
STATUTORY RULES OF NORTHERN IRELAND

2008 No.

LEGAL AID AND ADVICE

The Legal Aid for Crown Court Proceedings
(Costs) (Amendment) Rules (Northern Ireland) 2008

Made - - - - - 2008

Coming into operationOctober 2008

To be laid before Parliament

The Lord Chancellor makes the following Rules in exercise of the powers conferred by Article 36(3) of Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**a**¹), and now vested in him(**b**), and of all other powers enabling him in that behalf. In accordance with Article 36(3) of that Order, he has consulted with the Lord Chief Justice, the Attorney General and the Crown Court Rules Committee and he has obtained the approval of the Treasury.

Citation, commencement and application

1. These Rules may be cited as the Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2008 and shall come into operation on.....October 2008.

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

3. These Rules apply to cases in which the Commission grants a Very High Cost Case Certificate on or after [the commencement date].

4. The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 continue to apply as if

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

(b) S.I. 1982/159

(c) S.R. 2005 No. 112

these Rules had not been made in respect of cases in which the Commission grants a Very High Cost Case Certificate before [the commencement date].

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

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

6. For rule 16, substitute–

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

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

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

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

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

(3) Subject to paragraph (4) and to rule 19, an application under paragraph (1) shall be made within 14 days after the assisted person has been committed for trial, and shall be submitted to the Commission in such form and manner as it may direct, and in accordance with such guidance as the Commission may from time to time issue.

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

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

CONSULTATION DRAFT – 30/6/08

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

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

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

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

- (a) to record contemporaneously the number of hours he spends in preparation work on the case, together with a short description of the nature of the work performed on each occasion and a note of the fee-earner performing that work, as applicable;
- (b) to maintain such records, in a permanently accessible format; and
- (c) to provide periodic reports and projections as to the future costs of the case to the Commission at such times and in such a form as the Commission shall direct.

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

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

CONSULTATION DRAFT – 30/6/08

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

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

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

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

7. In rule 17—

(a) in paragraph (1), for "the taxing master" substitute "the Commission";

(b) for paragraph (2), substitute—

"(2) When assessing the costs payable to a representative under paragraph (1), the Commission shall have regard, among the matters which are relevant, to—

(a) the Basic Trial Fee, the Guilty Plea 1 Fee or the Guilty Plea 2 Fee which would otherwise be payable if the case in question were not a Very High Cost Case, as appropriate to the representative (including the category of advocate instructed, as applicable) and the offence for which the assisted person was tried, and

(b) the rates of payment set out in Schedule 2, together with the records maintained, and the periodic reports and projections provided, by that representative under rule 16B(1).".

(c) after paragraph (2), insert—

CONSULTATION DRAFT – 30/6/08

“(2A) Without prejudice to paragraph (2)(a), together with rule 4(2)(b), in assessing and determining the costs payable to a representative under this rule, the Commission shall only assess the costs based on the hours recorded in that representative’s periodic reports provided under rule 16B(1).”.

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

Signed by authority of the Lord Chancellor

Minister of State
Ministry of Justice

Dated

We approve

Two of the Lords Commissioners
of Her Majesty’s Treasury

Dated

SCHEDULE

Rule 8

"SCHEDULE 2

Rule 17

VERY HIGH COST CASES

Application

1. This Schedule applies to cases in which the Commission grants a Very High Cost Case Certificate on or after [the commencement date].

Interpretation

2. A reference in this Schedule to a Class of Offence refers to the Class in which that offence is listed in the Table of Offences in Schedule 3.

3. In this Schedule, unless the context otherwise requires—

"Category 1" means a case involving a Class A offence which has been uplifted from Category 2 in accordance with paragraph 5 of this Schedule, or a case involving a Class G offence which has been uplifted from Category 2 in accordance with paragraph 6 of this Schedule;

"Category 2" means all cases involving a Class A (Homicide and related grave offences), Class D (Serious sexual offences, offences against children) or Class G (Other offences of dishonesty) offence;

"Category 3" means all cases involving a Class B (Offences involving serious violence or damage, and serious drug offences) offence;

"Category 4" means all cases involving a Class C (Lesser offences involving violence or damage, and less serious drug offences, Class E (Burglary etc.), Class F (Other offences of dishonesty), Class H (Miscellaneous lesser offences) or Class I (Offences against public justice and similar offences) offence;

"Senior solicitor" means a solicitor who has not less than eight years post qualification experience in criminal defence work.

Categories of case

4.-(1) The Commission must assign each Very High Cost Case to Category 1, Category 2, Category 3 or Category 4.

(2) The Commission may review and amend its decision under sub-paragraph (1) at any stage during the case.

