



# **PRACTICE DIRECTION ON COSTS IN CRIMINAL PROCEEDINGS**

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## **PART I: INTRODUCTION**

### **I.1 Scope**

I.1.1 This direction shall have effect in Magistrates courts, the Crown Court, the Administrative Court and the Court of Appeal (Criminal Division) where the court, in the exercise of its discretion, considers an award of costs in criminal proceedings or deals with Criminal Defence Service funded work and Recovery of Defence Costs Orders. The provisions in this Practice Direction will take effect from 18 May 2004.

### **I.2 The Power to Award Costs**

I.2.1 The powers enabling the court to award costs in criminal proceedings are primarily contained in Part II of the Prosecution of Offences Act 1985 (The Act) (Sections 16, 17 and 18), the Access to Justice Act 1999 (in relation to funded clients) and in Regulations made under those Acts including the Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335 as amended) (the General Regulations). References in this direction are to the Prosecution of Offences Act and those Regulations unless otherwise stated. Schedule 1 sets out details of the relevant Regulations

I.2.2 Section 16 of the Act makes provision for the award of defence costs out of Central Funds. Section 17 provides for an award of costs to a private prosecutor out of Central Funds. Section 18 gives power to order a convicted defendant or unsuccessful appellant to pay costs to the prosecutor. Section 19(1) of the Act and Regulation 3 of the General Regulations provide for awards of costs between parties and Section 19A provides for the court to disallow or order a legal or other representative of a party to the proceedings to meet wasted costs.

I.2.3 The Supreme Court also has the power under its inherent jurisdiction over officers of the court to order a solicitor personally to pay costs thrown away. It may also give directions relating to CDS funded costs and Recovery of Defence Costs Orders.

### I.3 **Extent of Orders for Costs from Central Funds**

I.3.1 Where a court orders that the costs of a defendant, appellant or private prosecutor should be paid from Central Funds, the order will be for such amount as the court considers sufficient reasonably to compensate the party for expenses incurred by him in the proceedings. This will include the costs incurred in the proceedings in the lower courts unless for good reason the court directs that such costs are not included in the order, but it cannot include expenses incurred which do not directly relate to the proceedings themselves, such as loss of earnings. Where the party in whose favour the costs order is made is CDS funded, he will only recover his personal costs (see Section 21(4A)(a)). Schedule 2 sets out the extent of availability of costs from Central Funds and the relevant statutory authority.

### I.4 **Amount of Costs to be Paid**

I.4.1 Except where the court has directed, in an order for costs out of Central Funds, that only a specified sum shall be paid, the amount of costs to be paid shall be determined by the appropriate officer of the court. The court may however order the disallowance of costs out of Central Funds not properly incurred or direct the Determining Officer to consider whether or not specific items have been properly incurred. The court may also make observations regarding CDS funded costs. The procedures to be followed when such circumstances arise are set out in this

Direction.

- I.4.2 Where the court orders an offender to pay costs to the prosecutor, orders one party to pay costs to another party, disallows or orders a legal or other representative to meet any wasted costs, the order for costs must specify the sum to be paid or disallowed.
- I.4.3 Where the court is required to specify the amount of costs to be paid it cannot delegate the decision. Wherever practicable those instructing advocates should provide the advocate with details of costs incurred at each stage in the proceedings. The court may however require the appropriate officer of the court to make enquiries to inform the court as to the costs incurred and may adjourn the proceedings for enquiries to be made if necessary. Special provisions apply in relation to Recovery of Defence Costs Orders as to which see Part XI below.

## **PART II: DEFENCE COSTS FROM CENTRAL FUNDS**

### **II.1 In a Magistrates' Court**

- II.1.1 Where an information laid before a Justice of the Peace charging a person with an offence is not proceeded with, a Magistrates' Court enquiring into an indictable offence as examining Justices determines not to commit the accused for trial, or a Magistrates' Court dealing summarily with an offence dismisses the information, the court may make a defendant's costs order. An order under Section 16 of the Act may also be made in relation to breach of bind-over proceedings in a Magistrates' Court or the Crown Court (Regulation 14(4) of the General Regulations). As is the case with the Crown Court (see below) such an order should normally be made unless

there are positive reasons for not doing so. For example, where the defendant's own conduct has brought suspicion on himself and has misled the prosecution into thinking that the case against him was stronger than it was, the defendant can be left to pay his own costs. In the case of a partial acquittal the court may make a part order (details are at paragraphs II.2.1 and II.2.2 below).

II.1.2 Whether to make such an award is a matter in the discretion of the court in the light of the circumstances of each particular case.

## II.2 **In the Crown Court**

II.2.1 Where a person is not tried for an offence for which he has been indicted, or in respect of which proceedings against him have been sent for trial or transferred for trial, or has been acquitted on any count in the indictment, the court may make a defendant's costs order in his favour. Such an order should normally be made whether or not an order for costs between the parties is made, unless there are positive reasons for not doing so. For example, where the defendant's own conduct has brought suspicion on himself and has misled the prosecution into thinking that the case against him was stronger than it was, the defendant can be left to pay his own costs. The court when declining to make a costs order should explain, in open court, that the reason for not making an order does not involve any suggestion that the defendant is guilty of any criminal conduct but the order is refused because of the positive reason that should be identified.

II.2.2 Where a person is convicted of some count(s) in the indictment and acquitted on other(s) the court may exercise its discretion to make a defendant's costs order but

may order that only part of the costs incurred be paid. The court should make whatever order seems just having regard to the relative importance of the two charges and the conduct of the parties generally. Where the court considers that it would be inappropriate that the defendant should recover all of the costs properly incurred, the amount must be specified in the order.

II.2.3 The Crown Court may make a defendant's costs order in favour of a successful appellant. (See Section 16(3) of the Act.)

### II.3 **In the Administrative Court**

II.3.1 The court may make a defendant's costs order on determining proceedings in a criminal cause or matter.

### II.4 **In the Court of Appeal Criminal Division**

II.4.1 A successful appellant under Part 1 of the Criminal Appeal Act 1968 may be awarded a defendant's costs order. Orders may also be made on an appeal against an order or ruling at a preparatory hearing (Section 16(4A), to cover the costs of representing an acquitted defendant in respect of whom there is an Attorney Generals' Reference under Section 36 of the Criminal Justice Act 1972 (see Section 36(5) and (5A) of the 1972 Act) and in the case of a person whose sentence is reviewed under Section 36 of the Criminal Justice Act 1988 (see Section 36 and Schedule 3 paragraph 11 of the 1988 Act).

II.4.2 On determining an application for leave to appeal to the House of Lords under Part II

of the Criminal Appeal Act 1968, whether by prosecutor or by defendant, the court may make a defendant's costs order.

II.4.3 In considering whether to make such an order the court will have in mind the principles applied by the Crown Court in relation to acquitted defendants (see paragraph II.2.1 and II.2.2 above).

