SENTENCE REVIEW COMMISSIONERS

**FEE STRUCTURE FOR THE APPLICATION OF LEGAL AID**

**1.0 INTRODUCTION**

1.1 This document sets out the extent to which and the terms and conditions on which legal aid directions are made in respect of legal advice or representation, within the terms of rule 24 of the Northern Ireland (Sentences) Act 1998 Sentence Review Commissioners Rules 1998.[[1]](#footnote-1)

1.2 There are a number of key stages in the proceedings before the Commissioners on an application under section 3 or section 8 of the NI Sentences Act 1998 namely, the application (‘the Application’), the preliminary indication (‘PI’) stage and, if required, the oral hearing (‘the Substantive Hearing’).

##### 2.0 GENERAL PROCEDURES

2.1 At the Application stage Commissioners will normally make a legal aid direction in respect of a solicitor only.

2.2 Where an application for a legal aid direction has been granted, and the solicitor considers that the proper conduct of the case requires the appointment of counsel, s/he may make a further ancillary application to the Commissioners citing in full the reasons why s/he considers counsel should be appointed and seeking a consequential legal aid direction.

2.3 A legal aid direction for counsel will not normally be given in advance of the PI stage of the proceedings with the exception of cases in which the Response papers include a certificate of “damaging information” in accordance with rule 22 or where such a certificate is submitted by way of ancillary application in advance of the PI stage in the proceedings. In such cases a special advocate will be appointed prior to the PI and a review of the closed material (‘the gisting process’) will be commenced.[[2]](#footnote-2) Although the prisoner’s legal representatives would not be involved directly in this process an opportunity will be given to the prisoner’s representatives to make observations on the process and on the information contained in the gist by way of written submissions to the panel in advance of the PI stage. In such cases, the person concerned may consider it appropriate to make an application for a legal aid direction in respect of counsel.

2.4 In all other cases, an application for a legal aid direction in respect of counsel will be considered following the PI where either party indicates that he wishes to challenge the PI and a substantive hearing is required within the terms of rule 15.

2.5 Any legal aid direction for counsel will only be given in respect of junior **or** senior counsel.

2.6 The Commissioners will give a legal aid direction in respect of junior counsel only if they are satisfied that the case poses complex evidential problems or novel or difficult points of law. Where an application in respect of senior counsel is made, the application should set out the reasons why the appointment of senior counsel is considered necessary in the particular case. Consideration will be given to the appointment of senior counsel, rather than junior counsel, where a case is exceptionally complex, when an equality of arms issue arises or where the appointment of senior counsel is considered necessary to protect an applicant’s rights under the European Convention on Human Rights or the Human Rights Act.

**3.0 RATES**

3.1 SOLICITORS

Where a legal aid direction has been given in respect of a solicitor, fees will be paid on the following terms:

1. £150 for the preparation of an application.
2. £50 for the preparation of any further supplementary or ancillary applications or the response thereto. No fee is payable in respect of an application for a legal aid direction.
3. Where an oral hearing is required to determine a substantive application and/or ancillary appeal, a fee of £150 will be paid for attendance at the hearing. Payment for professional work (up to a maximum of 8 hours) undertaken in respect of the hearing will be paid at the rate of £100 per hour. Solicitors cannot claim extensions of time to cover time spent at hearings as this is covered in the oral hearing fee.
4. The fees for professional work are intended to cover the costs of time taken for preparation, consultation, advocacy, waiting, travel (up to 40 miles) photocopying, routine letters and telephone calls.
5. Mileage costs in respect of any consultation with the applicant and attendance at a hearing will be reimbursed at a rate of 45p per mile. Where a return journey in excess of 45 miles is required in order to take instructions from the applicant or to attend the oral hearing, travelling time at £29.25 per hour will also be paid.
6. Outlay on commissioning expert reports will be reimbursed, where the need for such a report and a fee estimate has been accepted in advance by the Commissioners. Applications for such reports should be submitted to the Commissioners by way of an ancillary application detailing the reasons for requesting the report and the projected costs in relation to preparation of the report and attendance of the report writer at the hearing. Consideration should always be given, in the first instance, to consultants based in Northern Ireland.
7. No solicitor will be paid travelling time or mileage in respect of more than one visit to the same prison on the same day, regardless of the number of applicants seen.
8. Extension of costs for professional work (which will be at the rates set out above) will be granted in advance only where the Commissioners are satisfied that work in excess of the standard upper limit of £800 is necessitated by the particular characteristics of the application. **Any such extensions of costs will only be considered where an application has been made in writing and approved by the Commissioners in advance of the work being undertaken.** Consideration will be given to factors including whether or not counsel has been instructed and the complexity of the case.
9. Where a legal aid direction has been given in respect of counsel, solicitor and counsel must ensure that there is no duplication in the work undertaken.
10. Solicitors will be reimbursed on foot of a duly completed claim form, which will be issued with the legal aid direction. The claim form should be returned to the Commissioners’ Secretariat within 6 months of the substantive determination.

3.2 COUNSEL

Where a legal aid direction has been given in respect of counsel, fees will be paid on the following terms:

1. Legal aid shall be paid to counsel at a rate of £110 per hour[[3]](#footnote-3).
2. Costs will be allowed up to a maximum of 8 hours.
3. All work completed by counsel should be detailed in a report which should itemise the nature of all work completed and time spent thereon.
4. Extension of costs for professional work (which will be at the rates set out above) will be granted in advance only where the Commissioners are satisfied that work in excess of 8 hours is necessitated by the particular characteristics of the application. **Any such extensions of costs will only be considered where an application has been made in writing and approved by the Commissioners in advance of the work being undertaken.**

1. The Northern Ireland (Sentences) Act 1998, Schedule 2, paragraph 9 provides:

   The Rules may allow Commissioners to award a prisoner money for legal advice or representation.

   The Secretary of State shall pay any sums which the Commissioners award.

   The Northern Ireland (Sentences) Act 1998 Sentence Review Commissioners Rules 1998 provide,

   Rule 24 (3) The Commissioners have the power to give legal aid directions and when doing so they shall specify the extent to which and the terms and conditions on which money is being made available thereby.

   (4) Legal aid directions shall have effect to award money which shall be paid, in accordance with the terms of the legal aid direction, by the Secretary of State as provided by paragraph 9 (2) of Schedule 2 to the Act [↑](#footnote-ref-1)
2. The most recent and comprehensive judicial considerations of the issue of closed material and the duty of disclosure have been in the cases of *A v UK* Appl No 3455/05, 19 Feb 2009 and *Secretary of State for Home Department v AF and another* [2009] UKHL 28. These rulings represent the current legal position and together give clear guidance as to the approach which should be taken by the court/tribunal, in circumstances where the appointment of a Special Advocate is required, in order that any unfairness to the individual is minimised. It is clear that the Special Advocate has a dual role in representing the interests of a party that does not have security clearance: (i) in making submissions on the disclosure of closed evidence to the defendant; and (ii) in making submissions and cross-examining witnesses in relation to the evidence that remains closed. [↑](#footnote-ref-2)
3. This rate has been set with reference to the rates for general casework currently paid by the NIO to Counsel representing the Secretary of State in proceedings before the Sentence Review Commissioners.

   [↑](#footnote-ref-3)