



Neutral Citation Number: [2014] EWCA Crim 1570

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/07/2014

Before :

LORD CHIEF JUSTICE OF ENGLAND AND WALES

Practice Direction
(Costs in Criminal Proceedings)
Amendment No. 1

AMENDMENT NO 1 TO THE PRACTICE DIRECTION (COSTS IN CRIMINAL PROCEEDINGS)

This Practice Direction amends the Practice Direction (Costs in Criminal Proceedings) paragraphs 1.4, 2.1 and 2.2 and will come into force on the 6th October 2014.

For paragraph 1.4 Amount of Costs to be paid substitute:

1.4 Amount of Costs to be Paid

1.4.1 If the court does not fix the amount of costs to be paid out of central funds, the costs will be determined in accordance with the General Regulations by the appropriate authority. The appropriate authority will calculate the amount payable in respect of legal costs at such rates and scales as are prescribed by the Lord Chancellor. Where the court makes a defendant's costs order, or an order in favour of a private prosecutor, but is of the opinion there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount of the costs, the court may assess the lesser amount that would in its opinion be just and reasonable, and specify that amount in the order. If the court is not in a position to specify the amount payable, the Judge may make remarks which the appropriate authority will take into account as a relevant circumstance when determining the costs payable.

1.4.2 In respect of proceedings commenced on or after 1 October 2012 legal costs (sums paid for advocacy, litigation services or experts' fees) may only be included in a defendant's costs order to a defendant who is an individual and only in proceedings in a magistrates' court, appeals against conviction or sentence from a magistrates' court to the Crown Court, relevant Crown Court proceedings after 27 January 2014 (as to which see para 1.4.3 below) and appeals to the Court of Appeal (i) against a verdict of not guilty by reason of insanity (ii) against a finding under the Criminal

Procedure (Insanity) Act 1964 that the appellant is under a disability or that he did the act or made the omission charged or (iii) under section 16A of the Criminal Appeal Act 1968 (appeals against order made in cases of insanity or unfitness to plead).

1.4.3 After 27 January 2014 legal costs may be included in a defendant's costs order, provided that the defendant is an individual, in relevant proceedings in the Crown Court if the Director of Legal Aid Casework has made a determination of financial ineligibility in relation to that defendant. The relevant proceedings are those in which the accused has been sent by a magistrates' court to the Crown Court for trial, where a bill of indictment has been preferred (under s.2(2)(b) Administration of Justice (Miscellaneous Provisions) Act 1933) or following an order for a retrial made by the Court of Appeal or the Supreme Court.

1.4.4 Where legal costs may be allowed, if the court fixes the amount to be paid to a defendant under section 16(6C) of the Act or under sections 62A (4) or 135A (4) of the Extradition Act 2003 it must calculate any amounts to be allowed in respect of legal costs in accordance with rates and scales prescribed by the Lord Chancellor.

1.4.5 Rules 76.2(6) and (7) of the Criminal Procedure Rules contain general rules about the amount of an award of costs that apply subject to any statutory limitation.

For paragraph 2.1 in a magistrates' court substitute:

PART 2: COSTS OUT OF CENTRAL FUNDS

2.1 In a magistrates' court

2.1.1 Where an information laid before a justice of the peace charging a person with an offence is not proceeded with 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. Whether to make such an order is a matter in the discretion of the court in the light of the circumstances of each particular case. A defendant's costs 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. Where the defendant has been acquitted on some counts but convicted on others the court may make an order that only part of the costs be paid: see paras 2.2.1 and 2.2.2 below. 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.¹ Where the court considers that it would be inappropriate that the defendant should recover all of the costs properly incurred, either the amount allowed must be specified in the order or the court may describe to the appropriate authority the reduction required.

- 2.1.2 In respect of proceedings in a magistrates' court commenced on or after 1 October 2012 legal costs (sums paid for advocacy, litigation services or experts' fees) may only be allowed to a defendant who is an individual. Where legal costs may be allowed, if the court fixes the amount to be paid under section 16(6C) of the Act or under sections 62A(4) or 135A(4) of the Extradition Act 2003 it must calculate any amounts allowed in respect of legal costs in accordance with the rates and scales prescribed by the Lord Chancellor. If the court does not fix the amount of costs to be paid out of central funds,

¹ Hussain v UK (2006) 43 EHRR 22 (ECtHR)

the costs will be determined by the appropriate authority in accordance with the General Regulations and any legal costs allowed will be calculated at the prescribed rates and scales.

For paragraph 2.2 In a Crown Court substitute:

2.2 In the Crown Court

2.2.1 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. Whether to make such an order is a matter for the discretion of the court in the light of the circumstances of the particular case. A defendant's costs 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 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.² Where the court considers that it would be inappropriate that the defendant should recover all of the costs properly incurred, either the lesser amount must be specified in the order, or the court must describe to the appropriate authority the reduction required.

2.2.2 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 a proportion of the costs incurred be paid. The court should make whatever order seems

² Hussain v UK (2006) 43 EHRR 22 (ECtHR)

just having regard to the relative importance of the charges and the conduct of the parties generally. The proportion of costs allowed must be specified in the order.

2.2.3 The Crown Court may make a defendant's costs order in favour of a successful appellant: see section 16(3) of the Act.

2.2.4 In respect of proceedings in the Crown Court commenced on or after 1 October 2012 legal costs (sums paid for advocacy, litigation services or experts' fees) may only be allowed under a defendant's costs order to a defendant who is an individual and only (1) in respect of appeals against conviction or sentence from a magistrates' court; or (2) after 27 January 2014 in other relevant Crown Court proceedings provided that the Director of Legal Aid Casework has made a determination of financial ineligibility in relation to the defendant. The relevant proceedings are those in which the accused has been sent by a magistrates' court to the Crown Court for trial, where a bill of indictment has been preferred (under s.2(2)(b) Administration of Justice (Miscellaneous Provisions) Act 1933) or following an order for a retrial made by the Court of Appeal or the Supreme Court. Where legal costs may be allowed, if the court fixes the amount to be paid under section 16(6C) of the Act it must calculate any amounts allowed in respect of legal costs in accordance with the rates and scales prescribed by the Lord Chancellor. If the court does not fix the amount of costs to be paid out of central funds, the costs will be determined by the appropriate authority in accordance with the General Regulations and any legal costs allowed will be calculated at the prescribed rates and scales.