### **PART III: PRIVATE PROSECUTOR'S COSTS FROM CENTRAL FUNDS**

III.1.1 There is no power to order the payment of costs out of Central Funds of any prosecutor who is a public authority, a person acting on behalf of a public authority, or acting as an official appointed by a public authority as defined in the Act. In the limited number of cases in which a prosecutor's costs may be awarded out of Central Funds, an application is to be made by the prosecution in each case. An order should be made save where there is good reason for not doing so, for example, where proceedings have been instituted or continued without good cause. This provision applies to proceedings in respect of an indictable offence or proceedings before the Administrative Court in respect of a summary offence. Regulation 14(1) of the General Regulations extends it to certain committals for sentence from a Magistrates' Court.

### **PART IV: COSTS OF WITNESS, INTERPRETER OR MEDICAL EVIDENCE**

IV.1 The costs of attendance of a witness required by the accused, a private prosecutor or the court, or of an interpreter required because of the accused's lack of English or of an oral report by a medical practitioner are allowed out of Central Funds unless the court directs otherwise (see Section 20(3) of the Act and Regulation 16(1) of the

General Regulations). If, and only if, the court makes such a direction can the expense of the witness be claimed as a disbursement out of CDS funds. A witness includes any person properly attending to give evidence whether or not he gives evidence or is called, but it does not include a character witness unless the court has certified that the interests of justice require his attendance.

IV.2 The Crown Court may order the payment out of Central Funds of such sums as appear to be sufficient reasonably to compensate any medical practitioner for the expenses, trouble or loss of time properly incurred in preparing and making a report on the mental condition of a person accused of murder (see Section 34(5) of the Mental Health (Amendment) Act 1982).

## **PART V: DISALLOWANCE OF COSTS OUT OF CENTRAL FUNDS**

V.1.1 Where the court makes an order for costs out of Central Funds, it must:

- (a) direct the appropriate authority to disallow the costs incurred in respect of any items if it is plain that those costs were not properly incurred; such costs are not payable under Sections 16(6) and 17(1) of the Act, and it may:
- (b) direct the appropriate authority to consider or investigate on determination any items which may have been improperly incurred.

Costs not properly incurred include costs in respect of work unreasonably done, eg, if the case has been conducted unreasonably so as to incur unjustified expense, or costs have been wasted by failure to conduct proceedings with reasonable competence and

expedition. In a plain case it will usually be more appropriate to make a wasted costs order under Section 19A of the Act (see Part VIII below). The precise terms of the order for costs and of any direction must be entered in the court record.

- V.1.2 Where the court has in mind that a direction in accordance with paragraph V.1.1(a) or (b) might be given it must inform any party whose costs might be affected, or his legal representative, of the precise terms thereof and give a reasonable opportunity to show cause why no direction should be given.

If a direction is given under paragraph V.1.1(b) the court should inform the party concerned of his rights to make representations to the appropriate authority.

- V.1.3 The appropriate authority may consult the court on any matter touching upon the allowance or disallowance of costs. It is not appropriate for the court to make a direction under paragraph V.1.1(a) when so consulted.

## PART VI: AWARD OF COSTS AGAINST OFFENDERS AND APPELLANTS

- VI.1.1 A Magistrates' Court or the Crown Court may make an order for costs against a person convicted of an offence before it or in dealing with it in respect of certain orders as to sentence specified in Regulation 14(3) of the General Regulations. The Crown Court may make an order against an unsuccessful appellant and against a person committed by a Magistrates' Court in respect of the proceedings specified in Regulation 14(1) and 14(2). The court may make such order payable to the prosecutor as it considers just and reasonable (Section 18(1) of the Act).

- VI.1.2 In a Magistrates' Court where the defendant is ordered to pay a sum not exceeding £5 by way of fine, penalty, forfeiture or compensation the court must not make a costs order unless in the particular circumstances of the case it considers it right to do so (Section 18(4) of the Act). Where the defendant is under 18 the amount of any costs awarded against him by a Magistrates' Court shall not exceed the amount of any fine imposed on him (Section 18(5)).
- VI.1.3 The Court of Appeal Criminal Division may order an unsuccessful appellant to pay costs to such person as may be named in the order. Such costs may include the costs of any transcript obtained for the proceedings in the Court of Appeal (Section 18(2), (6) of the Act).
- VI.1.4 An order should be made where the court is satisfied that the offender or appellant has the means and the ability to pay.
- VI.1.5 The amount must be specified in the order by the court.
- VI.1.6 The Administrative Court is not covered by Section 18 of the Act but it has complete discretion over all costs between the parties in relation to proceedings before it.
- VI.1.7 An order under Section 18 of the Act includes LSC funded costs (see Section 21(4A)(b) of the Act).

## **PART VII: AWARD OF COSTS BETWEEN THE PARTIES**

### **VII.1 Costs Incurred as a result of unnecessary or improper act or omission**

VII.1.1 A Magistrates' Court, the Crown Court and the Court of Appeal Criminal Division may order the payment of any costs incurred as a result of any unnecessary or improper act or omission by or on behalf of any party to the proceedings as distinct from his legal representative (Section 19 of the Act and Regulation 3 of the General Regulations).

VII.1.2 The court must hear the parties and may then order that all or part of the costs so incurred by one party shall be paid to him by the other party.

VII.1.3 Before making such an order the court must take into account any other order as to costs and the order must specify the amount of the costs to be paid. The court is entitled to take such an order into account when making any other order as to costs in the proceedings (Regulation 3(2) to (4) of the General Regulations). The order can extend to LSC costs incurred on behalf of any party (Section 21 (4A)(b) of the Act).

VII.1.4 In a Magistrates' Court no order may be made which requires a convicted person under 18 to pay an amount by way of costs which exceeds the amount of any fine imposed upon him (Regulation 3(5) of the General Regulations).

VII.1.5 Such an order is appropriate only where the failure is that of the defendant or of the prosecutor. Where the failure is that of the legal representative(s) Parts VIII and IX (below) apply.

## VII.2 **Costs in restraint, confiscation or receivership proceedings**

### VII.2.1 The Order for Costs

This part of this Practice Direction applies where the Crown Court is deciding whether to make an order for costs under Rule 12 of the Crown Court Rules 1982 in relation to restraint proceedings or receivership proceedings brought under the Crown Court (Confiscation Restraint and Receivership) Rules 2003. (Confiscation proceedings are treated for costs purposes as part of the criminal trial.) The court has discretion as to: whether costs are payable by one party to another; the amount of those costs; and, when they are to be paid. The general rule is that if the court decides to make an order about costs the unsuccessful party will be ordered to pay the costs of the successful party but the court may make a different order (Crown Court (Confiscation, Restraint and Receivership) Rules 2003, Rule 50).

VII.2.2 Attention is drawn to the fact that in receivership proceedings the 2003 Rules provide that the Crown Court may make orders in respect of security to be given by a receiver to cover his liability for his acts and omissions as a receiver (Rule 25). The court may also make orders in relation to determining the remuneration of the receiver (Rule 26). (Paragraph VII.2.15 below deals with determination of the remuneration of a receiver).

VII.2.3 In deciding what if any order to make about costs the court is required to have regard to all the circumstances including the conduct of all the parties and whether a party has succeeded on part of an application, even if that party has not been wholly successful.

VII.2.4 The 2003 Rules set out the type of order which the court may make (the list is not exclusive):

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating only to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date including a date before the making of an order.

