officers to act on its behalf under these Regulations in accordance with directions given by it or on its behalf.

## **6 Claims for costs**

(1) Subject to regulation 12, no claim for costs shall be entertained unless it is submitted within three months of the date on which the costs order was made.

(2) Subject to paragraph (3), a claim for costs shall be submitted to the appropriate authority in such form and manner as . . . it may direct and shall be accompanied by receipts or other evidence of the applicant's payment of the costs claimed, 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 solicitor;

(b) state, where appropriate, the dates on which items of work were done, the time taken and the sums claimed, . . .

(c) specify any disbursements claimed, including counsel's fees, the circumstances in which they were incurred and the amounts claimed in respect of them and

(d) contain either full particulars, including the date and outcome, of any claim for payment in respect of services funded for the applicant as part of the Criminal Defence Service, or a certificate by the solicitor that he has not made, and will not make, any such claim.

(4) Where there are any special circumstances which should be drawn to the attention of the appropriate authority, the applicant shall specify them.

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

## **7 Determination of costs**

(1) *The appropriate authority shall consider the claim and any further particulars, information or documents submitted by the applicant under regulation 6(5), and shall allow costs in respect of—*

*(a) such work as appears to it to have been actually and reasonably done; and*

*(b) such disbursements as appear to it to have been actually and reasonably incurred.*

(2) *In calculating costs under paragraph (1) the appropriate authority shall take into account all the relevant circumstances of the case including the nature, importance, complexity and difficulty of the work and the time involved.*

(3) *Any doubts which the appropriate authority may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant.*

(4) *The costs awarded shall not exceed the costs actually incurred.*

(5) *Subject to paragraph (6), the appropriate authority shall allow such legal costs as it considers reasonably sufficient to compensate the applicant for any expenses properly incurred by him in the proceedings.*

(6) *Where the subject of a costs order is an individual and—*

- (a) *the order was made under section 16(1), (3) or (4)(a)(ii) or (iii) or (d) of the Act;*
- (b) *the order was made under section 16 and includes legal costs that were incurred in proceedings in a court below which were—*
  - (i) *proceedings in a magistrates' court; or*
  - (ii) *proceedings on an appeal to the Crown Court under section 108 of the Magistrates' Courts Act 1980; or*
- (c) *the order includes an amount in respect of legal costs incurred in proceedings in a magistrates' court under the Extradition Act 2003,*

*the appropriate authority shall calculate amounts payable out of central funds in respect of legal costs to the individual in accordance with the rates or scales or other provision made by the Lord Chancellor pursuant to paragraph (7), whether or not that results in the fixing of an amount that the appropriate authority considers reasonably sufficient or necessary to compensate the individual.*

*(7) The Lord Chancellor shall, with the consent of the Treasury, determine provision (whether in the form of rates or scales or other provision) as to how amounts payable out of central funds in respect of legal costs shall be calculated.*

## **8 Payment of costs**

(1) When the appropriate authority has determined the costs payable to an applicant in accordance with these Regulations, the appropriate authority shall notify the applicant of the costs payable and authorise payment accordingly.

(2) Where the costs payable under paragraph (1) are varied as a result of a redetermination under regulation 9, an appeal to a costs judge under regulation 10, or an appeal to the High Court under regulation 11, then--

- (a) where the costs are increased, the appropriate authority shall authorise payment of the increase;
- (b) where the costs are decreased, the applicant shall repay the amount of such decrease; and
- (c) where the payment of the costs of an appeal is ordered under regulation 10(14) or 11(8), the appropriate authority shall authorise such payment to the applicant.

## **9 Redetermination of costs by an appropriate authority**

- (1) An applicant who is dissatisfied with the costs determined under these Regulations by an appropriate authority in respect of proceedings other than proceedings before a magistrates' court may apply to the appropriate authority to redetermine them.
- (2) Subject to regulation 12, the application shall be made, within 21 days of the receipt of notification of the costs payable under regulation 8(1), by giving notice in writing to the appropriate authority specifying the items in respect of which the application is made and the grounds of objection and shall be made in such form and manner as the appropriate authority 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 appropriate authority shall notify the applicant of the time at which it is prepared to hear him or his representative.
- (4) The notice of application shall be accompanied by any particulars, information and documents supplied under regulation 6 and the applicant shall supply such further particulars, information and documents as the appropriate authority may require.
- (5) The appropriate authority shall redetermine the costs, whether by way of increase, decrease or at the level previously determined, in the light of the objections made by the applicant or on his behalf and shall notify the applicant of its decision.
- (6) The applicant may request the appropriate authority to give reasons in writing for its decision and, if so requested, the appropriate authority shall comply with the request.
- (7) Subject to regulation 12, any request under paragraph (6) shall be made within 21 days of receiving notification of the decision.

