
Remunerating Exceptional Preparation Work in the Magistrates' Court

Bar Council - Consultation Response

Introduction

1. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.
2. The Bar Council welcomes the opportunity to contribute to the Department of Justice's targeted consultation on remunerating exceptional circumstances in cases in the Magistrates' Court. The Bar's response to the consultation is structured according to our comments focusing on two main areas. Firstly, the types of cases in which additional work would be required in the Magistrates' Court and secondly, the proposed hourly rates of payment for exceptionality.

Types of Case in the Magistrates' Court

3. The Bar accepts the Department's assertion at paragraph 3.8 of the consultation that complex cases will not routinely be heard in the Magistrates' Court and that most will typically be committed to the Crown Court for disposal. Consequently, the types of scenario in which additional work will be required are limited. We welcome the examples provided by the Department of the types of circumstances which could come together to mean that a case may come within the proposed exceptional arrangements and warrant consideration by the Legal Services Agency. These include:
 - Cases where a significant amount of investigative work is required at magistrates' courts level;
 - A case involving an "assisting offender" under Part 2 of the Serious Organised Crime and Police Act 2005;
 - Where the number of defendants in a case results in a significant increase in workload;
 - Complex fraud cases.
4. The Bar takes the view that "a case where there is a high volume of disclosure" should also be added to this list of examples. Counsel is under a professional duty to properly consider all of the material of relevance to a defendant's case in pursuance of the proper exercise of their obligations. We would suggest that any complex trials with high levels of pages of prosecution evidence alongside

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the involvement of expert witnesses should be considered by the Agency for exceptionality. This could potentially be relevant to terrorist cases originating in the Magistrates' Court.

5. Furthermore, the Bar also considers that there is a need to explore exceptional circumstances in relation to the committal process in the Magistrates' Court. This system can be useful for allowing the court to test the evidence in a case at an early stage, facilitate earlier guilty pleas in some instances and negate the need for longer trials in the Crown Court. The Bar understands that the Justice Act (Northern Ireland) 2015 introduces reforms around the use of preliminary investigations and preliminary inquiries by amending the Magistrates' Court (NI) Order 1981. Clause 7 of the 2015 Act provides that committal proceedings in the Magistrates' Court shall be conducted by way of a preliminary investigation when directed by the court and in all other cases shall be by way of preliminary inquiry. In addition, an accused may apply to the court for a direction that a preliminary investigation is to be held which the court will only grant if it is satisfied that an investigation is "necessary in the interests of justice". Therefore the circumstances in which a preliminary investigation will be employed in the Magistrates' Court is likely to be very limited.

6. However, the Bar takes the view that despite the limited use of this type of committal in the Magistrates' Court it is important that they can be recognised as meeting the criteria for exceptionality in certain circumstances. A number of terrorist cases involving a high amount of disclosure could be applicable in relation to this. For example, a lengthy preliminary investigation conducted at Belfast Magistrates' Court concluded in March 2016 that there was sufficient evidence for three alleged dissident republican paramilitaries to stand trial in the Crown Court for the attempted murder of PSNI officers in December 2013. Another example is the case of Séamus Daly charged with the murders of 29 people following the Omagh bomb in 1998. Following the assessment of evidence at a preliminary investigation at Omagh Magistrates' Court it was concluded that the case would not proceed to the Crown Court. Consequently, it is possible that similar cases involving a high level of disclosure and the early assessment of evidence in the Magistrates' Court could be considered for exceptionality.

7. Another consideration for the Department in relation to terrorist cases might be those involving matters of national security which are initially considered at preliminary investigation in the Magistrates' Court. There is the potential that such cases could evolve into complex ones requiring additional work, particularly if matters of covert surveillance or the use of informants are involved.

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8. Furthermore, the Department states at paragraph 3.9 that it intends to issue guidance to the Legal Services Agency on how the proposed exceptionality provisions are to apply in practice and the types of circumstances which will be considered exceptional. The Bar considers that it would be useful to view this guidance to the LSA before we can comment in full on the impact that this will have on practitioners.

Hourly Rates of Payment

9. The Bar notes that the proposed hourly rates of payment are £100 for Queen's Counsel and £80 for Junior Counsel. Meanwhile senior solicitors can expect £100 per hour with £80 for solicitors. We believe that the rates of payment for counsel in the Magistrates' Court should be more in line with the payments in the Crown Court for exceptional work. The Legal Aid for Crown Court Proceedings (Costs) (Amendment No. 2) Rules (Northern Ireland) 2016 outlines hourly rates of £130 for Queen's Counsel, £105 for Leading Junior Counsel, £80 for Led Junior Counsel and £90 for Sole Junior Counsel. We consider that the rates of payment in the Magistrates' Court should be increased to reflect these levels, particularly the £80 for Junior Counsel which should be commensurate with the £90 for Sole Junior Counsel in the Crown Court.
10. It is also worth noting that Very High Cost Cases were still operational in the Magistrates' Court up until last year under The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 with Schedule 2 highlighting preparation rates of £110 per hour for Senior Counsel and £80 per hour for Junior Counsel. The proposed rates under the current DOJ consultation of £100 for QC and £80 for Junior Counsel have either remained static or been reduced in the case of Senior Counsel despite these rates being set seven years ago.