VII.2.5 The court is required, where it is practicable, to award a proportion (eg a percentage) of the costs, or costs between certain dates, rather than making a order relating only to a distinct part or issue in the proceedings. The latter type of order makes it extremely difficult for the costs to be assessed.

VII.2.6 Where the court orders a party to pay costs it may, in addition, order an amount to be paid on account by one party to another before the costs are assessed. Where

the court makes such an order, the order should state the amount to be paid and the date on or before which payment is to be made.

VII.2.7 Assessment of Costs

Where the Crown Court makes an order for costs in restraint, or receivership proceedings it may make an assessment of the costs itself there and then (a summary assessment), or order assessment of the costs under Rule 14 of the Crown Court Rules 1982 (Crown Court (Confiscation, Restraint and Receivership) Rules 2003, Rule 51). If the court neither makes an assessment of the costs nor orders assessment as specified above, the order for costs will be treated as an order for the amount of costs to be decided by assessment under Rule 14 of the 1982 Rules unless the order otherwise provides.

VII.2.8 Whenever the court awards costs to be assessed under Rule 14 of the 1982 Rules it should consider whether to exercise the power to order the paying party to pay such sum of money, as it thinks just, on account of those costs.

VII.2.9 In carrying out the assessment of costs the court or the taxing authority is required to allow only costs which are proportionate to the matters in issue, and to resolve any doubt which it may have, as to whether the costs were reasonably incurred or were reasonable and proportionate in amount, in favour of the paying party.

VII.2.10 The court or taxing authority carrying out the assessment should have regard to all the circumstances in deciding whether costs were proportionately or reasonably incurred or proportionate and reasonable in amount. Effect must be given to any

orders for costs which have already been made. The court or the taxing authority should also have regard to:

- (a) the conduct of all the parties, including in particular conduct before as well as during the proceedings;
- (b) the amount or value of any property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (e) the skill, effort, specialised knowledge and responsibility involved;
- (f) the time spent on the case; and
- (g) the place where and the circumstances in which work or any part of it was done.

VII.2.11 In applying the test of proportionality regard should be had to the objective of dealing with cases justly. Dealing with a case justly includes, so far as practicable, dealing with it in ways which are proportionate to:

- (i) the amount of money involved;
- (ii) the importance of the case;
- (iii) the complexity of the issues; and
- (iv) the financial position of each party.

The relationship between the total of the costs incurred and the financial value of the claim may not be a reliable guide.

VII.2.12 In any proceedings there will be costs which will inevitably be incurred and which are necessary for the successful conduct of the case. Solicitors are not required to conduct litigation at rates which are uneconomic, thus in a modest claim the proportion of costs is likely to be higher than in a large claim and may even equal or possibly exceed the amount in dispute.

VII.2.13 Where a hearing takes place, the time taken by the court in dealing with a particular issue may not be an accurate guide to the amount of time properly spent by the legal or other representatives in preparing for the trial of that issue.

VII.2.14 The 2003 Rules do not apply to the assessment of costs in proceedings to the extent that Section 11 of the Access to Justice Act 1999 (Costs in Funded Cases) applies and statutory instruments made under that Act make different provision (in this regard attention is drawn to the Guidance Notes issued by the Senior Costs Judge: Costs Orders Against an LSC Funded Client and Against the LSC under Section 11(1) of the Access to Justice Act 1999).

VII.2.15 Remuneration of a Receiver

A receiver may only charge for his services if the Crown Court so directs and specifies the basis on which the receiver is to be remunerated (Crown Court (Confiscation, Restraint and Receivership) Rules 2003, Rule 26). The Crown Court (unless it orders otherwise) is required to award such sum as is reasonable and proportionate in all the circumstances. In arriving at the figure for remuneration the court should take into account:

- (a) the time properly given by the receiver and his staff to the receivership;
- (b) the complexity of the receivership;
- (c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;
- (d) the effectiveness with which the receiver appears to be carrying out or to have carried out his duties; and
- (e) the value and nature of the subject matter of the receivership.

VII.2.16 The Crown Court may instead of determining the receiver's remuneration itself refer it to be ascertained by the taxing authority of the Crown Court. In these circumstances Rules 15 to 18 of the Crown Court Rules 1982 (which deal with review by the taxing authority, further review by a Taxing Master/Costs Judge and appeal to a High Court Judge) have effect as if the taxing authority was ascertaining costs.

VII.2.17 Procedure on Appeal to the Court of Appeal

The costs of and incidental to all proceedings on an appeal to the Criminal Division of the Court of Appeal against orders made in restraint proceedings, or appeals against or relating to the making of receivership orders, are in the discretion of the court (Proceeds of Crime Act 2002 Section 89(4)).

VII.2.18 The court has full power to determine by whom and to what extent the costs are to be paid.

VII.2.19 In any such proceedings the court may disallow or (as the case may be) order the legal or other representative concerned to meet the whole of any wasted costs or such part of them as may be determined in accordance with the Criminal Procedure Rules. (As to wasted costs orders see Part VIII below).

VII.2.20 These provisions have retrospective effect in relation to proceedings on appeals in respect of offences committed or alleged to have been committed on or after 24 March 2003 (Courts Act 2003 Section 94(3)).

### VII.3 **Award of Costs Against Third Parties**

VII.3.1 The Magistrates' Court, the Crown Court and the Court of Appeal may make a third party costs order if there has been serious misconduct (whether or not constituting a contempt of court) by a third party and the court considers it appropriate, having regard to that misconduct, to make a third party costs order against him. A "third party costs order" is an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings ("the third party") (Prosecution of Offences Act 1985 Section 19B as inserted by Section 93 of the Courts Act 2003).

VII.3.2 The Lord Chancellor may make Regulations:

- (a) specifying types of conduct in respect of which a third party costs order may not be made;
- (b) allowing the making of a third party costs order at any time;

(c) making provision for any other order as to costs which has been made in respect of the proceedings to be varied on, or taken account of in, the making of a third party costs order;

(d) making provision for account to be taken of any third party costs order in the making of any other order as to costs in respect of the proceedings.

VII.3.4 Regulations will provide that the third party may appeal to the Crown Court against a third party costs order made by a Magistrates' Court and to the Court of Appeal against a third party costs order made by the Crown Court.

VII.3.5 These provisions came into force on 1 February 2004.

## **PART VIII: COSTS AGAINST LEGAL REPRESENTATIVES -**

### **WASTED COSTS**

VIII.1.1 Section 19A of the Act allows a Magistrates' Court, the Crown Court or the Court of Appeal Criminal Division to disallow or order the legal or other representative to meet the whole or any part of the wasted costs. The order can be made against any person exercising a right of audience or a right to conduct litigation (in the sense of acting for a party to the proceedings). "Wasted costs" are costs incurred by a party (which includes an LSC funded party) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or his employee, or which, in the light of any such act or omission occurring after they

were incurred, the court considers it unreasonable to expect that party to pay (Section 19A(3) of the Act; Section 89(8) of the Proceeds of Crime Act 2002).

VIII.1.2 The Judge has a much greater and more direct responsibility for costs in criminal proceedings than in civil and should keep the question of costs in the forefront of his mind at every stage of the case and ought to be prepared to take the initiative himself without any prompting from the parties.