## **10 Appeals to a costs judge**

- (1) Where the appropriate authority has given its reasons for its decision on a redetermination under regulation 9, an applicant who is dissatisfied with that decision may appeal to a costs judge.
- (2) Subject to regulation 12, an appeal shall be instituted within 21 days of the receipt of the appropriate authority's reasons by giving notice in writing to the Senior Costs Judge specifying the items in respect of which the appeal is brought and the grounds of objection.
- (3) The appellant shall send a copy of any notice given under paragraph (2) to the appropriate authority.
- (4) The notice of appeal shall be accompanied by--
  - (a) a copy of the written notice given under regulation 9(2);
  - (b) any particulars, information and documents supplied to the appropriate authority under regulation 9, and
  - (c) the appropriate authority's reasons for its decision given under regulation 9(6).
- (5) The notice of appeal shall state whether the appellant wishes to appear or to be represented or whether he will accept a decision given in his absence.
- (6) The Senior Costs Judge may, and if so directed by the Lord Chancellor either generally or in particular case shall, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.
- (7) 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 Senior Costs Judge and the appellant.
- (8) Any written representations made on behalf of the Lord Chancellor under paragraph (7) shall be sent to the Senior Costs Judge and to the appellant and, in the case of oral representations, the Senior Costs Judge and the appellant shall be informed of the grounds on which such representations will be made.

- (9) The appellant shall be permitted a reasonable opportunity to make representations in reply.
- (10) The costs judge shall inform the appellant (or his representative) and the Lord Chancellor, where representations have been or are to be made on his behalf, of the date of any hearing and, subject to the provisions of this regulation, may give directions as to the conduct of the appeal.
- (11) The costs judge may consult the presiding judge, and the appropriate authority or the determining officer who redetermined the costs on its behalf as the case may be, and may require the appellant to provide any further information which he requires for the purpose of the appeal and, unless the costs judge otherwise directs, no further evidence shall be received on the hearing of the appeal and no ground of objection shall be valid which was not raised on the redetermination under regulation 9.
- (12) The costs judge shall have the same powers as the appropriate authority under these Regulations and, in the exercise of such powers, may alter the redetermination of the appropriate authority in respect of any sum allowed, whether by increase or decrease, as he thinks fit.
- (13) The costs judge shall communicate his decision and the reasons for it in writing to the appellant, the Lord Chancellor, and the appropriate authority or the determining officer who redetermined the costs on its behalf as the case may be.
- (14) Save where he confirms or decreases the sums redetermined under regulation 9, the costs judge may allow the appellant a sum in respect of part or all of any reasonable costs (including any fee payable in respect of an appeal) incurred by him in connection with the appeal.

## **11 Appeals to the High Court**

- (1) An applicant who is dissatisfied with the decision of a costs judge on an appeal under regulation 10 may apply to a taxing master to certify a point of principle of general importance.
- (2) Subject to regulation 12, an application under paragraph (1) shall be made within 21 days of notification of a cost judge's decision under regulation 10(13).
- (3) Where a costs judge certifies a point of principle of general importance, the applicant may appeal to the High Court against the decision of a costs judge on an appeal under regulation 10, and the Lord Chancellor shall be a respondent to the appeal.
- (4) Subject to regulation 12, an appeal under paragraph (3) shall be instituted within 21 days of receiving a cost judge's certificate under paragraph (1).
- (5) Where the Lord Chancellor is dissatisfied with the decision of a costs judge on an appeal under regulation 10 he may, if no appeal has been made by the applicant under paragraph (3), appeal to the High Court against that decision and the applicant shall be a respondent to the appeal.
- (6) Subject to regulation 12, an appeal under paragraph (5) shall be instituted within 21 days of receiving notification of the cost judge's decision under regulation 10(13).
- (7) An appeal under paragraph (3) and (5) shall be brought in the Queen's Bench Division, follow the procedure set out in Part 52 of the Civil Procedure Rules 1998, and shall be heard and determined by a single judge whose decision shall be final.
- (8) The judge shall have the same powers as the appropriate authority and a costs judge under these Regulations and may reverse, affirm or amend the decision appealed against or make such other order as he thinks fit.

