
STATUTORY INSTRUMENTS

2011 No. 2065

**The Criminal Defence Service
(Funding) (Amendment) Order 2011**

Amendments to the 2007 Order

23. For paragraph 10 of Schedule 2 substitute—

“Retrials and Transfers

10.—(1) Where following a trial an order is made for a retrial and the same litigator acts for the assisted person at both trials that litigator will receive—

- (a) in respect of the first trial, a fee calculated in accordance with the provisions of this Schedule; and
- (b) in respect of the retrial, 25% of the fee, as appropriate to the circumstances and timing of the retrial, in accordance with the provisions of this Schedule.

(2) Where—

- (a) a case is transferred to a new litigator; or
- (b) a retrial is ordered and a new litigator acts for the assisted person at the retrial,

the original litigator and the new litigator must receive a percentage of the total fee, in accordance with the table following this paragraph, as appropriate to the circumstances and timing of the retrial, transfer or withdrawal of the representation order.

(3) In sub-paragraph (2), “transfer” includes the grant of a representation order to an individual who, immediately before the grant of the order—

- (a) had represented himself; or
- (b) had been represented (otherwise than under a representation order) by the litigator named in the order,

and for the purposes of that sub-paragraph the litigator shall be treated as a new litigator.

(4) For the purposes of sub-paragraph (2), a case is not transferred to a new litigator where—

- (a) a firm of solicitors is named as litigator in the representation order and the solicitor or other appropriately qualified person with responsibility for the case moves to another firm;
- (b) a firm of solicitors is named as litigator in the representation order and the firm changes (whether by merger or acquisition or in some other way), but so that the new firm remains closely related to the firm named in the order; or
- (c) a solicitor or other appropriately qualified person is named as litigator in the representation order and responsibility for the case is transferred to another solicitor or appropriately qualified person in the same firm or a closely related firm.

(5) For the purposes of sub-paragraph (2), where a case which has been transferred to a new litigator is transferred again, that new litigator—

- (a) shall be treated as the original litigator, where the transfer takes place at any time before the trial or any retrial;
- (b) shall be treated as a new litigator, where the transfer takes place during the trial or any retrial; and
- (c) shall not receive any fee, where the transfer takes place after the trial or any retrial but before the sentencing hearing.

(6) Where a representation order is withdrawn before the case ends, a litigator must receive a percentage of the total fee, in accordance with the table following this paragraph, as appropriate to the circumstances and timing of a transfer.

(7) In the table following this paragraph, the total fee means—

- (a) in a cracked trial or guilty plea in a case to which Part 2 applies, where the number of pages of prosecution evidence is less than or equal to the PPE Cut-off specified in the table following paragraph 4(1), the basic fee as set out in the table following paragraph 5(2);
- (b) in a trial where the number of pages of prosecution evidence is less than or equal to the PPE Cut-off specified in the table following paragraph 4(2), the basic fee specified in the table following paragraph 6(2) plus the length of trial proxy specified in the table following paragraph 6(3);
- (c) in a cracked trial or guilty plea in a case to which Part 2 applies, where the number of pages of prosecution evidence exceeds the PPE Cut-off specified in the table following paragraph 4(1), the final fee as calculated in accordance with paragraph 7(2);
- (d) in a trial where the number of pages of prosecution evidence exceeds the PPE Cut-off specified in the table following paragraph 4(2), the final fee, as calculated in accordance with paragraph 8(2);
- (e) in a cracked trial or guilty plea in a case to which Part 2A applies, the fixed fee set out in paragraph 8B.

(8) Where a case becomes a Very High Cost Case after a representation order has been granted and is transferred from the litigator named on the representation order to a new litigator—

- (a) the original litigator will be remunerated in accordance with the individual Very High Cost Case contract entered into by that litigator; and
- (b) the new litigator will be remunerated in accordance with the individual Very High Cost Case contract entered into by that litigator.

(9) Where a case becomes a Very High Cost Case after a representation order has been granted and the representation order is withdrawn before the end of the case, the litigator will be remunerated in accordance with the table following this paragraph as appropriate to the circumstances and timing of the withdrawal.

(10) Sub-paragraph (11) applies where—

- (a) the case is a case to which Part 2A would apply if it resulted in a cracked trial or guilty plea; and
- (b) at the time the case is transferred to a new litigator in accordance with sub-paragraph (2) it is not known whether the case would result in a cracked trial or guilty plea or whether it would proceed to trial.

(11) Where this sub-paragraph applies—

- (a) for the purpose of a claim by the original litigator at the time of the transfer of the case, “total fee” in the table following this paragraph, means the fixed fee set out in paragraph 8B;
 - (b) the original litigator may, if the case proceeds to trial, claim the difference between the payment received at the time of transfer of the case and the payment that would have been due at that time if that payment had been based on the case proceeding to trial.
- (12) A litigator may not be treated both as an original litigator and as a new litigator in a case.”.