VIII.1.3 Regulation 3B of the General Regulations requires the court to specify the amount of the wasted costs and before making the order to allow the legal or other representative and any party to the proceedings to make representations. In making the order the court must take into account any other orders for costs and must take the wasted costs order into account when making any other order as to costs. The court should also give reasons for making the order and must notify any interested party (which includes the CDS fund and Central Funds determining authorities) of the order and the amount.

VIII.1.4 Judges contemplating making a wasted costs order should bear in mind the guidance given by the Court of Appeal in *Re: A Barrister (Wasted Costs Order)* (No.1 of 1991) [1993] QB 293. The guidance, which is set out below, is to be considered together with all the statutory and other rules and recommendations set out by Parliament and in this Practice Direction:

- (i) There is a clear need for any Judge or court intending to exercise the wasted costs jurisdiction to formulate carefully and concisely the

complaint and grounds upon which such an order may be sought. These measures are draconian and, as in contempt proceedings, the grounds must be clear and particular.

- (ii) Where necessary a transcript of the relevant part of the proceedings under discussion should be available and in accordance with the rules a transcript of any wasted cost hearing must be made.
- (iii) A defendant involved in a case where such proceedings are contemplated should be present if, after discussion with counsel, it is thought that his interest may be affected and he should certainly be present and represented if the matter might affect the course of his trial. Regulation 3B(2) of the Costs in Criminal Cases (General) (Amendment) Regulations 1991 furthermore requires that before a wasted costs order is made “the court shall allow the legal or other representative and any party to the proceedings to make representations”. There may be cases where it may be appropriate for counsel for the Crown to be present.
- (iv) A three stage test or approach is recommended when a wasted costs order is contemplated: (a) Has there been an improper, unreasonable or negligent act or omission? (b) As a result have any costs been incurred by a party? (c) If the answers to (a) and (b) are “yes”, should the court exercise its discretion to disallow or order the representative to meet the whole or any part of the relevant costs, and if so what specific sum is involved?

- (v) It is inappropriate to propose any settlement that the representative might forego fees. The complaint should be formally stated by the Judge and the representative invited to make his own comments. After any other party has been heard the Judge should give his formal ruling. Discursive conversations may be unfair and should certainly not take place.
- (vi) The Judge must specify the sum to be allowed or ordered. Alternatively the relevant available procedure should be substituted should it be impossible to fix the sum (see paragraph VIII.1.7 below).

VIII.1.5 The Court of Appeal has given further guidance in *Re P* [2001] EWCA Crim 1728 [2002] 1 Cr App R 207 CA as follows:

- (i) The primary object is not to punish but to compensate, albeit as the order is sought against a non party, it can from that perspective be regarded as penal.
- (ii) The jurisdiction is a summary jurisdiction to be exercised by the court which has “tried the case in the course of which the misconduct was committed”.
- (iii) Fairness is assured if the lawyer alleged to be at fault has sufficient notice of the complaint made against him and a proper opportunity to respond to it.
- (iv) Because of the penal element a mere mistake is not sufficient to justify an order there must be a more serious error.

- (v) Although the trial Judge can decline to consider an application in respect of costs, for example on the ground that he or she is personally embarrassed by an appearance of bias, it will only be in exceptional circumstances that it will be appropriate to pass the matter to another Judge, and the fact that, in the proper exercise of his judicial function, a Judge has expressed views in relation to the conduct of a lawyer against whom an order is sought, does not of itself normally constitute bias or the appearance of bias so as to necessitate a transfer.
- (vi) If the allegation is one of serious misconduct or crime the standard of proof will be higher but otherwise it will be the normal civil standard of proof.

VIII.1.6 Though the court cannot delegate its decision to the appropriate authority, it may require the appropriate officer of the court to make enquiries and inform the court as to the likely amount of costs incurred.

VIII.1.7 The court may postpone the making of a wasted costs order to the end of the case if it appears more appropriate to do so, for example, because the likely amount is not readily available, there is a possibility of conflict between the legal representatives as to the apportionment of blame, or the legal representative concerned is unable to make full representations because of a possible conflict with the duty to the client.

VIII.1.8 A wasted costs order should normally be made regardless of the fact that the client of the legal representative concerned is CDS funded. However where the court is

minded to disallow substantial costs out of the CDS fund, it may, instead of making a wasted costs order, make observations to the determining authority that work may have been unreasonably done (see paragraph X.1.1 below). This practice should only be adopted where the extent and amount of the costs wasted is not entirely clear.

## **VIII.2 The Administrative Court**

VIII.2.1 In the Administrative Court where the court is considering whether to make an order under Section 51(6) of the Supreme Court Act 1981 (a wasted costs order) it will do so in accordance with CPR 48.7 which contains similar provisions as to giving the legal representative a reasonable opportunity to attend a hearing to give reasons why the court should not make such an order. In addition to the power to make a wasted costs order, the Administrative Court has powers in relation to misconduct under CPR 44.14 which enable the court to make an order against a party or his legal representative where it appears to the court that the conduct of a party or his legal representative before or during the proceedings which gave rise to the summary or detailed assessment proceedings was unreasonable or improper.

## **PART IX: AWARDS OF COSTS AGAINST SOLICITORS UNDER THE COURTS INHERENT JURISDICTION**

IX.1.1 In addition to the power under Regulation 3 of the General Regulations to order that costs improperly incurred be paid by a party to the proceedings and the power to make wasted costs orders under Section 19A of the Act, the Supreme Court (which includes the Crown Court) may, in the exercise of its inherent jurisdiction over officers of the court, order a solicitor personally to pay costs thrown away by

reason of a serious dereliction on the part of the solicitor of his duty to the court.

IX.1.2 No such order may be made unless reasonable notice has been given to the solicitor of the matter alleged against him and he is given a reasonable opportunity of being heard in reply.

IX.1.3 This power should be used only in exceptional circumstances not covered by the statutory powers.

## **PART X: CDS FUNDED COSTS**

X.1.1 Where it appears to any Judge of the Crown Court or the Court of Appeal Criminal Division, sitting in proceedings for which CDS funding has been granted, that work may have been unreasonably done, eg, if the CDS funded person's case may have been conducted unreasonably so as to incur unjustifiable expense, or costs may have been wasted by failure to conduct the proceedings with reasonable competence or expedition, the Judge may make observations to that effect for the attention of the appropriate authority. The Judge or the court as the case may be, should specify as precisely as possible the item, or items, which the determining officer should consider or investigate on the determination of the costs payable pursuant to the representation order. The precise terms of the observations must be entered in the court record.

X.1.2 This power co-exists with the power to disallow fees when making a wasted costs order. The Criminal Defence Service (Funding) Order 2001 allows the determining officer to disallow the amount of the order from the amount otherwise payable to

solicitors and counsel and allows for deduction of a greater amount if appropriate (Schedule 1 paragraph 16 of the Funding Order).

X.1.3 In the Crown Court, in proceedings specified in paragraph 1 of Part II of Schedule 1 of the Criminal Defence Service (Funding) Order 2001, where standard fees would otherwise be payable, where the trial Judge is dissatisfied with the solicitors conduct of the case or he considers that for exceptional reasons, the fees should be determined by the appropriate authority, he may direct that such determination shall take place.

