



PROCEDURES GOVERNING THE PAYMENT OF CRIMINAL LEGAL AID FEES

Courts Policy Division
Department of Justice and Equality

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Note: This document does not purport to provide legal advice or to provide a legal interpretation of the legislation referred to. It provides information on the fees which are payable in respect of the Statutory Criminal Legal Aid Scheme and certain ad hoc schemes and on how the Department of Justice and Equality and the Legal Aid Board, where relevant, deal with claims for fees.

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PART 1 – Introduction to and outline of the scope of the scheme

1. Introduction

1.1 The Criminal Legal Aid Scheme, in relation to the fees / expenses and forms applicable, can be regarded as comprising of two broad components relating to (i) cases coming before the District Court and appeals to the Circuit Court and (ii) cases coming before the Circuit and higher courts. The legislation governing the Scheme dates back to 1962 with a series of Regulations made in the successive years relating to procedural matters such as establishing the panels of lawyers willing to undertake criminal legal aid work under the Scheme and the level of fees payable.

1.2 There is a separate element to legal aid arising from ad hoc arrangements which have evolved to ensure that certain eligible persons have legal advice and representation as appropriate. These ad hoc arrangements developed over recent years to provide for representation in circumstances that are not covered by the Statutory Criminal Legal Aid Scheme but where, nonetheless, the person before the court is entitled to legal representation and the State has a duty to ensure that such representation is available and paid for by the State, if the person is without sufficient means. Further information in respect of Ad Hoc Schemes is provided in Part 3 of this document.

1.3 This document sets out the procedures and rules which determine the fees payable to solicitors and barristers in respect of appearances in criminal cases under the Criminal Legal Aid Scheme. In addition, set out in Appendix 4 are fees payable to expert witnesses and in Appendix 5 are fees payable in respect of interpretation and translation work.

1.4 This document does not cover issues relating to the provision of civil legal aid and advice for which the Legal Aid Board is responsible. Full details can be obtained on the website of the Legal Aid Board - www.legalaidboard.ie.

2. Summary of operation of the Scheme

2.1 The Criminal Justice (Legal Aid) Act 1962 and the Regulations made under it provide that free legal aid may be granted by the courts, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings.

2.2 An accused person is entitled to be informed by the court in which they appear of their possible right to legal aid. The grant of legal aid entitles the applicant to the services of a solicitor and, in certain circumstances, up to two counsel, in the preparation and conduct of their defence or appeal.

2.3 The courts, through the judiciary, are responsible for the granting of legal aid. The Department of Justice and Equality does not have the power to grant or refuse access to the Criminal Legal Aid Scheme. However, the Department has a role in examining claims for fees and making payments under the Scheme. An application for legal aid may be made to the court either in person, by the applicant's legal representative or by letter to the Court Registrar.

2.4 The granting of legal aid is subject to the applicant satisfying the court of two criteria. The applicant for legal aid must establish to the satisfaction of the court that

- (i) their means are insufficient to enable them to pay for legal aid themselves. This is purely a discretionary matter for each court and is not governed by any financial eligibility guidelines.
- (ii) by reason of the 'gravity of the charge' or 'exceptional circumstances' it is essential in the interests of justice that the applicant should have legal aid.

(See Sections 2 – 6 of the Criminal Justice (Legal Aid) Act 1962).

2.5 Where the charge is one of murder or where an appeal is one from the Court of Appeal to the Supreme Court, free legal aid is granted solely on the grounds of insufficient means.

2.6 An applicant for free legal aid may be required by the court to complete a statement of means. It is an offence for an applicant to knowingly make a false statement or conceal a material fact for the purpose of obtaining legal aid. Such an offence carries a penalty of a fine or imprisonment or both. (See Sections 9 & 11 of the Criminal Justice (Legal Aid) Act 1962).

2.7 Legal representation under the Criminal Legal Aid Scheme is provided entirely by solicitors and barristers in the private sector who have notified County Registrars (in the case of solicitors) and the Bar Council (in the case of barristers) of their willingness to have their names placed on panels to undertake legal aid work. County Registrars and the Bar Council notify the Minister for Justice and Equality of the practitioners who have expressed their willingness to undertake criminal work under the Scheme. A solicitor is assigned to the applicant from the panel of solicitors and, where counsel is also assigned, the solicitor may instruct a barrister from the panel of barristers.

N.B. There is no requirement for a practitioner to be on the panel when undertaking work under the Garda Station legal Advice Revised Scheme, the Legal Aid – Custody Issues Scheme or the Criminal Assets Bureau Ad Hoc Legal Aid Scheme.

3. Elements of Criminal Legal Aid

3.1 The Criminal Legal Aid Scheme is composed of several elements. These different components arise from the way in which the fees and expenses are set out. Under the Scheme, fees and expenses can be claimed in order to meet the following costs where they are essential to the preparation and conduct of a defence:-

Solicitor in the District Court, appeals to the Circuit Court and bail applications to the Circuit and Special Criminal Courts (S. I. No. 362 of 2011);

Solicitor and Counsel in the Circuit and higher courts (S. I. Nos. 234 of 1976 and 202 of 1977);

Prison Visits made by solicitor and/or counsel for a consultation with their client (S. I. No. 362 of 2011);

Expert Witnesses – Medical and Technical Reports (S. I. No. 12 of 1965)

Interpretation or translation services (S. I. No. 33 of 1978)

Travel & Subsistence (S. I. No. 12 of 1965)

Photocopying expenses (S. I. No. 33 of 1978)

Fees payable are set out in the Appendices.

3.2 In addition to the above elements of the Criminal Legal Aid Scheme there are four non statutory ad-hoc schemes to provide legal aid for certain types of cases not covered by the main scheme. Three of these schemes are administered by the Legal Aid Board and are as follows:-

Legal Aid - Custody Issues Scheme (previously known as the Attorney General's Scheme)

Criminal Assets Bureau Ad-Hoc Legal Aid Scheme (CAB)

Garda Station Legal Advice Revised Scheme

Further information regarding these schemes is set out in Part 3 of this document.

3.3 The fourth scheme, the Non Statutory District Court (Counsel) Scheme is administered by the Department. Further information regarding this scheme is set out in Part 3 of this document.

4. Proper Representation

4.1 The Criminal Justice (Legal Aid) (Amendment) Regulations 2011 (S. I. No. 362 of 2011) amended regulation 7 of the Criminal Justice (Legal Aid) (Amendment) Regulations 1970 (S. I. No. 240 of 1970) to clarify the basis on which a solicitor assigned under a certificate for free legal aid may be represented by another person. The 2011 regulations provide that a solicitor assigned to a legal aid case that is not in attendance at a hearing or part thereof shall be paid fees and expenses where they were "properly represented".

4.2 Proper Representation in the District Court is as follows:

(a) a solicitor who is a partner of solicitor assigned

(b) a solicitor employed by the firm of assigned solicitor

(c) in the case of a sole practitioner, a solicitor from different firm who is on the legal aid panel

(d) counsel instructed by the solicitor or firm of solicitors in which the solicitor assigned is a partner or employee unless the case is one where counsel has been assigned in the case by or under the 1962 Act, the Enforcement of Court Orders Act 1940 or the Ad Hoc District Court (Counsel) Scheme.