## **12 Time limits**

- (1) Subject to paragraph (2), the time limit within which there must be made or instituted--
- (a) a claim for costs by an applicant under regulation 6, an application for a redetermination under regulation 9, or a request for an appropriate authority to give reasons for its decision on a redetermination under regulation 9;

- (b) an appeal to a costs judge under regulation 10 or an application for a certificate under regulation 11; or
- (c) an appeal to the High Court under regulation 11;

may, for good reason, be extended by the appropriate authority, the Senior Costs Judge or the High Court, as the case may be.

(2) Where an applicant without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the appropriate authority, the Senior Costs Judge or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the costs; provided that the costs shall not be reduced unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.

(3) An applicant may appeal to the Senior Costs Judge against a decision made under this regulation by an appropriate authority in respect of proceedings other than proceedings before a magistrates' court and such an appeal shall be instituted within 21 days of the decision being given by giving notice in writing to the Senior Costs Judge specifying the grounds of appeal.

### **13 Supreme Court**

(1) In the case of proceedings in the Supreme Court, the costs payable to any person under section 16(5) or 17(1) of the Act shall be determined by such officer as may be prescribed by order of the Supreme Court.

(2) Subject to paragraph (1), this Part of these Regulations shall not apply to proceedings in the Supreme Court.

## Appendix 8: Senior Courts Costs Office Guideline hourly rates

These guideline hourly rates are taken from the *Guide to the Summary assessment of Costs* published by the Senior Courts Costs Office. They were described by a previous Master of the Rolls as 'broad approximations only'. In appropriate determinations, i.e. those not subject to capped rates, the NTT will use these rates as a point of departure. Where a claim exceeds the appropriate guideline hourly rate, the NTT will expect to see justification submitted.

In accordance with the notice on the website of the Courts and Tribunals Judiciary of England and Wales, the 2010 rates will continue to apply until further notice.

<http://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/guideline-hourly-rates-2011/>

Further information on the 2010 rates is available from the Judiciary website at

<http://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/ghrsurveyfaq/>

### **Guideline Hourly Rates for 2010**

|            | <b>Band A</b> | <b>Band B</b> | <b>Band C</b> | <b>Band D</b> |
|------------|---------------|---------------|---------------|---------------|
| London 1   | 409           | 296           | 226           | 138           |
| London 2   | 317           | 242           | 196           | 126           |
| London 3   | 229 - 267     | 172 - 229     | 165           | 121           |
| National 1 | 217           | 192           | 161           | 118           |
| National 2 | 201           | 177           | 146           | 111           |

The rates for London 3, Bands A and B are presented as ranges following the format of The Guide to the Summary Assessment of Costs. These ranges go some way towards reflecting the wide range of work types transacted in these areas.

## **SCCO Guide to the Summary Assessment of Costs 2007**

### **Solicitor's hourly rates**

The guideline rates for solicitors provided here are broad approximations only. In any particular area the Designated Civil Judge may supply more exact guidelines for rates in that area. Also the costs estimate provided by the paying party may give further guidance if the solicitors for both parties are based in the same locality.

The following diagram shows guideline figures for each of three bands outside the London area, and a further three bands within the London area with a statement of the localities included in each band. In each band there are four columns specifying figures for different grades of fee earner.

### **Localities**

The guideline figures have been grouped according to locality by way of general guidance only. Although many firms may be comparable with others in the same locality, some of them will not be. For example, a firm located in the City of London which specialises in fast track personal injury claims may not be comparable with other firms in that locality and vice versa.



In any particular case the hourly rate it is reasonable to allow should be determined by reference to the rates charged by comparable firms. For this purpose the costs estimate supplied by the paying party may be of assistance. The rate to allow should not be determined by reference to locality or postcode alone.

