

Consultation on Section 75 Equality Impact Assessment of the Proposals on new Rules on Remuneration of Defence Representation in the Crown Court

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1.0 Introduction

1.1 The purpose of this document is to seek views from interested parties on the implications of the proposed new Legal Aid remuneration arrangements for defence representation in the Crown Court with regard to the equality of opportunity for all groups specified under Section 75 of the Northern Ireland Act 1998.

1.2 This document provides an overview of the purpose and content of the proposals.

1.3 The Northern Ireland Courts and Tribunals Service (the NICTS) is required to screen all policies to determine whether a full Equality Impact Assessment (EQIA) is required. In this case, the NICTS has concluded that a full EQIA should be carried out on the proposals and as part of the consultation exercise it would welcome any information on the impact of the policy on any of the Section 75 equality groups.

1.4 The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005¹ (the 2005 Rules) provide for the remuneration for solicitors and counsel working on legally aided Crown Court cases. The 2005 Rules provide for remuneration based on a range of standard fees with the exception of cases certified as being “Very High Cost Cases” (VHCCs). In these cases, solicitors’ and counsels’ remuneration includes payment for preparatory work on the basis of hourly rates.

2.0 Background

2.1 The NICTS commenced a formal review of the 2005 Rules at the beginning of April 2007. The review was conducted in two parts, looking at VHCCs and the standard fees elements of the rules, separately.

2.2 In terms of VHCCs, the review resulted in the NICTS making amendment rules in September 2009 (The Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2009)², that reduced the hourly rates payable for VHCC work to the current rates applicable in England and Wales.

¹ These rules can be accessed at <http://www.opsi.gov.uk/sr/sr2005/20050112.htm> .

² These rules can be accessed at http://www.opsi.gov.uk/sr/sr2009/nisr_20090267_en_1 .

2.3 At the same time, the NICTS launched a consultation exercise on a proposal to replace the standard fee element of the 2005 Rules with graduated fee schemes (GFSs) similar to those currently being operated in England and Wales. Again, the thinking behind the proposal was to contain costs and achieve parity with England and Wales for work of a broadly analogous nature.

2.4 The Law Society and the Bar Council have expressed strong opposition to the new lower rates of remuneration for VHCCs and the (potential) introduction of the GFSs in Northern Ireland. They argue that there are differences between the two jurisdictions that mean these changes would not provide fair remuneration for work in the Crown Court. In these circumstances, they believe that it would be more appropriate to create a bespoke scheme for Northern Ireland based principally on the standard fee structure of the 2005 Rules.

2.5 In light of this, the NICTS entered into a dialogue with the Law Society and the Bar in an attempt to agree a new scheme. Whilst reaching agreement has not yet been possible, the dialogue has resulted in the development of a new scheme which is the basis of the present consultation. On this basis, the NICTS has decided not to proceed with its GFSs proposal at this time.

3.0 Overview of Proposal

3.1 The proposed amendment rules retain the structure of the 2005 Rules but there are three proposed substantive amendments. The first is a reduction in all standard fees payable to solicitors and counsel of 30% and 20% respectively. The second is the removal of all provisions for enhancements to fees associated with the difficulty of the case. The third change is that there is no longer a separate category for VHCCs. To replace this, the new scheme includes an extension of the tables of standard fees to cover trials lasting beyond 25 days and up to and including 80 days.

3.2 The 2005 Rules provide for a special fee, a “Guilty Plea 2”, to be paid where the assisted person has pleaded guilty after the first arraignment but before the end of the first full day of trial and the trial did not proceed further. The Guilty Plea 2 Fee is set at a higher rate than the standard Guilty Plea 1 Fee to reflect additional work that is undertaken by the legal representatives in preparation for a trial. The NICTS is proposing to retain a Guilty Plea 2 Fee for cases that meet the criteria above but it believes that the current structure of the fee requires amendment as it may not provide appropriate remuneration for cases of varying size and complexity. On the basis that limited objective information is available on which to award such fees the NICTS has concluded that the size and difficulty of a case can best be measured by reference to the number of pages of served prosecution evidence. Accordingly it is proposed that for each class of offence there will be three possible fees where a

guilty plea is entered, with the applicable fee in each individual case determined by the number of pages of served prosecution evidence in the case.

4.0 Equality Considerations

4.1 As a public authority under Section 75 of the Northern Ireland Act 1998, the NICTS is required to have due regard to the need to promote equality of opportunity:

- Between persons of different religious belief, political opinion
- racial group, age, marital status or sexual orientation
- Between men and women generally
- Between persons with a disability and persons without
- Between persons with dependants and persons without

4.2 In addition to this obligation public authorities are required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

4.3 This legislation requires the NICTS to consider whether any policy has a differential impact upon the relevant groups, the nature and extent of that impact and whether such impact is justifiable.

4.4 The NICTS considers that the two groups most likely to be affected by the proposals are Crown Court defendants and the legal professions, that is, both solicitors and counsel.

5.0 Defendants

5.1 Data on defendants on each Section 75 category are not available to the NICTS or other organisations within the criminal justice system. This is because there are sensitivities around providing personal characteristics such as religion, political opinion, sexual orientation etc. within the criminal justice process. The only data held by the NICTS on defendants are age and gender.

5.2 The NICTS has analysed the available Section 75 data on defendants dealt with before the Crown Court during 2009. The following tables show the age bands and gender of the 1556 defendants in the sample.