X.1.4 Where the Judge or the court has in mind that observations under paragraph X.1.1 or that a direction under paragraph X.1.3 should be made, the solicitor or counsel whose fees or expenses might be affected must be informed of the precise terms thereof and of his right to make representations to the appropriate authority and be given a reasonable opportunity to show cause why the observations or direction should not be made.

X.1.5 Where such observations or directions are made the appropriate authority must afford an opportunity to the solicitor or counsel whose fees might be affected to make representations in relation to them.

X.1.6 Whether or not observations under paragraph X.1.1 have been made the appropriate authority may consult the Judge or the court on any matter touching the allowance or disallowance of fees and expenses, but if the observations then made are to the effect mentioned in paragraph X.1.1, the appropriate authority should afford an opportunity

to the solicitor or counsel concerned to make representations in relation to them.

## **X.2 Very high cost cases**

X.2.1 In proceedings which are classified as a very high cost case (vhcc) as defined by Regulation 2 of the Criminal Defence Service (General) Regulations 2001, the judge or court should, at the earliest opportunity, ask the representative of the LSC funded person whether they have notified the LSC of the case in accordance with Regulation 23. If they have not they should be warned that they may not be able to recover their costs. Further, if the vhcc is one of fraud or serious financial impropriety, the judge or court should inform the representatives that the case can only be conducted by a firm who is a member of the specialist fraud panel and non-panel firms and advocates instructed by such firms may not be able to recover their costs.

## **PART XI: RECOVERY OF DEFENCE COSTS ORDERS**

XI.1.1 Recovery of Defence Costs Orders (RDCOs) are created and regulated by the Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001 (as amended) made under Section 17 of the Access to Justice Act 1999.

XI.1.2 Where an individual receives representation in respect of criminal proceedings funded as part of the Criminal Defence Service, the court before which the proceedings are heard, other than a Magistrates' Court, must make an order requiring him to pay some or all of the costs of any representation, except for the

following:

- an RDCO may not be made against a funded defendant who has appeared in the Magistrates' Court only;
- where a funded defendant is committed for sentence to the Crown Court;
- where a funded defendant is appealing against sentence to the Crown Court; or
- where a funded defendant has been acquitted, other than in exceptional circumstances. (CDS RDCO) R 2001 Regulation 4.

XI.1.3 An RDCO may be made up to the maximum of the full costs of the representation in any court under the representation order and may provide for the payment to be made forthwith or in specified instalments (ibid Regulation 5). This includes the cost of representation in the Magistrates' Court.

XI.1.4 Subject to the exceptions set out above, the Judge must make an RDCO. (ibid Regulation 11).

XI.1.5 Where a funded defendant has been acquitted the Judge must consider whether it is reasonable in all the circumstances to make such an order.

XI.1.6 Where a person of modest means properly brings an appeal against conviction, it

should be borne in mind that it will not usually be desirable or appropriate for the court to make an RDCO for a significant amount, if to do so would inhibit an appellant from bringing an appeal. (There is no power to make an RDCO in an appeal against sentence.)

XI.1.7 The Judge should consider the amount or value of every source of income and capital available to the defendant and the funded defendant's partner. Other than in exceptional circumstances, the Judge shall not take into account:

- the first £3,000 of available capital,
- the first £100,000 of equity in the principal residence, or
- his income where his gross annual income is less than £25,000 (ibid Regulation 9 as amended by CDS (RDCO) (Amendment) Regulations 2003).

These limits are prescribed and are subject to annual amendments by regulation change to the CDS (RDCO) Regulations.

XI.1.8 The Judge may ask the defendant's solicitor to provide an estimate of the total costs which are likely to be incurred under the representation order. It should be borne in mind that whilst the solicitor may have little difficulty in producing an estimate of the costs incurred up until the point of request, this estimate may not be accurate. In a very high cost case which has been managed under contract, the

solicitor will be able to provide accurate figures of all costs incurred to date and to say what costs have been agreed as reasonable for the next stage of the case. Where an RDCO is made based on this estimate the defendant's solicitor must inform the Commission if it subsequently transpires that the costs incurred were lower than the amount ordered to be paid under an RDCO. In these circumstances, where the defendant has paid the amount ordered, the balance will be repaid to him (ibid Regulation 14). An RDCO for full costs may be made at the end of the proceedings. The appropriate authority will tax the costs incurred under the representation order. The defendant will be notified of the amount of the RDCO once this figure is known.

XI.1.9 Where a representation order has been made or is being considered, the appropriate officer or the court may refer the financial resources of the funded defendant to the Special Investigations Unit (SIU) at the Legal Services Commission for a report, where:

- the defendant is being prosecuted by Customs and Excise, Serious Fraud Office, the Department of Trade and Industry or Inland Revenue;
- the information that the defendant supplies suggests that he has sufficient means to pay all of the costs incurred in his defence; or
- there is some other information that suggests that the defendant has more resources than he has disclosed; for example the type of charge he faces or his reputation.

The SIU will produce a report for the Judge to consider at the end of the case in the same way that the court will provide the Judge with a summary of the defendant's means. This report is made to support the role of the court, and is not an application for costs.

XI.1.10 During the proceedings, the Judge may refer the matter to the Legal Services Commission/SIU for investigation where further information has come to light which had previously not been disclosed by the defendant to the court. The SIU may investigate the financial resources of the funded defendant and require him to provide further information or evidence as required.

XI.1.11 At the end of the case where the Judge is considering what order to make, he may make the order or, if further information is required, adjourn the making of the order and order that any further information which is required should be provided (ibid Regulation 12). This power may be used where further information has come to light during the case about the defendant's means. Where the defendant has failed to co-operate either with the court or the Special Investigations Unit, the Judge may order that the further information should be provided.

XI.1.12 The defendant is obliged to provide details of his means or evidence as is required by the court or the Legal Services Commission (ibid Regulation 6). Arrangements are in place to ensure that a summary of the means information is available for the Judge at the first hearing, or details as to whether or not the defendant has provided any information. Where the funded defendant does not provide this

information, the Judge may order him to do so.

XI.1.13 Where information required under the Regulations is not provided the Judge must make an RDCO for the full cost of the representation incurred under the representation order (ibid Regulation 13).

XI.1.14 Where it appears to the Judge that the funded defendant has:

- directly or indirectly transferred any resources to another person;
- another person is or has been maintaining him in any proceedings;
- or any of the resources of another person are or have been made available to him,

the value of the resources of that other person may be assessed or estimated and may be treated as those of the funded defendant. In this context “person” includes a company, partnership, body of trustees and any body of persons, whether corporate or not corporate (ibid Regulation 8).

XI.1.15 The Judge may make an order prohibiting any individual who is required to furnish information or evidence from dealing with property where:

- information has failed to be provided in accordance with the Regulations;

- he considers that there is a real risk that relevant property will be disposed of; or
- at the conclusion of the case, the assessment of costs incurred under the representation order or of the financial resources of the defendant has not yet been completed (ibid Regulation 15).