4.3 Proper Representation in Circuit and higher courts is as follows:

(a) a solicitor who is a partner of solicitor assigned

(b) a solicitor employed by the firm of assigned solicitor

(c) in the case of a sole practitioner, a solicitor from different firm who is on the legal aid panel

(d) counsel instructed by the solicitor or firm of solicitors in which the solicitor assigned is a partner or employee unless the case is one where counsel has been assigned in the case by or under the 1962 Act, the Enforcement of Court Orders Act 1940 or the Ad Hoc District Court (Counsel) Scheme.

(e) a trainee solicitor employed by the firm of assigned solicitor

(f) a law clerk employed by the firm of assigned solicitor

4.4 Where a solicitor cannot attend court and he/she is properly represented, the representative should satisfy the Registrar of his/her credentials in accordance with the 2011 regulations referred to above.

5. Tax Clearance Certificates

5.1 Each County Registrar is legally required to compile a list of the solicitors practising in the county or the county and county borough, who are willing to undertake criminal work under the Scheme.

See Regulation 4 of the Criminal Justice (Legal Aid) Regulations 1965 (S. I. No. 12 of 1965).

5.2 Solicitors (willing to act for persons to who legal aid certificates have been granted) who wish to be added to panels maintained by County Registrars must submit evidence that they are tax compliant to the County Registrar(s) prior to having their name added to the panel(s). Solicitors who are included on panels and who wish to be retained on such panels must furnish a printed copy of their electronic Tax Clearance Certificate to the County Registrar(s) annually dated after 30 November of the year prior to which inclusion on the panel(s) is sought to be retained.

See Regulations 4 and 5 of the Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999 (S. I. No. 135 of 1999).

5.3 The Minister for Justice and Equality is legally obliged to keep a list of the names of counsel who have notified the Bar Council of their willingness to undertake criminal work under the Scheme.

See Regulation 5 of the Criminal Justice (Legal Aid) Regulations 1965 (S. I No. 12 of 1965).

5.4 Barristers (willing to act for persons to who certificates for free legal aid have been granted) who wish to be added to the panel maintained by the Minister must furnish a tax clearance certificate to the Minister prior to having their name added to the panel. Those who wish to be added to the panel must submit their request through the Bar Council. Barristers who are included on the panel maintained by the Minister and who wish to be retained on that panel must furnish a tax clearance certificate to the Minister annually on or before the 30 November of the year prior to which inclusion on the panel is sought to be retained.

See Regulations 4 and 5 of the Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999 (S. I. No. 135 of 1999).

5.5 Responsibility for ensuring the retention of a solicitor's or barrister's name on a panel remains at all times the responsibility of the solicitor or barrister concerned. Fees under the Criminal Justice (Legal Aid) Regulations cannot be paid to a solicitor or barrister who accepts an assignment to a case if their name is not, at the time of assignment, on the relevant panel. A solicitor or barrister shall be entitled to payment of fees under the Regulations where at the time the assignment was made, the name of the solicitor or barrister concerned was on the relevant panel.

5.6 Fees are paid by the Financial Shared Services Division of the Department of Justice and Equality. The level of fees and expenses payable and the procedures for making claims vary somewhat depending the nature of the court proceedings. This is explained in more detail in Part 2 of this document. Rates payable are set by the Minister for Justice and Equality with the consent of the Minister for Public Expenditure and Reform.

5.7 Solicitor's and counsel's fees are subject to withholding tax. This is deducted from the fees and paid to the Revenue Commissioners. If solicitors and counsel are registered for VAT, VAT at 23% is added to the fees paid by the Department of Justice and Equality.

6. Criminal Legal Aid Certificates

6.1 The Criminal Justice (Legal Aid) Regulations 1965 (S. I. No. 12 of 1965) as amended by S. I. No. 493 of 2014 prescribes the types of legal aid certificate to issue from the courts depending on the nature of the proceedings. These certificates range from the initial granting of legal aid in the District Court before which a person is charged with an offence up an appeal to the Court of Appeal or the Supreme Court. The First Schedule to the Regulations sets out the form and content of each certificate. The certificate is important as it contains details of the legal aid granted e.g. date, reference number, name of defendant, name of solicitor assigned, whether counsel was assigned etc.

6.2 A judge may grant a defendant more than one criminal legal aid certificate when charged with more than one offence. The charges may relate to one incident on one particular date or they may relate to different incidents on the same or different dates.

Section 7(4) of the 1965 Regulations (S. I. No. 12 of 1965) provides that *“where two or more certificates for free legal aid are granted to a person and the cases in relation to which they are granted are heard together or in immediate succession, one certificate only shall (unless the Court, being satisfied that there is good reason for so doing, otherwise directs) be deemed, for the purposes of these Regulations, to have been granted to the person”*.

PART 2 – Types of fees, fee rates and claims

7. Fee Rates

7.1 Two separate payment systems operate in relation to the payment of solicitors and counsel under the Criminal Legal Aid Scheme -

- one system operates in respect of appearances in the District Court and Appeals to the Circuit Court. Fee rates are set out in Appendix 1.
- a separate method of payment exists in respect of appearances in the Circuit Court, Central Criminal Court, Special Criminal Court and Court of Appeal. Fee rates are set out in Appendix 2.

7.2 The Criminal Justice (Legal Aid) (Amendment) Regulations 2011 (S. I. No. 362 of 2011) set out

- the fees payable to a solicitor assigned, pursuant to a legal aid certificate, to a person charged before the District Court or to an appellant in the Circuit Court, and
- the fee payable to a solicitor assigned, pursuant to a legal aid certificate, to a person before the Circuit Court or Special Criminal Court in relation to an application to be admitted to bail that is contested by the prosecution. High Court bail applications are covered by the Legal Aid – Custody Issues Scheme.

7.3 The manner in which fees payable to solicitors in the Circuit Court and higher courts are calculated was set by the Criminal Justice (Legal Aid) (Amendment) Regulations 1978 (S. I. No. 33 of 1978). The fees paid to solicitors acting on behalf of the defendant in the higher courts are related to the fees payable to the defence counsel which are in turn based on the fees paid to the prosecution counsel as determined by the Director of Public Prosecutions (DPP). The Regulations also provide that any disbursements that were reasonably made and essential to the preparation and conduct of a defence by a solicitor are also payable under the Scheme.

7.4 Fees for counsel in the Circuit and Higher courts in respect of indictable offences are determined entirely by the fees which the DPP pays to prosecution counsel, through parity agreements introduced by Regulations made in 1976 (Criminal Justice (Legal Aid) (Amendment) Regulations 1976 (S. I. No. 234 of 1976).

7.5 A solicitor may, when absolutely necessary, engage an expert witness to assist in matters associated with the defence of their client. Prior authorisation of the Courts Policy Division must be obtained. The schedule of maximum fees payable in all but very exceptional circumstances and the conditions to be met are set out in detail in Appendix 4.

7.6 A solicitor may need to engage the services of an interpreter and/or a translator. The Criminal Legal Aid Scheme does not cover interpretation and translation services provided in court as these services are covered by a separate contract arranged by

the Courts Service. The fees payable and the conditions to be met are set out in detail in Appendix 5.

8. Completion of Fee Claims

8.1 Fee payments are based on claim forms completed by the Solicitors and/or Court Clerks/Court Registrars. The appropriate form must be properly completed and authorised by the appropriate official. Claim forms for cases heard in the District Court and Appeals to the Circuit Court are available on the Department's website which is www.justice.ie

Claim forms for cases heard in the Circuit and higher courts are available in court on the day of hearing.

