



Department of
Justice

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**DIRECTION GIVEN UNDER
THE MAGISTRATES' COURTS AND COUNTY COURT APPEALS (CRIMINAL
LEGAL AID) (COSTS) RULES (NORTHERN IRELAND) 2009**

Direction No. 4 of 2017

**INTERIM PAYMENTS IN CRIMINAL CASES IN THE MAGISTRATES' COURTS
AND COUNTY COURTS**

1. The Department of Justice hereby directs under rule 5(1) of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009, as amended ("the 2009 Rules") that, subject to paragraphs 2 to 10 below, the Legal Services Agency ("the Agency") may:
 - a. assess any application submitted in accordance with this Direction; and
 - b. having regard to the duration of the case, the costs incurred in providing representation and the estimated period of time within which a final claim can be submitted, make an interim payment in such amount as the Agency, in its discretion, may determine.

2. The Agency may authorise an interim payment under paragraph 1 only in respect of:
 - a. disbursements; and
 - b. in cases in which a 'Very High Cost Case' certificate or 'Certificate of Exceptionality' has been granted, representative(s)' fees.

3. Unless there are exceptional reasons for doing so, the Agency shall not authorise the making of an interim payment in any individual case under this Direction more than once in any twelve month period.
4. Rule 13 of the 2009 Rules shall not apply to any decision taken by the Agency under this Direction in relation to interim payments. In the ordinary way, however, rule 13 shall apply to decisions taken by the Agency in relation to the final determination of the costs involved in the case, to include any payment(s) made under this Direction.
5. Unless there are exceptional circumstances, the Agency may only make an interim payment in respect of a legal representative's professional fees under this Direction if, upon receiving an application from an assisted person's representative, and having considered any representations and any supporting documentation, the Agency is satisfied that:
 - a. the representative has had carriage of the case for at least 12 months¹;
 - b. fees of at least £10,000 have been properly accrued by the representative; and
 - c. the case is unlikely to conclude within a 6 month period.
6. In making an application for an interim payment in respect of professional legal fees under this Direction, the assisted person's representative shall provide the Agency with:
 - a. a detailed report of the work done to date;
 - b. a detailed breakdown of the value of the work claimed within the report including an itemised breakdown of who

¹ For the purposes of this Direction, the date from which a representative will be taken to have had carriage of a case will be the date on which a criminal aid certificate is assigned under Article 28, 28A or 30 of the 1981 Order to the representative making the application for an interim payment.

- conducted the work, when the work was done and how long was spent on each item;
- c. evidence of the key outputs in the case so far;
- d. an estimate of the projected future costs of the case;
- e. an estimate of the timescale for the case to be concluded;
- f. copies of counsel's directions and advices;
- g. a written undertaking, pursuant to paragraph 10, to refund to the Agency at the conclusion of the case any overpayment; and
- h. such further information, documents or particulars that the Agency may require to enable it to assess the application for an interim payment.

The Agency shall consider the documents referred to in this paragraph before authorising any interim payment and shall seek such independent third party verification as is necessary in order to substantiate any details.

7. In assessing an application for an interim payment in respect of disbursements, the Agency may authorise a claim for payment where liability appears to have been reasonably and actually incurred and –
 - a. the disbursement(s) falls within any guidance issued by the Agency in respect of criminal proceedings in the Magistrates' Court, or the representative has obtained prior authority from the Agency to incur the expenditure;
 - b. the total liability for such disbursement(s) exceeds £500; and
 - c. the assisted person's representative has provided the Agency with copies of vouching documentation for the disbursements being claimed.
8. Where the Agency considers that the making of an interim payment for the disbursements claimed is appropriate but that the making of an interim payment for the fees of a representative is not appropriate, or vice versa, the

Agency will authorise an interim payment only in respect of the disbursement or fees, as applicable.

9. At the conclusion of a case in which an interim payment has been made to a representative, that representative shall submit a claim to the Agency for a determination of the overall costs in the case. The representative shall do so whether or not such a claim will result in an assessment of final costs which is greater than the total of any interim payments made in the case.
10. In determining the amount payable to a representative, the Agency shall be entitled to deduct the amount of any interim payment(s) made under this Direction in respect of the same case from the amount that would otherwise be payable. If the amount of the interim payment(s) is greater than the amount that would otherwise be payable, the Agency shall be entitled to recover the amount of the difference. The Agency may elect to recover the difference either by immediate repayment by the representative or by way of a deduction from any other current or future amount that may be due to that representative.

Signed: 

Permanent Secretary

Date: 14 Sep 2017