## **XII: ADVICE ON APPEAL TO THE COURT OF APPEAL CRIMINAL DIVISION**

XII.1.1 In all cases the procedure set out in “A Guide to Proceedings in the Court of Appeal Criminal Division” published by the Criminal Appeal Office with the approval of the Lord Chief Justice in 1997 should be followed. The reference to “Appendix 1” which follows is to the appendix to that Guide.

XII.1.2 This procedure requires written advice to be delivered to the defendant within 21 days of conviction or sentence. In simple cases this will involve little or no expense. If the procedure is not followed and the work has not been done with due care, fees may be reduced accordingly. The advocate will have received instructions in the form of Appendix 1 from the defendant solicitor which will specifically refer to the Guide. The advocate is required to complete Appendix 1 immediately following the conclusion of the case and the solicitor should give a copy to the defendant at that stage. Where the advocates’ immediate and final view is that there are no reasonable grounds of appeal, no additional fee will normally be allowed. In any other circumstances the advocate must further advise in writing within 14 days and where it was reasonable for the advocate so to advise an

allowance will be made for the advice.

XII.1.3 When both (a) the advocate or the solicitor has given positive advice to appeal; and (b) notice of application for leave to appeal or notice of appeal has been lodged with the Crown Court on the strength of that advice, the Registrar of Criminal Appeals is the appropriate authority to determine the fees in respect of the work in connection with the advice and notice of application, etc. The Crown Court should not determine those fees unless the solicitor confirms that the notice of application, etc, was not given on the solicitors' or the advocates' advice. Where no notice of application is given, either because of unfavourable advice or despite favourable advice, the appropriate authority is the appropriate officer for the Crown Court.

XII.1.4 If it appears that the defendant was never given advice, the Crown Court should direct the solicitors' attention to this fact and if there is no satisfactory explanation as to why no advice was sent, the determining officer should bear this in mind when determining the solicitor's costs and should draw the solicitor's attention to the above mentioned Guide of 1997.

**PART XIII: APPEALS TO A COSTS JUDGE AND TO THE HIGH COURT PURSUANT TO THE COSTS IN CRIMINAL CASES (GENERAL) REGULATIONS 1986, THE LEGAL AID IN CRIMINAL AND CARE PROCEEDINGS (COSTS) REGULATIONS 1989, THE CROWN COURT RULES 1982 AND THE CRIMINAL DEFENCE SERVICE (FUNDING) ORDER 2001**

XIII.1.1 Solicitors and counsel dissatisfied with the determination of costs under the above Regulations may apply to the appropriate authority for a review of the determination. Appeal against a decision on such a review is made to a Costs Judge of the Supreme Court Costs Office. Written Notice of Appeal must be given to a Costs Judge within 21 days of receipt of the reasons given for the decision (14 days in the case of appeals under Rules 16 and 17 of the Crown Court Rules) or within such longer time as the Costs Judge may direct.

XIII.1.2 The Notice of Appeal should be in Form A set out in Schedule 3 (adapted where appropriate) setting out in separate numbered paragraphs each fee or item of costs or disbursement in respect of which the appeal is brought, showing the amount claimed for the item, the amount determined and the Grounds of Objection to the decision on the assessment or determination.

Counsel and solicitors must provide detailed Grounds of Objection in respect of each item in accordance with Regulation 10(2) General Regulations 1986, Regulation 15(5) of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989, Rule 16(1) of the Crown Court Rules 1982 and paragraph 21(5)(b) of the Criminal Defence Service (Funding) Order 2001. Reference to accompanying correspondence or documents is insufficient and will result in the appeal being dismissed.

XIII.1.3 The appeal must be accompanied by a cheque for the appropriate fee made payable to "H M Paymaster General". The notice must state whether the appellant wishes to appear or to be represented, or whether he will accept a decision given

in his absence.

The following documents should be forwarded with the Notice of Appeal:

- (a) a legible copy of the bill of costs (with any supporting submissions) showing the allowance made;
- (b) advocate's fee claimed, fee note, together with any note or memorandum by counsel submitted to the determining authority;
- (c) a copy of the original determination of costs and a copy of the redetermination;
- (d) a copy of the appellant's representations made to the determining authority on seeking redetermination;
- (e) the written reasons of the determining officer;
- (f) a copy of the representation order and any authorities given under Regulation 54 of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989, or the Representation Order under S.26 Access to Justice Act 1999 and Article 3(1) of the Criminal Defence Service (Funding) Order 2001.

### **XIII.2 Supporting Papers**

XIII.2.1 Appellants who do not intend to appear at the hearing of their appeal should lodge all relevant supporting papers with the documents listed above.

Appellants who do wish to attend the hearing of their appeal should not lodge their supporting papers until directed to do so by the Supreme Court Costs Office.

XIII.2.2 Appellants are reminded that it is their responsibility to procure the lodgment of the relevant papers, even if they are in the possession of the Crown Court or other persons. Appeals may be listed for dismissal if the relevant papers are not lodged when required.

XIII.2.3 Delays frequently arise in dealing with appeals by counsel because the relevant papers have been returned by the court to the solicitor whose file may not be readily available or who may have destroyed the papers. These problems would be avoided if counsel's clerk were, immediately on lodging with the court a request for redetermination, to ask instructing solicitors to retain safely the relevant papers.

XIII.2.4 In complex or multi handed appeals guidance should be sought from the Clerk of Appeals before lodging large volumes of papers to avoid duplication and unnecessary reading by the Costs Judge.

### XIII.3 **Time Limits**

XIII.3.1 Appellants who are likely to be unable to lodge an appeal within the time limits

should make an application prior to the expiry of the time limit seeking a reasonable extension with brief reasons for the request.

XIII.3.2 Appellants who have not been able to lodge an appeal within the time limits, and who have failed to make application before those time limits have expired, should make application to the Costs Judge for leave to appeal out of time in writing setting out in full the circumstances relied upon.

If the application is refused on the papers it can be renewed to a Costs Judge at an oral hearing. Such oral hearings should not be necessary if a full explanation is given in writing in the initial request for extension of time.

Appeals should not be delayed because certain relevant documents are not available, an accompanying note setting out the missing documents and undertaking to lodge within a specified period, normally not exceeding 28 days, should be sent with the Notice of Appeal.

#### XIII.4 **Appeals to the High Court**

XIII.4.1 An appellant desiring to appeal to a Judge from a decision of the Costs Judge should, within 21 days of the Costs Judge's decision, request him to certify that a point of principle of general importance (specifying the same) is involved. The appeal can proceed only if such a certificate is granted. Such an appeal is instituted by claim form under CPR Part 8 in the Queen's Bench Division within 21 days of the receipt of the Costs Judge's certificate. The times may be extended by a Costs Judge or the High Court as the case may be.

XIII.4.2 The claim form by which an appeal is to be instituted must contain full particulars of the item or items, or the amount allowed in respect of which the appeal is brought. After issue of the claim form the appellant must forthwith lodge with the Clerk of Appeals at the Supreme Court Costs Office, all the documents used on the appeal to the Costs Judge.

XIII.4.3 The claim form is to be served in accordance with the provisions of CPR Part 6 and the Practice Direction thereto. It is no longer necessary to endorse an estimate of the length of hearing on the claim form, the Clerk to the Senior Costs Judge will obtain from the Judge a date for hearing and will notify the parties.