The forms are as follows:

COURT	FORM	COMPLETED BY
District Court/Appeals to the Circuit court	LA 1	Solicitor and authorised at Part 2 by District Court Clerk or Court Registrar
Circuit Court	CLA 8	Court Registrar and signed by solicitor and Counsel on day of court hearing
Central Criminal Court	CLA 8	Court Registrar and signed by solicitor and Counsel on day of court hearing
Special Criminal Court	CLA 8	Court Registrar and signed by solicitor and counsel on day of court hearing
Court of Appeal	CLA 9	Court Registrar and signed by solicitor and counsel on day of court hearing

8.2 Completed forms are sent directly to Criminal Legal Aid Payments Section, Financial Shared Services, Department of Justice and Equality, Deerpark Road, Killarney, Co Kerry. Financial Shared Services will examine the claim and payment will be made into the bank account of the solicitor and counsel concerned. The payment system has inbuilt controls to ensure that the correct fees are paid.

9. Types of fees paid in the Circuit, Central, Special Criminal Courts

9.1 Certain types of fees are common to all of these courts. They are payable to the solicitor and counsel (junior and, where appropriate, senior) and are summarised below. Rates of fees are set out in the Fees Schedule at Appendix 2

9.2 **Case or Brief Fee:** This is payable on the first day of a trial or the day the defendant pleads guilty. It covers both the work involved in preparing the case for trial and the appearance on the day in question. One brief fee is payable per case.

9.3 **Refresher Fee:** This is payable for the second and subsequent days of a trial.

9.4 **Adjourned Case Fee:** The refresher fee is also payable for trial dates which are adjourned where counsel has less than 7 days notice of the adjournment. The Criminal Justice (Legal Aid) (Amendment) Regulations 2000 (S. I. No. 235 of 2000) provide that defence counsel, who appears in an adjourned trial hearing which is adjourned within seven days of the scheduled trial date in the Circuit Court outside Dublin, shall be entitled to receive a fee equivalent to the fee which is payable to prosecution counsel by the Director of Public Prosecutions for such hearings in the Circuit Court cases in Dublin.

These Regulations also state that no fees shall be paid under the Act to a solicitor assigned in relation to any particular case in the Circuit Court in respect of any day which the hearing consists only of an application for an adjournment by or on behalf of the solicitor, or the prosecution, made, in the opinion of the Court, for the purpose of the solicitor's convenience.

9.5 **Trial hearing:** A trial hearing occurs on a date when a case has been formally listed for trial. At a trial hearing either (i) the defendant will plead guilty, (ii) a trial will take place, (iii) a Nolle Prosequi will be entered or (iv) the trial will be adjourned.

(a) If the defendant pleads guilty on the first day of the trial, solicitor and counsel are paid a brief fee.

(b) If the hearing takes place, solicitor and counsel are paid a brief fee for the first day of the trial and a refresher fee for the second and subsequent day(s) of the trial.

(c) If the case was adjourned and solicitor and counsel did not have 7 days notice of the adjournment, a refresher fee may be due. See note above regarding refresher fees.

(d) If the defendant is acquitted at the end of the trial, no further fees will be paid. However, if the jury cannot agree, a re-trial may occur.

(e) Please see note 9.14 below regarding payment where a Nolle Prosequi is entered.

9.6 **Retrial Fee:** Where a trial collapses or the jury fails to agree a verdict, the judge may send the case for retrial. In such cases a retrial fee is paid for the first day of the new trial and is at the same rate as a brief fee. Rules that apply to a brief fee apply to the retrial fee.

9.7 **Arraignment Hearing:** An arraignment is a hearing at which the accused is brought before the Circuit Court, the indictment is read out and the defendant is asked whether they want to plead guilty or not guilty. If the defendant pleads guilty solicitor and counsel will receive a brief fee for that hearing. If the defendant pleads not guilty the case will continue, a date is fixed for the next hearing and no fee is paid.

9.8 **Call over:** This is the reading out in court of a list of cases yet to be dealt with in order that hearing dates may be arranged. There is no fee payable for cases in a call over list.

9.9 **For Mention hearing:** A mention hearing occurs at the request of the prosecution or defence. The hearing deals with administrative matters connected with the case. For example, an upcoming trial date might have to be postponed due to the illness of a key witness. There is no fee payable for cases which are for mention only.

9.10 **Pre-trial Procedure:** A pre-trial procedure is currently being piloted in certain Circuit Courts. The aim is to avoid unnecessary delays in criminal proceedings by identifying cases in which pleas may be entered in advance of a trial date and facilitating the commencement of trials. There is no fee payable to solicitor and counsel for this pre-trial procedure hearing.

9.11 **Signed plea fee:** The defendant will sometimes agree to plead guilty at a preliminary stage. When this happens the matter is listed for hearing before the Circuit Court, the defendant affirms his plea and the judge passes sentence. A signed plea fee is paid for such a hearing which is a brief fee.

9.12 **Signed plea refresher:** A signed plea refresher fee is payable for the second and subsequent day(s) of a signed plea hearing. This is paid at a rate equal to that of a sentence fee.

9.13 **Sentence Fee:** Sentence is rarely passed on the day the defendant is convicted. When the defendant has pleaded or been found guilty, a future date is fixed for dealing with sentencing. Sentence may be passed on that date or the matter may be adjourned to a further sentence date. After sentence has been passed it may still be re-entered. For example, if sentence is suspended on certain conditions and those conditions are breached, the case may be re-entered for hearing so that the judge can decide whether to activate the suspended sentence. Such a hearing attracts a sentence fee. One sentence fee is paid for a sentencing hearing and a sentence adjourned fee is paid for any adjourned hearings.

9.14 **Nolle Prosequi:** Nolle Prosequi arises when the DPP instructs prosecution counsel to withdraw a prosecution in a particular case. If the case has been listed for trial and counsel does not have seven days notice a brief fee or refresher fee as appropriate is paid to counsel and solicitor. If however, counsel and solicitor have seven days notice then a Nolle Prosequi is paid.

There are two types of Nolle Prosequi:

- If no other fee has been paid to solicitor and counsel, i.e. where the Nolle Prosequi is the first fee payable, then a Higher Nolle amount is paid.
- If a brief or refresher has already been paid, then solicitor and counsel receive a Lower Nolle fee.

9.15 Seven Days Notice Rule: It is possible that at a mention hearing prior to a trial hearing, the Court becomes aware that either the defence or prosecution is not ready to proceed on the scheduled trial date. The following rules apply:

- If more than seven days notice is given of a trial date postponement, no fee is due for the mention hearing or the original trial date. The exception to this is in the case of a Nolle Prosequi – see 9.14.
- If notice was given seven days or less from the hearing date a refresher fee may be due to solicitor and counsel.

9.16 Consultation Fee: A fee is payable for one consultation per case other than on a hearing day. There is no fee payable for a consultation in respect of cases heard in the District Court and appeals to the Circuit Court.

9.17 Bail Fee: Where a defendant applies for bail and the matter is contested, a bail fee is payable. A contested hearing is one where an application is made by the defendant to be admitted to bail and the prosecution contests the application. An uncontested bail application does not attract a fee.

N.B. High Court Bail applications are covered under the Legal Aid – Custody Issues Scheme.

9.18 Section 4E application: This is an application made by the defence to the trial court to have the case dismissed due to insufficient evidence. If the application is successful and the case is dismissed, a full brief fee is paid. If the application is unsuccessful and the case proceeds, a fee is paid in accordance with the duration of the hearing, a refresher fee where the hearing lasts two or more hours or half the refresher fee where hearing is less than two hours.