Age Bands

	Frequency	Percent
under 18	90	5.8
18-19 years	81	5.2
20-24 years	401	25.8
25-29 years	260	16.7
30-34 years	194	12.5
35-39 years	154	9.9
40-49 years	178	11.4
50-59 years	102	6.6
60-69 years	25	1.6
70-79 years	8	0.5
80-89 years	1	0.1
Total	1494	96.0
Unknown	62	4.0
Total	1556	100.0

Gender

	Frequency	Percent
Company	15	1.0
Female	142	9.1
Male	1398	89.8
Unknown	1	0.1
Total	1556	100.0

5.3 The NICTS would deduce from analysing the available information, as set out in the tables above, that young males who are defendants may be affected more than any other Section 75 group. However, the impact will only be on defendants - not on young males as a group.

5.4 As previously mentioned, no data were available on the other Section 75 categories. However, there is nothing to suggest that any other Section 75 category is over represented in the number of defendants, who would therefore be affected more by the proposal.

6.0 The Legal Profession

6.1 The Bar of Northern Ireland is an association of independent barristers based in the Bar Library in Belfast. As of the 1 September 2009 there were almost 600 members in private practice. The Bar is a body of specialist advocates experienced in litigation to which the public have access through solicitors and in limited circumstances by direct professional access. As the Bar is not a public body there is no requirement on it to maintain Section 75 data such information is not collected or held by the Bar.

6.2 The Law Society of Northern Ireland is the regulatory and representative body for solicitors in Northern Ireland. Recent information from the Law Society confirms that there over 2200 solicitors working in 550 firms based in 74 geographical locations in Northern Ireland. As the Law Society is not a public body there is no requirement on it to maintain Section 75 data such information is not collected or held by the Law Society.

6.3 In 2009 the NICTS conducted a customer service exit survey at all court locations throughout Northern Ireland. The tables below show the Section 75 data collected from the 385 members of the legal profession who participated in the exit survey.

Gender

	Frequency	Percent
Male	216	56.1
Female	168	43.6
Total	384	99.7
Missing	1	0.3
Total	385	100.0

Age Bands

	Frequency	Percent	Valid Percent
17-25 years	66	17.1	17.5
26-35 years	137	35.6	36.2
36-45 years	101	26.2	26.7
46-55 years	52	13.5	13.8
56-65 years	21	5.5	5.6
over 65	1	0.3	0.3
Total	378	98.2	100.0
Missing	7	1.8	
Total	385	100.0	

Disability

	Frequency	Percent
Yes	4	1.0
No	377	97.9
Total	381	99.0
Refusal	2	0.5
Don't Know	1	0.3
System	1	0.3
Total	4	1.0
Total	385	100.0

Marital Status

	Frequency	Percent
Single, that is never married	175	45.5
Married and living with husband/wife	193	50.1
A civil partner in a legally recognised Civil Partnership	1	0.3
Married and separated from husband/wife	3	0.8
Divorced	6	1.6
Widowed	2	0.5
Total	380	98.7
Refusal	3	0.8
Don't Know	1	0.3
Missing	1	0.3
Total	5	1.3
Total	385	100.0

Children as Dependents

	Frequency	Percent
Yes	156	40.5
No	224	58.2
Total	380	98.7
Refusal	3	0.8
Don't Know	1	0.3
System	1	0.3
Total	5	1.3
Total	385	100.0

Other relatives as dependents

	Frequency	Percent
Yes	14	3.6
No	368	95.6
Total	382	99.2
Refusal	1	0.3
Don't Know	1	0.3
System	1	0.3
Total	3	0.8
Total	385	100.0

Ethnic Groups

	Frequency	Percent
White	382	99.2
Mixed ethnic group – Please specify	2	0.5
Total	384	99.7
Missing	1	0.3
Total	385	100.0

Religion

	Frequency	Percent
Catholic	229	59.5
Presbyterian	47	12.2
Church of Ireland	27	7.0
Methodist	6	1.6
Baptist	1	0.3
Free Presbyterian	2	0.5
Protestant - not specified	27	7.0

Other Christian	6	1.6
Any other religion, please describe	1	0.3
No religion	29	7.5
Total	375	97.4
Refusal	7	1.8
Don't Know	2	0.5
System	1	0.3
Total	10	2.6
Total	385	100.0

6.4 The NICTS would deduce from analysing the available information, as set out in the tables above, that lawyers attending courthouses in Northern Ireland are fairly evenly split in terms of gender with slightly more men, tend to be in the 26 to 45 age range, are evenly split between people being married and single, with the vast majority coming from a non ethnic white group. In terms of religious belief there are over twice as many Roman Catholics as Protestants.

6.5 In these circumstances, the policy is likely to have impact on young to middle aged adult, white Roman Catholics. The proposals do not target these groups and it the NICTS's view that the greater impact arises from the fact there are more people from these groups within the survey.

7.0 How to Respond

7.1 The NICTS welcomes any information you have that suggests that any Section 75 group may be affected disproportionately by this proposal. Your comments are welcome on the equality implications of the draft proposals, particularly with regard to the following questions.

- Is there any evidence of higher or lower participation or uptake by different groups in relation to the scheme within any of the nine categories?
- Is there evidence or indication that different groups have different needs, experiences, issues and priorities in relation to the scheme?
- Is there an opportunity better to promote equality of opportunity or better relations by altering the policy or working with others in Government or the larger community?

7.2 When responding to this document, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear whom the organisation represents and, where appropriate, how the views of the members were assembled.

7.3 Please submit your response to this consultation by post, fax or email to:

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Closing date

7.4 Responses must be received by 16.00 on Friday 19 November 2010.

Miscellaneous

7.5 Additional copies of this document may be made without seeking permission from NICTS. Printed copies may be obtained by post by contacting the Consultation Co-ordinator at the address above. An electronic version will be available for viewing on NICTS's web-site at <http://www.courtsni.gov.uk>.

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