XIII.4.4 The appeal, which is final, will be heard by a Judge of the Queens Bench Division who will normally sit with two assessors, one of whom will be a Costs Judge and the other a practising solicitor or barrister.

XIII.4.5 After the appeal has been heard and determined the Clerk will obtain the documents together with a sealed copy of any order of the Judge which may have been drawn up and will notify the court concerned of the result of the appeal.

## **PART XIV: VAT**

XIV.1.1 Every taxable person as defined by the Value Added Tax Act 1994 (the Act) must be registered and in general terms (subject to the exceptions set out in the Act) whenever a taxable person supplies goods or services in the United

Kingdom in the course of business a liability to Value Added Tax (VAT) arises.

XIV.1.2 Responsibility for making a charge to VAT in a proper case and for accounting to HM Customs & Excise for the proper amount of VAT is totally that of the registered person concerned or the person required to be registered.

XIV.1.3 The following directions will apply to all bills of costs lodged for determination or assessment after the date hereof.

XIV.2 **VAT Registration Number**

XIV.2.1 The number allocated by HM Customs and Excise to every person registered under the Act (except a Government Department) must appear in a prominent place at the head of every bill of costs, fee sheet, account or voucher on which VAT is being included as part of a claim for costs.

XIV.3 **Action Before Taxation**

XIV.3.1 VAT should not be included in a claim for costs in a between the parties bill of costs if the receiving party is able to recover the VAT as input tax. Where the receiving party is able to obtain credit from HM Customs and Excise for a proportion of the VAT as input tax only that proportion which is not eligible for credit should be claimed in the bill.

XIV.3.2 The responsibility for ensuring that VAT is claimed in a between the parties bill of costs only when the receiving party is unable to recover the VAT or a proportion thereof as input tax, is upon the receiving party. On an assessment of costs payable out of public funds the costs officer or determining officer as the

case may be must continue to satisfy himself as to the tax position.

XIV.3.3 Where there is a dispute as to whether VAT is properly claimed in a between the parties bill of costs the receiving party must provide a certificate signed by the solicitors or the auditors of the receiving party in the form in Schedule 4. Where the receiving party is a litigant in person who is claiming VAT, reference should be made by him to HM Customs and Excise and whenever possible a statement to similar effect produced on assessment.

XIV.3.4 Where there is a dispute as to whether any service in respect of which a charge is proposed to be made in the bill is zero rated or exempt, reference should be made to HM Customs and Excise and wherever possible the view of HM Customs and Excise obtained and made known on assessment. In the case of a between the parties bill such application should be made by the receiving party. In the case of a bill from a solicitor to his own client such application should be made by the client.

#### XIV.4 **Form of bill of costs where VAT is included as part of the costs claimed**

##### **Form of bill of costs where VAT rate changes**

XIV.4.1 Where there is a change in the rate of VAT, suppliers of goods and services are entitled by ss88(1) and 88(2) of the Act in most circumstances to elect whether the new or the old rate of VAT should apply to a supply where the basic and actual tax points span a period during which there has been a change in VAT rates.

XIV.4.2 It will be assumed, unless a contrary indication is given in writing, that an election to take advantage of the provisions mentioned in paragraph XIV.4.1 above and to charge VAT at the lower rate has been made. In any case in which an election to charge at the lower rate is not made, such a decision must be justified in accordance with the principles of assessment which are applicable to the basis upon which the costs are ordered to be assessed.

#### XIV.5 **Apportionment**

XIV.5.1 All bills of costs, fees and disbursements on which VAT is included must be divided into separate parts so as to show work done before, on and after the date or dates from which any change in the rate of VAT takes effect. Where a lump sum charge is made for work which spans a period during which there has been a change in VAT rates, and paragraphs XIV.4.1 and XIV.4.2 above do not apply, reference should be made to paragraphs 30.9 and 30.10 of HM Customs and Excise Notice 700 (April 2002 edition) (or any revised edition of that notice), a copy of which is in the possession of every registered trader. If necessary, the lump sum should be apportioned.

#### XIV.6 **Disbursements**

XIV.6.1 VAT attributable to any disbursement eg an expert's report, must (except in the case of a between the parties bill where VAT is not claimed) be shown as a separate item in the receipt or voucher.

XIV.6.2 (1) Petty (or general) disbursements such as postage, fares etc which are normally treated as part of a solicitor's overheads and included in his

profit costs should be charged with VAT even though they bear no tax when the solicitor incurs them. The costs of travel by public transport on a specific journey for a particular client where it forms part of the service rendered by a solicitor to his client eg charged in his bill of costs attract VAT.

- (2) With effect from January 3<sup>rd</sup> 1978 VAT is added to sheriff's fees (SI 1977 No.2111).

XIV.6.3 Reference is made to the criteria set out in the VAT Guide (HM Customs and Excise Notice 700 – April 2002 edition paragraph 25.1, or any revised edition of that Notice), as to expenses which are not subject to VAT. Charges for the cost of travel by public transport, postage, telephone calls and telegraphic transfers where these form part of the service rendered by the solicitor to his client are examples of charges which do not satisfy these criteria and are thus liable to VAT at the standard rate.

#### XIV.7 **CDS Funding**

XIV.7.1 VAT will be payable in respect of every supply made pursuant to a criminal contract or otherwise with the benefit of CDS Funding where it is made by a taxable person and the assisted person belongs in the UK or other Member State of the European Union and is a private individual or receives the supply for non-business purposes. The place where a person belongs is determined by Section 9 of the Valued Added Tax Act 1994.

**XIV.8 Tax Invoice**

XIV.8.1 Where costs are payable out of the LSC Fund or Central Funds pursuant to any authority the tax invoice in the case of counsel will consist of his fee note and in the case of a solicitor his bill of costs as determined or assessed together with the payment advice supplied by the court as to the fees allowed on determination or assessment.

**XIV.9 Appeal**

XIV.9.1 Where the fees or costs as determined or assessed are varied on appeal the VAT charged will be amended as appropriate by the costs officer or determining officer as the case may be.

**XIV.10 Vouchers**

XIV.10.1 Where receipted accounts for disbursements made by the solicitor or his client are retained as tax invoices a Photostat copy of any such receipted account may be produced and will be accepted as sufficient evidence of payment when disbursements are vouched.

**XIV.11 Solicitors and other litigants acting in person**

XIV.11.1 Where a litigant acts in litigation on his own behalf he is not treated for the purposes of VAT as having supplied services and therefore no VAT is chargeable on that litigant's between the parties bill of costs unless VAT has been charged on disbursements when the normal rules will apply.

XIV.11.2 Similarly, where a solicitor acts in litigation on his own behalf even on a matter arising out of his practice he is not treated for the purposes of VAT as having supplied services and therefore no VAT is chargeable on the bill of that solicitor.

XIV.11.3 Consequently where such a bill as is described in the preceding two paragraphs is presented for agreement, determination or assessment VAT should not be claimed and will not be allowed on determination or assessment unless tax has been paid on disbursements.