9.19 Hearing transferred: At an arraignment, a mention or a trial hearing, a trial may be transferred from one Circuit to another (usually country to Dublin) at either the request of the defence or the prosecution. A transfer hearing fee is paid.

9.20 Fitness to be tried hearing: This is a hearing to determine whether the defendant is fit to be tried under the Insanity Act 2006. If the defendant is found fit to be tried the case goes on and a fee is paid in accordance with the duration of the hearing, a refresher fee where the hearing lasts two or more hours or half the refresher fee where hearing is less than two hours. If the defendant is found not fit to be tried the case is discontinued and a brief fee is paid.

9.21 Central Criminal Court: The Central Criminal Court deals principally with cases of rape and murder. The rules and procedures governing the payment of fees in the Central Criminal Court are similar to the Circuit Court position as set out above.

9.22 Special Criminal Court: There are a small number of cases that are not suitable for hearing before normal jury courts. The Special Criminal Court deals with these cases. The brief and refresher fees for all cases in the Special Criminal Court are set by the DPP's office on a case by case basis. Defence solicitor and counsel are paid on a parity basis with the prosecution side.

9.23 Same defendant, same day rule: Section 7(4) of the 1965 Regulations (S. I. No 12 of 1965) provides that “*where two or more certificates for free legal aid are granted to a person and the cases in relation to which they are granted are heard together or in immediate succession, one certificate only shall, (unless the court, being satisfied that there is good reason for so doing, otherwise directs) be deemed, for the purposes of these Regulations, to have been granted to the person.*” The position is that a solicitor is only entitled to one fee in respect of their representation of an accused on a particular day unless the Judge makes a direction to the contrary.

9.24 Multiple defendants, same trial, same solicitor or counsel: Particular rules apply to the case of two defendants on the same charges being dealt with on the same bill of indictment and being represented by the same solicitor.

If one defendant pleads guilty and the other pleads not guilty at arraignment and goes forward to trial, a brief fee would be paid for the arraignment hearing and a refresher fee would be paid for the first and subsequent date(s) of the trial if represented by the same legal team. One brief fee is awarded in respect of an individual bill of indictment, except in the case of a retrial.

9.25 Separate Trials: It is unusual for two defendants facing the same charges to apply for and be granted separate trials but this can happen on occasion when one party feels that having their case heard with the other party would prejudice their defence. If separate trials are granted then separate fees are paid in respect of each trial.

9.26 Multiple defendants, separate solicitor and counsel: Each solicitor and counsel will receive a brief fee and refresher fee(s).

9.27 Bench Warrant Fee: A brief or refresher fee, as appropriate, is paid for trial hearings where the County Registrar certifies that the outcome of the hearing is the issuing of a bench warrant. An adjourned sentence fee is paid for sentence hearings adjourned where the Court Registrar certifies that the outcome of the hearing is the issuing of a bench warrant.

9.28 Enhanced Fee: In the event that the DPP considers that an enhanced fee should be paid to the prosecution legal team in a case, an equal fee will be paid to the defence legal team in accordance with the parity regulations. This happens automatically and it is not necessary for the solicitor and counsel to do anything to effect payment of an enhanced fee. The DPP informs Financial Shared Services of the granting of an enhanced fee who then process payment.

10. Calculation of Fees for Solicitors in courts other than the District Court or appeals to Circuit Court

10.1 A solicitor's fee is calculated as a percentage of the counsel's fees. The percentage rates were set in 1978 by the Criminal Justice (Legal Aid) (Amendment) Regulations 1978 (S. I. No. 33 of 1978) and continue to apply.

10.2 The fees are based on the court, the charge (murder/non-murder) and the duration of hearing (Day 1 or subsequent day). The Table below sets out the appropriate percentage payments due to a solicitor.

Solicitor's fees in courts other than cases in the District Court or appeals to the Circuit Court

Type of hearing	One day hearing	Each subsequent day
Circuit Court, Central Criminal Court or Special Criminal Court hearing in relation to a charge <ul style="list-style-type: none"> - other than murder - of murder where one counsel is assigned - of murder where two counsel are assigned 	<ul style="list-style-type: none"> Junior Counsel fee Junior Counsel fee Senior Counsel fee 	<ul style="list-style-type: none"> 73% of Junior Counsel refresher fee 74% of Junior Counsel refresher fee 48% of Senior Counsel refresher fee
Court of Appeal hearing in relation to a charge <ul style="list-style-type: none"> - other than murder - of murder where one counsel is assigned - of murder where two counsel are assigned 	<ul style="list-style-type: none"> 119% of Junior Counsel fee Junior Counsel fee Senior Counsel fee 	<ul style="list-style-type: none"> 73% of Junior Counsel refresher fee 58% of Junior Counsel refresher fee 38% of Senior Counsel refresher fee

High Court hearing of case stated by the District Court	Junior Counsel fee	73% of Junior Counsel refresher fee
Supreme Court hearing of case stated by Circuit Court	Junior Counsel fee	73% of Junior Counsel refresher fee
Supreme Court hearing of appeal from determination of High Court on case stated by District Court	Junior Counsel fee	73% of Junior Counsel refresher fee
Supreme Court hearing of appeal from Court of Appeal in relation to a charge		
- other than murder	119% of Junior Counsel fee	73% of Junior Counsel refresher fee
- of murder where one counsel is assigned	80% of Junior Counsel fee	58% of Junior Counsel refresher fee
- of murder where two counsel are assigned	83% of Senior Counsel fee	38% of Senior Counsel refresher fee

11. Types of hearings in the Circuit Court and outcomes

11.1 The fees payable to solicitor and counsel depend on the type of hearing. Hearings are categorised as follows:

Hearing	Description	Fees paid for
Arraignment Call over Mention	This covers all hearings other than trial and sentence hearings.	<ul style="list-style-type: none"> • Guilty pleas • Affirming Signed Plea • Entry of Nolle Prosequi • Contested Bail applications • Section 4E application • Fitness to be tried applications • Sentence passed on a mention date

Hearing	Description	Fees paid for
Trial Dates	This covers dates when listed for trial.	<ul style="list-style-type: none"> • Guilty pleas • Entry of Nolle Prosequi • Ongoing trials • Adjourned trial less than 7 days notice (see 9.4 for exception)
Sentence Date	This covers dates when listed for sentencing.	<ul style="list-style-type: none"> • Adjourned sentence hearings • Hearings when sentence is passed • Hearings when sentence is re-entered

11.2 Only one type of hearing and one outcome must be recorded on the CLA 8 Claim Form.

12. Court of Appeal

12.1 A defendant who is not satisfied with the outcome of a trial in the Central, Special or Circuit Criminal Courts can appeal to the Court of Appeal.

The fees payable in the Court of Appeal are detailed below.

12.2 **Brief fee:** This is payable on the first day of an appeal against conviction. The brief fee paid is equal to the brief paid in the original case. An appeal against conviction may incorporate an appeal against sentence. If both are dealt with together, the fee for appeal against conviction covers both.

12.3 **Refresher fee:** This is payable for the second and any subsequent day of an appeal against conviction. The refresher fee paid is equal to the refresher paid in the original case.

12.4 **Appeal against sentence fee:** This is the fee paid where the defendant appeals against the severity of their sentence. It is equal to the Circuit Court sentence fee with no refresher rate. Should the hearing continue to another day a second sentence fee is paid.