5. For a case involving a Class A offence, where all of the following criteria are met, the case will be uplifted to Category 1:

(1) The volume of prosecution documentation served on the court, which consists of:

- (a) witness statements;
- (b) exhibits;
- (c) interview transcripts;
- (d) pre-interview disclosure/advance information; and
- (e) Notices of Further Evidence ("NFEs"),

exceeds 5,000 pages (unused material will not be considered for the purposes of this criterion, nor will evidence which has yet to be served).

(2) The total costs of representing the defendant(s) are likely to exceed £200,000.

(3) The main offence with which the defendant is charged, whether at common law or under any statutory enactment, is primarily founded on allegations of terrorism as defined in the Terrorism Act 2000.

6. For a case involving a Class G offence, where all of the following criteria are met, the case will be uplifted to Category 1:

(1) The value of the fraud as described in the indictment and/or the prosecution case statement/summary exceeds £2m.

(2) The volume of prosecution documentation served on the court, which consists of:

- (a) witness statements;
- (b) exhibits;
- (c) interview transcripts;

- (d) pre-interview disclosure/advance information; and
- (e) Notices of Further Evidence (“NFEs”),

exceeds 10,000 pages (unused material will not be considered for the purposes of this criterion, nor will evidence which has yet to be served).

(3) The total costs of representing the defendant(s) are likely to exceed £250,000.

(4) The defendant’s case requires legal, accountancy and investigative skills to be brought together.

(5) The length of the trial is estimated at over 3 months.

7. For Category 3 and Category 4 cases, if the case is primarily founded on allegations of terrorism as defined in the Terrorism Act 2000, the case will be uplifted to either Category 2 or Category 3 respectfully.

Levels of fee earner

8.-(1) The Commission must assign each solicitor or other fee earner providing funded services in a Very High Cost Case to one of the three levels referred to in the Tables following paragraphs 9 and 10.

(2) In order to be assigned as a senior solicitor under sub-paragraph (1), a solicitor must provide evidence that he meets the requirements of the definition given in paragraph 3.

(3) Any question as to whether a fee earner fulfils the criteria for a particular level must be determined by the Commission, which must consider the circumstances of the individual case.

Rates for payment

9. The hourly rates for preparation payable under this Schedule are the rates specified in the Table following this paragraph.

Hourly rates for preparation

	Category 1 £	Category 2 £	Category 3 £	Category 4 £
Solicitor				
Senior Solicitor	145	113	91	91
Solicitor	127	100	79	79
An apprentice or fee-earner of equivalent experience	84	65	51	51
Counsel				
Queen's Counsel	145	113	91	91
Leading Junior	127	100	79	79
Led Junior	91	73	61	61
Sole Junior	100	82	70	70
Solicitor Advocate				
Certified	100	82	70	70

10. The hourly rates for non-preparatory work payable under this Schedule are the rates specified in the Table following this paragraph.

Hourly rates for non-preparatory work

	Rate £
Attendance at Court	
Senior Solicitor	42.25
Solicitor	34.00
An apprentice or fee-earner of equivalent experience	20.50
Travel and waiting	
Senior Solicitor	25.00
Solicitor	25.00
An apprentice or fee-earner of equivalent experience	25.00

11.-(1) The daily rates for advocacy payable under this Schedule are the rates specified in the Table following this paragraph.

(2) The full daily rate in the Table following this paragraph may be allowed if the advocate was in court for

CONSULTATION DRAFT – 30/6/08

more than 3 hours 30 minutes; and half that rate will be allowed if he was in court for 3 hours 30 minutes or less.

Daily rates for advocacy

Daily rate	Full Day £	Half Day £
Counsel		
Queen's Counsel	476	238
Leading Junior	390	195
Led Junior	252	126
Sole Junior	285	143
Solicitor Advocate		
Certified	285	143

12.-(1) The rates payable under this Schedule to advocates for attendance at preliminary hearings are the rates specified in the Table following this paragraph.

(2) The rates in the Table following this paragraph will only apply where the hearing lasted 2 hours or less; otherwise the daily or half-daily rate payable under the Table following paragraph 11 and paragraph 11(2) will apply.

Preliminary hearings

	Amount payable for hearing £
Counsel	
Queen's Counsel	113
Leading Junior	86
Led Junior	58
Sole Junior	67
Solicitor Advocate	
Certified	67

"

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005.

They provide for applications for certification as a very high cost case to be made by a solicitor or counsel on behalf of himself, or on behalf of himself and another representative in the case.

They also provide that, where the Northern Ireland Legal Services Commission certify a case as a very high cost case, the Commission shall require the representative or representatives concerned to maintain contemporaneous records of the hours of preparatory work they do on the case.

The Rules also introduce new maximum rates of payment for very high cost cases, and provide that the costs payable in such cases shall be determined by the Commission rather than the taxing master.