#### XIV.12 **Government Departments**

XIV.12.1 On an assessment between the parties where costs are being paid to a Government Department in respect of services rendered by its legal staff, VAT should not be added since such services do not attract VAT.

### **PART XV: REVOCATIONS – THE FOLLOWING DIRECTIONS ARE HEREBY WITHDRAWN**

21 November 1968            Lord Chief Justice: (Judges nominated to hear costs appeals)  
[1969] WLR 370; [1968] 3 All ER 869

25 November 1982            Lord Chief Justice: (Magistrates Discretion) [1982] 1 WLR 1447;  
[1982] 3 All ER 1152

15 May 1984                 Lord Chief Justice: (Procedure of Costs Appeals) [1984] 1 WLR  
856; [1984] 2 All ER 288

3 May 1991 Lord Chief Justice: (Costs in Criminal Proceedings) [1991] 1  
WLR 498; [1991] 2 All ER 924

8 February 1994 Chief Taxing Master: (Crown Court: VAT) (No.2 of 1994)

16 January 1995 Lord Chief Justice: (Crown Court: Counsel) [1995] 1 WLR 261

10 July 2002 Senior Costs Judge SCCO: Appeals as to Costs in Criminal Cases

The Lord Chief Justice of England and Wales

18 May 2004

## **SCHEDULE 1**

Crown Court Rules 1982 - SI 1992/1109

Costs in Criminal Cases (General) Regulations 1986 - SI 1986/1335

Crown Prosecution Service (Witnesses' etc Allowances) Regulations 1988 – SI 1988/1862

Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 - SI 1989/343

Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 - SI 1989/344

Criminal Defence Service (Funding) Order 2001 - SI 2001/855

Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001 -  
SI 2001/856

Criminal Defence Service (Choice in Very High Cost Cases) Regulations 2001 –  
SI 2001/1169

Criminal Defence Service (General) (No.2) Regulations 2001 - SI 2001/1437

Crown Court (Confiscation, Restraint and Receivership) Rules 2003 – SI 2003/421

## SCHEDULE 2

### Costs from Central Funds and relevant Statutory Authorities

Proceedings	Court	Extent of Availability	Authority
Information not proceeded with	Magistrates'	Defendant	S.16(1)(a) POA 1985
Decision not to commit for trial	Magistrates'	Defendant	S.16(1)(b) POA 1985
Dismissal for information	Magistrates'	Defendant	S.16(1)(c) POA 1985
Person indicted or committed for trial but not tried	Crown	Defendant	S.16(2)(a) POA 1985
Notice of transfer given but person not tried	Crown	Defendant	S.16(2)(aa) POA 1985
Acquittal on indictment	Crown	Defendant	S.16(2)(b) POA 1985
Successful appeal to the Crown Court against conviction or sentence	Crown	Appellant	S.16(3) POA 1985
Successful appeal to CACD against conviction or sentence or insanity/disability finding	CACD	Appellant	S.16(4) POA 1985
Appeal against order or ruling at preparatory hearing	CACD	Appellant	S.16(4A) POA 1985
Application for leave to appeal to House of Lords	CACD	Appellant	S.16(5)(c) POA 1985
Attorney General reference to CACD on point of law following acquittal	CACD, House of Lords	Acquitted Defendant	S.36(5) CJA 1972
Attorney General reference under s.36 CJA 1988 (lenient sentence appeals)	CACD	Convicted Defendant	Sch.3 para 11 CJA 1988
Determination of proceedings in a criminal cause or matter in Divisional Court	Divisional Court	Defendant in criminal proceedings	S.16(5)(a) POA 1985
Determination of appeal or application for leave to appeal from CACD or DC	House of Lords	Defendant in criminal proceedings	S.16(5)(b)&(c) POA 1985
Proceedings in respect of an indictable offence	Magistrates' and Crown	Private prosecutor	S.17(1)(a) POA 1985
Proceedings before DC or House of Lords	Divisional Court and House of Lords	Private prosecutor	S.17(1)(b) POA 1985
Criminal cause or matter	All	Defence or private prosecution witness, interpreter and medical practitioner	S.19(3) POA 1985 – there are restrictions on what may be paid (see regs 18, 19, 20, 21, 24 & 25 CCC (General) Regs 1986. <b>For example, a witness cannot claim for any legal expenses incurred by them in attending court to give evidence or to set aside a witness summons.</b>

Murder case	Crown	Medical practitioner	S.34(5) MHA 1982
Criminal Procedure (Insanity) Act proceedings	Crown	Person appointed to put case for the defence	S.19(3)(d) POA 1985
Cross examination of vulnerable witnesses	Magistrates' and Crown	Person appointed to cross examine witness for the defence	S.19(3)(e) POA 1985
Compensation where a court refuses an application for a banning order	Magistrates' and Crown Court (on appeal where compensation refused by the magistrates' court).	Person against whom a banning notice has been given (limited to £5,000)	Football Spectators Act 1989 (as amended under sch.1 of the Football (Disorder) Act 2000)
Licensing Appeals	Crown	Licensing Justices	Lotteries and Amusements Act 1976, Sch.3 para 11. Gaming Act 1968, Sch, 9 para 14(2) Sect.25 Licensing Act 1964

**SCHEDULE 3**

**FORM "A"**

**Form of Notice of Appeal**

**Appeal Pursuant to the Costs in Criminal Cases (General) Regulations 1986/ The Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989/ The Crown Court Rules, 1982, the Criminal Defence Service (Funding) Order 2001**

Crown Court/ Divisional  
Court/ Court of Appeal Criminal Division

Regina v .....

Appeal of .....

Case No .....

To: A Costs Judge and to the appropriate authority of the  
.....

Crown Court/ Divisional Court/ Court of Appeal Criminal Division.

The Appellant ..... appeals to a Costs Judge against the redetermination of the costs in the above matter.

The following are the items in respect of which the Applicant appeals:

Item	Description	Amount Claimed	Amount Allowed	Total Amount in Dispute After Redetermination
1.				
2.				
3. etc				£ .....

Grounds of Objection (To Be Set Out in Full)

We confirm that a copy of this notice has been served upon the appropriate authority.

The Appellant should attach to this Notice of Appeal his/her Grounds of Objection and in so doing provide the Costs Judge with a detailed response to the written reasons provided by the Determining Officer.

Do you wish to attend the hearing of your Appeal: Yes/ No

Dated the                      day of

(Signed) .....

Appellant  
Address .....

Tel No. ....

Ref: .....

Fax No. ....

DX No. ....

E-Mail .....

## **SCHEDULE 4**

### FORM OF CERTIFICATE

To: The Chief Clerk  
Crown Court

Address:

Date:

### **Regina v A**

With reference to the pending determination of the [prosecutor's] [defendant's] costs and disbursements herein which are payable by the [defendant] [the prosecutor] [public funds], we the undersigned (solicitors to) (the auditors of) the [prosecutor] [defendant] hereby certify that he on the basis of his last completed VAT return would (not be entitled to recover) (be entitled to recover only                      percent of the) Value Added Tax on such costs and disbursements, as input tax pursuant to Section 25 of the Value Added Tax Act 1994.

Signed

(Solicitors to) (Auditors of) (Defendant) (Prosecutor)

Registered number