12.5 **Appeal against leniency:** In cases where the Office of the DPP considers that a sentence is unduly lenient, the DPP may appeal to have the sentence increased. The fee paid for the first day of hearing (brief fee) is equal to that of a refresher fee in the Central Criminal Court. The fee paid for the second and subsequent days of hearing is calculated at 50% of the Appeal against leniency brief fee.

12.6 **Bail fee:** Where the defendant applies for bail and the matter is contested, a bail fee is payable. A contested hearing is one where counsel for the Office of the DPP contests the case. N.B. High Court Bail applications are covered under the Legal Aid – Custody Issues Scheme.

12.7 Enlargement of time fee: There is a time limit for lodging an appeal. An application to extend this time limit is referred to as an enlargement of time. A fee is payable for such a hearing.

12.8 Bail and enlargement of time fee: A hearing can cover both a bail and an enlargement of time application. A fee is payable however such cases are rare.

12.9 Taking Judgement: Judgement in a case may not be given on the day that the case is heard. A fee is payable for the day on which the judgement is issued if it is not given of the day of hearing.

12.10 Section 29 Application: A certificate as provided for by Section 29 of the Courts of Justice Act 1924 as amended is applied for if the DPP or accused feels that there is a point of law of exceptional public importance that requires consideration by the Supreme Court. Application is made to the Court of Appeal and the fee payable for this is equivalent to a refresher fee. If the certificate is granted a brief fee is payable on the first day of the hearing in the Supreme Court. Second and subsequent days in the Supreme Court attract a refresher fee.

13. District Court Fees and Appeals to the Circuit Court

13.1 Fees for cases in the District Court and appeals to the Circuit Court are based on the number of appearances by the solicitor on a given day and the number of defendants in a given case.

13.2 District Court hearings and Appeals to the Circuit Court are divided into two categories for the purpose of fee calculation, (i) first day of hearing and (ii) subsequent days of hearing. The first day of hearing attracts a higher fee than subsequent days of hearing.

13.3. The Criminal Justice (Legal Aid) (Amendment) Regulations 2011 (S. I. No. 362 of 2011) set out the fees payable for cases in the District Court and appeals to the Circuit Court.

13.4 There is an agreement between the Department and the Incorporated Law Society that enhanced fees can be paid to solicitors assigned to exceptional cases in the District Court and appeals to the Circuit Court where certificates for free legal aid have been granted. A solicitor seeking such a fee should submit a request to the Department. An enhanced fee may be payable following consultation by the Department with the Office of the Director of Public Prosecutions. Such a fee is rarely paid.

13.5 Regulation 3 (2) (b) of the Criminal Justice (Legal Aid) (Amendment) Regulations 1978 (S. I. No. 33 of 1978) provides that

“No fees shall be paid under the Act to a solicitor assigned in relation to any particular case in the District Court in pursuance of a certificate for free legal aid in respect of any day which the hearing consists only of an application for an adjournment by or on behalf of the solicitor, or the prosecution, made, in the opinion of the court, for the purpose of the solicitor’s convenience”.

The “*opinion of the Court*” is very important in this context and unless the court indicates that the reason the application for an adjournment is being granted is for the convenience of the solicitor, the solicitor is entitled to a fee for the appearance.

14. Case Stated to High Court/Supreme Court

14.1 “Case Stated” is a mechanism to review a court decision on a point of law. A statement of the facts is prepared in terms of one or more questions and is referred to a higher court for decision. A District Court judge may consult the High Court and a Circuit Court judge may consult the Supreme Court. A solicitor granted a Legal Aid (Case Stated) Certificate is paid on a parity basis with counsel for the Office of the Director of Public Prosecutions. A request for fees (there is no set claim form) from the solicitor and counsel for these cases should be forwarded to the Courts Policy Division, Department of Justice and Equality, 51 St Stephen’s Green, Dublin 2.

PART 3 – Further elements of Criminal Legal Aid

15. Enforcement of Court Orders Act 2009

15.1 The above Act was enacted in 2009 following a finding of the High Court that Section 6 of the Enforcement of Court Orders Act 1940 was unconstitutional on several grounds, including the fact that no provision was made for legal aid to an indigent debtor at risk of imprisonment. The 2009 Act contains a provision to allow a debtor to apply for legal aid in circumstances where he or she is at risk of imprisonment.

15.2 The 2009 Act amends the Enforcement of Court Orders Act 1940 and provides for the granting of legal aid in circumstances where enforcement proceedings are initiated under Section 6 of the Enforcement of Court Orders Act 1940 (as inserted by Section 2 of the 2009 Act) and under Section 8 of the Enforcement of Court Orders Act 1940 (as amended by Section 2 of the 2009 Act). In this regard the Minister, on 23 July 2009, signed Regulations entitled the Enforcement of Court Orders (Legal Aid) Regulations 2009 (S. I. No. 301 of 2009) to prescribe the form of the legal aid certificates, the rates of fee payable and the manner in which solicitors are to be assigned to represent debtors in enforcement proceedings.

15.3 The 2009 regulations were amended in 2011 in order to decrease the fees payable. This was done by way of the Enforcement of Court Orders (Legal Aid) (Amendment) Regulations 2011 (S. I. No. 363 of 2011).

15.4 The fees payable in debtor legal aid cases are per case and not actual appearances in courts. Fees are set out in Appendix 3.

16. Ad-Hoc District Court (Counsel) Scheme

16.1 An Ad-Hoc District Court (Counsel) Scheme came into force in October 2009 following the Supreme Court judgement in the *Carmody* case¹. The case in the Supreme Court found that a person charged before the District Court had a constitutional right to apply for legal aid for counsel as well as a solicitor where the court considered that the case contained a degree of gravity and complexity or other exceptional circumstances. Following the judgement it was necessary to introduce with immediate effect an Ad-Hoc Scheme on an administrative basis to grant such provision in order to avoid challenges. The Scheme also provides for counsel for the preparation and conduct of an appeal to the Circuit Court.

16.2 The District Court can issue a Legal Aid (District Court) (Counsel) Certificate and a Legal Aid (Circuit Court (Counsel) Appeal) Certificate. The Scheme further allows for a Legal Aid (Circuit (Counsel) Appeal) Certificate to be issued by the Circuit Court.

16.3 A single fee per case is payable in the District Court rather than a fee for each court appearance. The fee rate is set out in Appendix 3.

¹ *Carmody v Minister for Justice Equality and Law Reform*, [2009] IESC 71

17. Garda Station Legal Advice Revised Scheme

17.1 The Garda Station Legal Advice Revised Scheme combines two elements:

- The original Garda Station Legal Advice Scheme with a continuation of the existing arrangements pertaining to the rates payable for solicitor / detainee telephone and Garda Station consultations and with the current limits on the number of consultations that will attract a fee being retained. The existing arrangements for the payment of a fee for an Extension Hearing will still apply.

- New payment rates to apply for a solicitor's attendance at a Garda Station for the purpose of attending a formal interview between the Gardaí and the detainee and / or attending a formal Identification Parade in which the detainee is involved

17.2 Fees are paid to solicitors for telephone and in-station consultations with persons detained in Garda Stations, the attendance of the solicitor at a formal interview between the Gardaí and the detainee and / or where a solicitor is required to attend an Identity Parade in circumstances where a person is detained under the provisions of:

- (a) Section 30 of the Offences against the State Act 1939 (as amended), or
- (b) Section 4 of the Criminal Justice Act 1984, (as amended), or
- (c) Section 2 of the Criminal Justice (Drug Trafficking) Act 1996, (as amended), or
- (d) Section 50 of the Criminal Justice Act 2007, (as amended),

and,

(e) the person has a legal entitlement to consult with a solicitor and the person's means are insufficient to enable him / her to pay for their own legal advice at the Garda Station. There is a specific financial means threshold of €20,316 enforced.