### **Grades of fee earner**

The grades of fee earner have been agreed between representatives of the Supreme Court Costs Office, the Association of District Judges and the Law Society. The categories are as follows:

- Solicitors with over eight years post qualification experience including at least eight years litigation experience.
- Solicitors and legal executives with over four years post qualification experience including at least four years litigation experience.
- Other solicitors and legal executives and fee earners of equivalent experience.
- Trainee solicitors, para legals and other fee earners.

"Legal Executive" means a Fellow of the Institute of Legal Executives. Those who are not Fellows of the Institute are not entitled to call themselves legal executives and in principle are therefore not entitled to the same hourly rate as a legal executive.

Unqualified clerks who are fee earners of equivalent experience may be entitled to similar rates and in this regard it should be borne in mind that Fellows of the Institute of Legal Executives generally spend two years in a solicitor's office before passing their Part 1 general examinations, spend a further two years before passing the Part 2 specialist examinations and then complete a further two years in practice before being able to become Fellows. Fellows have therefore possess considerable practical experience and academic achievement. Clerks without the equivalent experience of legal executives will be treated as being in the bottom grade of fee earner ie. trainee solicitors and fee earners of equivalent experience. Whether or not a fee earner has equivalent experience is ultimately a matter for the discretion of the court.

### **Rates to allow for senior fee earners**

Many High Court cases justify fee earners at a senior level. However the same may not be true of attendance at pre-trial hearings with counsel. The task of sitting behind counsel should be delegated to a more junior fee earner in all but the most important pre-trial hearings. The fact that the receiving party insisted upon the senior's attendance, or the fact that the fee earner is a sole practitioner who has no juniors to delegate to, should not be the determinative factors. As with hourly rates the costs estimate supplied by the paying party may be of assistance. What grade of fee earner did they use?

An hourly rate in excess of the guideline figures may be appropriate for Grade A fee earners in substantial and complex litigation where other factors, including the value of the litigation, the level of complexity, the urgency or importance of the matter as well as any international element would justify a significantly higher rate to reflect higher average costs.

## Appendix 9: DCO Fastrak cover sheet

TO THE NATIONAL TAXING TEAM

Attached is a claim where profit costs total £2000 or less (exclusive of VAT and or disbursements) under the new

### FASTRAK DCO SCHEME

**I enclose the following mandatory documents:**

**Please tick**

- ☐ A certified and signed claim in form 5911 clearly marked as **FASTRAK DCO**
- ☐ A copy of the costs order made by the court
- ☐ Appropriate evidence of the contract of the retainer (i.e. the client care letter and any amendments)

**I enclose the following documents if applicable:**

**Please tick:**

- ☐ All vouchers for disbursements
- ☐ A copy of any interim or final bills sent to the applicant
- ☐ Advocate's fee notes.
- ☐ Client's authority to pay costs to solicitors

I certify that no other claim has been made in respect of these costs

SIGNED.....DATED.....

FIRM.....

DX NO.....

## Appendix 10: Legal Aid Fastrak cover sheet

**To: THE NATIONAL TAXING TEAM**

Attached is a claim where profit costs total **£2000** or less (exclusive of VAT and/or disbursements) under the Fastrak scheme.

*I enclose the following mandatory documents:*

**Please tick**

- ☐ A signed claim clearly marked as **FASTRAK**
- ☐ A relevant legal aid/representation order for the Crown Court (and Magistrates Court in Section 51 cases)
- ☐ A copy of the most recent Crown Court listing notification in order to validate the case number and Court

*I enclose the following documents if applicable:*

**Please tick**

- ☐ All vouchers for disbursements (with Prior Authorities if appropriate)
- ☐ A copy of the certificate of attendance for Crown Court proceedings
- ☐ A statement giving the names and grades of all fee earners involved in the case, which should include reasons for claiming enhanced rates/use of a Grade A fee earner if applicable
- ☐ In the case of an Appeal, a copy of the Notice of Appeal

***Please complete a short synopsis of the case in the box below:***

*(Include the number of defendants, the offence on indictment/certificate of committal, the trial length (or nature of plea) and the number of pages of prosecution evidence)*

***Please sign the declaration below:***

I certify that no request for payment of Standard Fees has been made in respect of this claim.

Signed ..... Dated .....

Firm .....

DX No .....

