

Draft response to Magistrates' Courts Rules Committee: Costs in criminal cases (magistrates' courts)

Consultation on proposals to:

- 1. Increase the maximum amount of costs that can be awarded by a magistrates' court in respect of solicitors and counsel;*
- 2. Update the scale of allowances payable to witnesses as part of an order for costs in a magistrates' court; and*
- 3. Establish a regular review of the above.*

The following is the NILGA response to the consultation document published by the Northern Ireland Courts and Tribunals Service and requires a response by 6th January 2012.

It is intended that this response will be submitted in draft form on 6th January 2012, following consideration and endorsement by the NILGA Executive on 13th January 2012.

For further information or to discuss any of the issues highlighted, please contact Claire Bradley at the NILGA Offices: Email: c.bradley@nilga.org Tel: 028 9079 8972

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Chief Executive**

6th January 2012

Introduction

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties in Northern Ireland.

NILGA is pleased to be given the opportunity to respond to this consultation, particularly as a number of council officers and members have expressed concern regarding the prohibitive costs for councils to take a case to the courts for a legal resolution, for example, in cases of fly-tipping, dog control, food hygiene or littering.

Overview

NILGA welcomes the concept of increasing the extent of cost recovery in relation to fees for solicitors and counsel. However, it is felt that this review of fees does not go far enough.

It is recommended that legislation in Northern Ireland is brought in line with the current legal framework in England and Wales where the costs of investigation are also put before the court with a request for those costs to be recovered from the offender.

Maximum amount of costs that can be awarded in respect of solicitors and counsel (to take into account inflation since 1979)

NILGA welcomes the proposed increase in the amount of costs that can be awarded.

It is recognised that the majority of prosecutions undertaken by councils are relatively straightforward and it is believed that the cap of £300 would be suitable for such cases.

However, there are a number of cases which are complex and involve a substantial amount of work. These can vary widely but typically those which incur higher legal costs are those relating to food safety, health and safety, breaches of entertainment licences, illegal evictions, breach of building regulations and prosecutions for possession of a prohibited dog. These cases can require Counsel advice and the services and attendance at court of technical experts which can have a significant impact on costs incurred by a council. The proposed normative cost award would not satisfy costs incurred on these cases.

While discretion exists to award higher costs where cases are deemed to be of sufficient difficulty or complexity, it would be of concern that the frequency of such discretion would not be appropriate to mitigate the level of costs incurred in such cases. This will result in the continuation of a financial burden on councils as they carry out their statutory enforcement duties.

Furthermore, it is suggested that in relation to prosecutions taken against people where the charge arises in connection with the operation of a business (e.g. a breach of food hygiene regulations or a prosecution for the sale of tobacco products to be person under 18 years), then the £300 cap should not apply. It is also suggested that if it can be shown that the costs associated with a case were increased by the unreasonable actions of a party to the proceedings, then the £300 cap should also not apply in this instance and a higher cap should be established.

Provision relating to exceptional cases

The provision for exceptional cases is a welcome step to address the overall cost issue.

It is noted that the ICOS (Integrated Court Operational System) does not record special orders separately, therefore sufficient information is lacking.

There needs to be greater clarity and explanation as to how the costs are to be awarded in these cases. It may be prudent to further investigate special orders and extract the necessary information to allow a realistic comparison to be made.

The complexity of cases and time involvement needs to be comparable to a relative cost. This could be addressed through a framework analysis to achieve a fairer proportional cost.

Scale of allowances and rates for witness expenses

It is believed that the revision is necessary, as the 1994 rates do not reflect current costs associated with witness attendance.

Review of Schedule 1 and Schedule 2

The proposal to establish a review of Schedule 1 and Schedule 2 is welcomed, as this will allow for continued relevance of costs awarded. A review every three years offers a timely review of cost levels. It allows for rates to remain relevant to the economic climate whilst not being an excessively frequent burden.

Investigative Costs

Currently in Northern Ireland, councils are bound by the Costs in Criminal Cases Act (Northern Ireland) 1968 and the Magistrates' Court (Costs in Criminal Cases) Rules (Northern Ireland) 1988. Essentially, the 1988 Rules permit a maximum of £75 costs to be awarded to the prosecution in most cases. However, where the court, having regard to the exceptional length, difficulty or complexity of the proceedings, is satisfied that amount is inadequate, it may make a special order for the payment of a greater sum.

The question of costs in Northern Ireland was considered by the High Court in the 2001 case of *Re Caffrey's Application*, which was a challenge to the Resident Magistrate awarding investigation costs. The Court held that the Resident Magistrate had no power to do so and that the legislation referred to above related to the costs of actually prosecuting the case and was primarily concerned with legal fees and witness expenses.

By way of contrast, is *Neville - v - Gardner Merchant Limited 1983 5 Crim App R (Sentencing) 349*, where Westminster City Council pursued prosecution in respect of food hygiene offences. In this case, the Magistrate ordered that Gardner Merchant Limited pay the costs of the prosecutor, including the preparatory works carried out by the senior lawyer, but disallowed the costs incurred by the Environmental Health Officer who had carried out the original inspection which led to the instigation of proceedings, on the basis that these costs had already been met by the ratepayers of Westminster City Council, and that to allow the council to recover them would be to permit double recovery. Westminster City Council appealed and it was held on appeal that prima facie, these costs should be allowed. The fact that the costs related to the time of an investigating officer paid for out of public funds whose duty it was to investigate such offences did not preclude recovery.