It should also be noted that the provisions of Section 42 of the Criminal Justice Act 1999 and Sections 16 & 17 of the Criminal Procedure Act 2010 provide that detentions under both these pieces of legislation will be dealt with as though the detainee had been detained under Section 4 of the Criminal Justice Act 1984.

17.3 The Garda Station Legal Advice Revised Scheme also provides for payments to solicitors in respect of Extension Hearings held in the District Court where the Gardaí wish to extend the time limit for holding suspects under the Offences Against the State Acts, the Criminal Justice (Drug Trafficking) Act 1996 or under the Criminal Justice Act 2007.

17.4 The Scheme is administered by the Legal Aid Board. Full information including the rate of fees payable can be found on their website at www.legalaidboard.ie

18 Criminal Assets Bureau Ad Hoc Legal Aid Scheme

18.1 The Scheme is applicable to persons who are respondents and/or defendants in any court proceedings brought by, or in the name of, the Criminal Assets Bureau or

its Chief Bureau Officer or any member of the Criminal Assets Bureau, including court proceedings under the Proceeds of Crime Act 1996, Revenue Acts or Social Welfare Acts.

18.2 The Scheme also covers:

- social welfare appeals made to the Circuit Court under Section 34 of the Social Welfare Act 1997
- tax appeals made to the Circuit Court under the Taxes Acts where the Criminal Assets Bureau or its Chief Bureau Officer or any member of the Criminal Assets Bureau is the respondent and/or defendant
- applications made by the Director of Public Prosecutions under Section 39 of the Criminal Justice Act 1994.

18.3 The Scheme provides that the grant of legal aid, including the level of legal representation and/or witness expenses allowed, is a matter for the Court with the appropriate jurisdiction to deal with the specific case. The calculation of fees that apply to counsel representing the legally aided person is made in accordance with the mechanism which is in operation under the Criminal Justice (Legal Aid) Act 1962 and the Regulations made under that Act. The effect of this is that fees payable are related to fees for counsel who appear for the Criminal Assets Bureau or the Director of Public Prosecutions, as the case may be.

18.4 The Scheme is administered by the Legal Aid Board. Full information can be found on their website at www.legalaidboard.ie

19. Legal Aid – Custody Issues Scheme (formerly the Attorney General’s Scheme)

19.1 The Legal Aid - Custody Issues Scheme provides payment for legal representation in certain types of legal cases not covered by civil legal aid or the Criminal Legal Aid Scheme.

19.2 The Scheme applies to the following forms of litigation:

- (i) Habeas Corpus applications.
- (ii) High Court Bail Motions.
- (iii) Judicial reviews that consist of or include certiorari, mandamus or prohibition and concerning criminal matters or matters where the liberty of the applicant is at issue.
- (iv) Applications under section 50 of the Extradition Act 1965, Extradition applications and European Arrest Warrant applications.

The Scheme only applies to proceedings of the type referred to above, conducted in the High Court, the Court of Appeal and the Supreme Court.

19.3 The Scheme is administered by the Legal Aid Board. Full information including the rate of fees payable can be found on their website at www.legalaidboard.ie

PART 4 - FAQs

20. Frequently Asked Questions

The following questions often arise and the replies provide a useful guide as to how the criminal legal aid arrangements operate.

What fees are payable to solicitors in the District Court?

S. I. No. 362 of 2011 covers fees in the District Court and this is available on the Department's website www.justice.ie

What fees would a solicitor be entitled to where a case was mentioned twice in the District Court, then heard, and completed on the third occasion?

A Day 1 fee is payable for the first day and a subsequent day fee is payable for the other 2 days. No fee is payable where a case is adjourned, in the opinion of the Court, for the solicitor's convenience.

What fees would a Junior Counsel and a Senior Counsel be entitled to in a murder trial?

A brief fee is payable for the first day of the trial and a refresher fee is payable for each additional day. Junior Counsel brief fee is €4,752 and refresher fee is €1,041. Senior Counsel brief fee is €7,127 and refresher fee is €1,562.

How does a solicitor become a member of the Criminal Legal Aid Panel?

Under the Criminal Legal Aid Scheme the local County Registrar keeps a list of solicitors who are willing to act in that county for persons to whom certificates for free legal aid have been granted. The Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999 (S. I. No 135 of 1999) provide that a solicitor who wishes to have their name added to or retained on the panel which is maintained by the County Registrar must furnish a printed copy of their electronic Tax Clearance Certificate to the County Registrar(s) annually dated after 30 November of the year prior to which inclusion on the panel(s) is sought to be retained.

How does a barrister become a member of the Criminal Legal Aid Panel?

A barrister who wishes to have their name added to the panel must notify the Bar Council of their willingness to act for persons to who certificates for free legal aid have been granted. The Bar Council then notifies the Minister for Justice and Equality of this. On receipt of the notification from the Bar Council along with the provision of the barrister's current tax clearance certificate their name is added to the panel.

Section 11(4) of the Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999 (S. I. No 135 of 1999) provides that *"responsibility for ensuring eligibility for inclusion or retention of a barrister's name on the barristers' panel shall at all times remain the responsibility of the barrister concerned"*.

What fees are payable to a solicitor for co-accused under the Criminal Legal Aid Scheme?

Where there are two defendants and two legal aid certificate numbers and the cases are heard together, only one payment is made in respect of each day in Court. Only one brief fee and one refresher fee per day is paid. Section 3 (1) (g) of S. I. No. 33 of 1978 Criminal Justice (Legal Aid) (Amendment) Regulations 1978 states:

“Where the same solicitor is assigned in pursuance of two or more certificates for free legal aid to one or more defendants and the cases to which they relate are heard together and are not cases in the District court or appeals to the Circuit Court, the solicitor so assigned shall be deemed, for the purpose of these Regulations to have been assigned to the said defendant or defendants, as the case may be, in relation to one case only.”

Are two sentence fees due for sentencing hearings where a barrister represents two defendants on one Bill Number?

Where there are two defendants, two legal aid certificate numbers and one bill number and the cases are heard together only one payment is made in respect of each day in Court.

What fee is payable where a case is listed for trial and a Nolle Prosequi is entered on the trial day?

As the case was listed for trial on a particular day and a Nolle Prosequi was entered on the trial day, the solicitor and counsel did not have 7 days notice. A brief fee is payable provided no brief fee had previously been paid in the case.

Are fees payable to a solicitor whose name is not on the solicitor’s panel?

A solicitor must be on the panel on the date that the judge grants legal aid and the court issues a certificate in order for fees to be paid.

Are fees payable to a barrister whose name is not on the barrister’s panel?

A barrister must be on the panel on the date that the solicitor first instructs him/her in order for fees to be paid.

Are fees payable to a barrister whose name has been removed from or has lapsed and not renewed to the barrister’s panel?

Regulation 11(5) of the Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999 provides that *“no fees under the Criminal Justice (Legal Aid) Regulations shall be payable to a barrister who accepts an assignment to a case if his or her name is not, at the time of assignment, on the barristers’ panel”*. The criteria for determining whether a barrister is entitled to payment of fees is whether their name is on the barristers’ panel at the time of assignment.

Are consultations paid for under the Criminal Legal Aid Scheme?

There is no fee payable for a consultation in respect of cases heard in the District Court and appeals to the Circuit Court.

In relation to clients that have been granted a legal aid certificate for trial in respect of an indictable offence in the Circuit and higher courts the following applies:

- If a consultation (one) is held between solicitor and counsel and client in connection with a criminal legal aid case (other than on a hearing date) and solicitor and counsel are present for the whole of the consultation then a consultation fee is payable in the case.
- Consultation fees are € 88 if less than 1 hour and €130 if between 1 and 2 hours in duration.
- Only one consultation fee is payable per case.

What is the rate for photocopying expenses under the Criminal Legal Aid Scheme?

Photocopying rate is 11 cent per page.

Is a fee due for an application for a case to be transferred from the Country Circuit to Dublin where the application was refused?

If an application was made at a mention hearing to transfer a case to another circuit, a transfer fee is payable.

What are the travel and subsistence rates under the scheme?

Under S. I. No. 362 of 2011 the travel rate is set at 24 cent per km and the subsistence rate is set at an overnight rate of €66.87 with day rates of €7 for 5 hours but less than 10 hours and €16.81 for 10 hours or more.

For cases in the District and Circuit Courts the following applies:

- Solicitor may claim for travel for sittings outside of Dublin.
- Dublin based solicitor cannot claim for travel for attendance at sittings of Dublin District and Circuit Courts.
- Solicitor based outside of Dublin may claim for travel for attendance at sittings of Dublin District and Circuit Courts.

Subsistence is not payable for cases in the District and Circuit Courts.

For cases in the Central Criminal Court, Special Criminal Court and the Court of Appeal the following applies:

- Solicitor practising outside of Dublin may claim for travel and subsistence.
- Dublin based solicitors cannot claim for travel and subsistence.

Can a defendant in the District Court obtain the services of an expert witness to assist in their defence, and if so how?

A solicitor who wishes to engage an expert witness to assist in matters associated with the defence of their client must request prior authorisation from Courts Policy Division of the Department of Justice and Equality to do so. Expert witnesses should not be engaged unless it is absolutely necessary to do so in defence of the client. Set out at Appendix 4 is a Guidance Document.

All requests seeking approval to engage an expert witness should be sent by email to clawitness@justice.ie.

Could a solicitor claim fees for each of 4 cases they dealt with in the District Court on the same day where there was a different defendant in each case?

If a solicitor is granted legal aid certificates for a number of defendants they would receive a fee of €201.50 (Day 1 fee) for the first two defendants and a fee of €120.88 (Day 1 fee) for the third and for each additional such person represented on any one day by the solicitor.

Does the Criminal Legal Aid Scheme provide for payment for appearances in respect of proceedings pursuant to Section 63 of the Criminal Justice (Mutual Assistance) Act 2008?

Such proceedings are not provided for by the scheme however the Department has agreed that cases can be dealt with on an ex gratia basis. Solicitors appearing for witnesses in these cases should contact the Courts Policy Division of the Department for prior sanction.

What should a solicitor or barrister do if a claim is rejected by Financial Shared Services?

In the event that this occurs, the practitioner may contact the Courts Policy Division of the Department.

Appendix 1

District Court and Appeals to the Circuit Court

Defendant/Appellant	First day of hearing		Subsequent days of hearing
Fee in respect of defendant / appellant where only one defendant / appellant represented and in respect of first defendant / appellant where solicitor assigned in respect of more than one defendant / appellant.	€201.50 in relation to first 2 cases.	€120.88 in relation to each subsequent case.	€50.39
Fee in respect of second defendant / appellant where solicitor assigned in respect of more than one defendant / appellant.	€120.88 in relation to first 2 cases	€72.20 in relation to each subsequent case.	€50.39
Fee in respect of each defendant / appellant (other than the first and second defendants / appellants) where solicitor assigned in respect of more than two defendant / appellant.	€80.64 in relation to first 2 cases.	€50.39 in relation to each subsequent case.	€50.39

Appendix 2

Circuit Court and Higher Courts

Senior Counsel

Court	Brief	Refresher	Sentence	Adjourned Sentence
Circuit Court	€1,716	€858	€370	€185
Central Criminal Court/Murder	€7,127	€1,562	€370	€185
Central Criminal Court/Rape	€5,704	€1,562	€370	€185

Junior Counsel

Court	Brief	Refresher	Sentence	Adjourned Sentence
Circuit Court	€1,144	€572	€247	€124
Central Criminal Court/Murder	€4,752	€1,041	€247	€124
Central Criminal Court/Rape	€3,803	€1,041	€247	€124

Solicitor

Court	Brief	Refresher	Sentence	Adjourned Sentence
Circuit Court	€1,144	€418	€180	€90
Central Criminal Court/Murder	€7,127	€750	€180	€90
Central Criminal Court/Rape	€3,803	€760	€180	€90

Appendix 3

Other types of fees payable

Prison visit essential to preparation and conduct of defence	€97.22
Legal consultation in prison via videolink	€75
Sentence fee	Junior Counsel - €247 Senior Counsel - €370
Adjourned sentence fee	Junior Counsel - €124 Senior Counsel - €185
Nolle Prosequi	Higher fee - €502 Lower fee - €82
Consultation fee	€88 - less than one hour €130 - one to two hours
Bail fee	€176
Transfer hearing	€247
Enlargement of time fee	€133
Bail and enlargement of time fee	€216
Taking judgement fee	Senior Counsel - €130 Junior Counsel/Solicitor - €88
Counsel's fee under the Non Statutory District Court (Counsel) Scheme	€572 per case

Fees payable under the Enforcement of Court Orders Act 2009

Solicitor's fee for proceedings in the District Court	€201.50 per case
Solicitor's fee for an appeal against order for imprisonment of debtor	€201.50 per case
Solicitor's fee for a hearing by the High Court of a case stated	€1,332.90 per case
Counsel's fee for a hearing in the High Court of a case stated	€1,332.90 per case

Appendix 4

CRIMINAL LEGAL AID - EXPERT WITNESS CLAIMS

Table 1: Fees Payable to Expert Witnesses

Expert Type	Fees for preparation of examination/report	Fees for attendance at Court Full day/Half day
Consultant medical practitioner, consultant psychiatrist, consultant pathologist	€120 per hour	€610/€435
Forensic scientist, psychologist, psychiatrist, surveyor, forensic accountant, accountant, engineer, medical practitioner, botanist, architect, veterinary surgeon, meteorologist	€100 per hour	€610/€435
Fire (assessor) and/or explosives expert	€90 per hour	€475/€238
Fingerprint expert, motor assessor	€70 per hour	€475/€238
Other Routine Technical Reports:- e.g. DNA analysis, cell site analysis; Ballistics reports; Analysis, Examination or Enhancement of CCTV/DVD/Disc Drive/SIM Card/ Audio; Site examination, measurement, mapping etc. associated with incidents/motor/traffic	€70 per hour	€475/€238
Advocacy support (where a solicitor's client has an intellectual disability)	€70 per hour	€475/€238
General Practitioner	€200 (Flat rate per Report)	n/a
Urinalysis Report*	€200 (Flat rate per Report)	n/a
Summons Server	€72	n/a

	(Flat rate per summons)	
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*Only one report per client, where it is absolutely necessary, will be paid in respect of Urinalysis under the criminal legal aid scheme (this includes the cost of diagnostic tests). Should the solicitor believe that more than one report is necessary they must seek the approval of the court and a copy of the legal aid certificate with the decision of the court to that effect will be required in order to make a claim for payment.

It should be noted that where an expert witness is required to meet/interview the defendant and the defendant does not make themselves available that cost must be borne by the defence.

Expert witnesses who are necessarily engaged from outside of the jurisdiction will be paid at the rates applicable in Ireland and the appropriate exchange rate to be applied will be the exchange rate applicable on the date of the invoice.

Table 2 - Expenses Payable to Expert and Non-Expert Witnesses

Expense type	Rate payable
Expert witnesses who travel from abroad	Paid on foot of receipts
Mileage (Expert and Non-Expert Witnesses)	24 cent per km
Vouched expenses including accommodation (Expert and Non-Expert Witnesses)	Paid on foot of receipts up to a maximum of €133.73 per 24 hour period Vouched parking costs up to a maximum of €10 per day
Loss of earnings (non-expert witnesses)	Payable to non-expert witnesses on foot of proof from employer

As appropriate, expert witnesses will be paid for travelling time required in the preparation of reports. Travel time will be paid at half the relevant work rate as set out in Table 1 above.

Travel time is not paid in respect of court appearances as it is deemed to be included in the fee for attendance at court.

Expert witnesses who travel from abroad will have travel costs (air/ferry fares) paid on foot of receipts/tickets.

General Information

All claims for payment must follow the procedures set out below.

- A solicitor who wishes to engage an expert witness to assist in matters associated with the defence of their client must request and receive the prior authorisation of Courts Policy Division to do so.
- This applies in all cases except where reports are specifically authorised by the courts at the request of the solicitor. In such instances evidence of the

court authorisation will be required in the form of a copy of the Criminal Legal Aid (CLA) certificate duly noted by the court registrar/clerk in order to allow for payment.

- Expert witnesses should not be engaged unless it is absolutely necessary for the defence of the client.
- An application for permission to engage an expert witness should be made at the earliest possible opportunity in order to ensure that there are no delays in the process.
- A solicitor who engages an expert witness to assist in matters associated with the defence of their client is responsible for –
 - a) following the correct procedure for pre-authorisation
 - b) certifying that the service provider prepared and produced the report and attended on the dates and times directed by the solicitor
 - c) the accuracy of the hours and the amount claimed
 - d) submitting the appropriate LA5 claim form with accompanying documentation/receipts.
- All LA5 Claim Forms should be submitted **DIRECTLY** to Financial Shared Services, Department of Justice & Equality, Deerpark Road, Killarney, Co. Kerry. It is no longer necessary to submit LA5 Forms to the Courts Service.
- All LA3 Claim Forms which require certification of attendance in court by the expert witness must in the first instance be submitted to the District Court, County Registrar or Registrar, as the case may be, of the court which hears the case.
- It should be noted that where an expert witness produces a report on behalf of the defence but the report of that expert witness is not subsequently used by the defence solicitor the State will **not** cover the cost of a second report.
- The list of experts and reports outlined above does not purport to be exhaustive. However, it does provide guidance in relation to the fees that will be paid under the criminal legal aid scheme.
- Should a solicitor wish to make a case for the payment of a higher fee in respect of an expert witness, the request should be submitted in writing along with all relevant documentation to support the request. It should be noted that such a request would need to be detailed and compelling. Courts Policy Division reserves the right to request the defence solicitor to seek the approval of the court to the particular expert witness.
- Claims for payment must be submitted within 24 months of the date on which legal aid is granted. If the case continues for longer than 24 months the claim should be submitted within 24 months from the date on which the expenses have been incurred. Claims submitted after this deadline will not be paid.
- Solicitors must retain evidence/proofs, including the report if not subsequently handed in to court, in relation to the claim for audit purposes.
- Please submit all requests seeking approval to engage an expert witness by email to clawitness@justice.ie. Any supporting documentation should be scanned with the email request to this address. Please note that from 1 October 2011 requests **will only be accepted by email**.

N.B This document relates to expert witness claims under the main Criminal Legal Aid Scheme. The Legal Aid Board has a separate document for the schemes it operates.

Appendix 5

CRIMINAL LEGAL AID - INTERPRETATION/TRANSLATION CLAIMS

Maximum fees payable

Type of claim	Rate payable
Interpretation (including sign language)	€40 for the first hour or part thereof €20 per half hour thereafter
Translation of documents	10 cent per word
Translation of Book of Evidence	€22 per page
Mileage - Interpretation Services only (where interpreter is required to travel outside of a radius of 15km from base)	24 cent per km

General Information

All claims for payment must follow the procedures set out below.

- A solicitor who engages an interpretation company to assist in matters associated with the defence of their client is responsible for -
 - a) certifying that the service provider attended on the dates and times directed by the solicitor
 - b) the accuracy of the hours and the amount claimed
- A claim for payment from an interpretation/translation company must be submitted **by the solicitor** to Financial Shared Services (FSS), Department of Justice & Equality, Deerpark Road, Killarney, Co. Kerry for processing and direct payment to translation/interpretation provider.
- A claim lodged directly by the interpretation/translation company **will not** be processed by FSS.
- Each application for payment must include the following –
 - a) the original invoice from the interpretation/translation service provider (invoice must include full details including name, address, taxpayer ID, bank account details)
 - b) a record of the dates and times of attendance by the service provider certified as accurate by the solicitor assigned to the case
 - c) a completed LA10 Form (including the Legal Aid Certificate Number) signed and stamped by the solicitor assigned to the case
 - d) a copy of the Legal Aid Certificate
- Under no circumstances should a solicitor sign off on a claim in respect of a service provided by an interpretation/translation service to a client other than the client that they represent.
- Claims for payment must be submitted within 24 months of the date on which legal aid is granted. If the case continues for longer than 24 months the claim should be submitted within 24 months from the date on which the expenses have been incurred. Claims submitted after this deadline will not be paid.

- Solicitors must retain evidence/proofs in relation to the claim for audit purposes.
- Where costs for translation are in excess of €5,000 solicitors must obtain at least THREE quotations for the provision of the service.
- Where the Courts Service provides court interpreters it is of critical importance that the use of interpretation/translation companies engaged by the solicitor is limited to what is absolutely necessary in defence of the client. Solicitors should ensure that any invoices submitted refer only to the time during which the interpreter has acted on behalf of the defence.
- The Criminal Legal Aid Scheme does not cover interpretation/translation services provided for in the court as these services are covered by a separate contract arranged by the Courts Service.
- An interpreter must have linguistic competence, a professional attitude, an understanding of the legal process and of their duties and must be impartial and confidential.

N.B This document relates to interpretation/translation claims under the main Criminal Legal Aid Scheme. The Legal Aid Board has a separate document for the schemes it operates.

Appendix 6

Contact Details:

Courts Policy Division,
Department of Justice and Equality,
51 St. Stephen's Green,
Dublin 2.
D02 HK52

Tel: 01 6028202
Email: info@justice.ie

Financial Shared Services,
Department of Justice and Equality,
Deerpark Road,
Killarney,
Co. Kerry.

Tel: 064 6670030
Email: legalaid@justice.ie

Legal Aid Board,
Criminal Legal Aid Section,
48-49 North Brunswick Street,
Smithfield,
Dublin 7.
D07 PE0C

Tel: 01 6469644
Email: cla@legalaidboard.ie