England and Wales are now governed by the Prosecution of Offences Act 1985, (which does not apply in Northern Ireland). This states that when a person is convicted of an offence, the court may make an order relating to the costs to be paid by the accused as it considers just and reasonable.

The prosecution serves a schedule of costs upon the defendant, who then has an opportunity to object to all or part of those costs being awarded. If the defendant, having been sent a copy of the prosecution's application for costs, does not notify the prosecution or the court that they propose to object before the verdict is delivered, then they may not raise objection to any part of the costs application. Therefore, provided the prosecution can demonstrate that the schedule of costs is just and reasonable, an order for the full amount will usually be made.

It is recommended that policy and legislation should be developed in Northern Ireland to reflect the situation as it currently stands in England and Wales. It is asserted that if this

approach is not taken that cases that should be brought to court are not, particularly due to the level and extent of resource required doing so.

At present, the position in Northern Ireland in relation to the prosecution of offenders is in danger of becoming an option that enforcement authorities cannot afford, or certainly becomes one in which the decision process is heavily weighted by economic considerations. Anecdotal evidence from local district council officers throughout Northern Ireland would suggest that costs are the major prohibitive factor for taking cases in the magistrates' court. This is supported by Belfast City Council's experience of undertaking prosecutions in the magistrates' court on behalf of a number of other local councils.

Frequently bills for those prosecutions will be several hundred pounds based on time recorded against that particular file by the relevant solicitor. For example, in a recent case one bill was over £2,000 due to a number of adjournments and the case being part heard over 3 days. In a case for another district council, in which a legal point of general public importance was raised in relation to the Notices issued under the Litter (NI) Order 1994 and their compatibility with the European Convention of Human Rights, the total bill was nearly £6,000. Further examples of costs borne by councils in undertaking court cases in the enforcement of their statutory duties are outlined in **Appendix 1**.

Furthermore, council officers are frequently frustrated by the disparity between both fines and costs in Northern Ireland when compared to those imposed in England and Wales. For example, in November 2010, PoundStretcher Ltd was convicted of a total of 7 fire safety offences at a store in Yorkshire. The total fines were £51,500 and costs of £3,450 were awarded. In 2008, KFC was prosecuted for a number of food safety offences in a restaurant in London's West End. A fine of £10,500 was imposed and £7,937.80 costs were also awarded. Furthermore, in January 2010, a Birmingham landlord was sentenced to 120 hours of community service and ordered to pay £1,500 contribution towards prosecution costs.

It is therefore also recommended that the Magistrates' Courts Rules Committee reviews and reconsiders the level of fines that are imposed to address the disparity between councils in NI and councils in England and Wales.

There have been some exceptions in Northern Ireland, for example, when one council prosecuted two food businesses for allowing persons on their premises to consume unfit foods that subsequently caused food poisoning in late 1998, the costs awarded in both cases were £3,510 and £6,531 respectively.

It is clear from the table in **Appendix 1** that costs vary significantly depending on the type of case taken and even when comparing similar cases there are significant differences in costs. There is also disparity between costs awarded to councils by the court. All the cases listed in the table illustrate the crucial role councils play in protecting the public. It is on this basis that NILGA believes that a more comprehensive review of fees payable should be undertaken and that actual costs incurred (both legal costs and officer costs) should be taken into consideration by the court when deciding how much councils should be awarded.

It is also reported by councils that where the defendant is ordered to pay court costs, the costs are paid to the court service and then forwarded to the council. If the defendant does not pay, a warrant is issued by the courts and is enforced by the police. This may result in the defendant being imprisoned for non-payment. This is a process that local district councils

are not part of. In the cases where the defendant does not pay, councils do not recover any of the money.

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Appendix 1: Sample of council led court cases and legal costs incurred

Nature of prosecution	Legal costs incurred	Costs awarded to council
Test purchasing (Guilty plea entered)	£300.75	£94 x 2 = £198
Test purchasing (Guilty plea entered)	£718.50	£94
Test purchasing (Guilty plea entered)	£487.50	£94 x 3 = £282
Test purchasing (Guilty plea entered)	£595	£94 x 2 = £188
Smoking in smoke free vehicle (FPN non-pay)	£234.50	£75
Smoking in smoke free vehicle (FPN non-pay)	£162.81	£91
Smoking in smoke free vehicle (FPN non-pay)	£630	None awarded
Smoking in a smoke free vehicle (FPN non-pay)	£390	£91
Smoking in smoke free vehicle (FPN non-pay)	£327	£107
Dog attack on person	£1838.05	£166
Dog attack on livestock	£260.30	£75.16
Dog licensing	£346.95	£91
Leaving litter	£348.50	£109
Dangerous Dogs	£17,721.31	NIL
Street Drinking	£214	£101
Sale of tobacco to U18	£561.43	£91
Sale of tobacco to U18	£2,453.91	£166
Sale of tobacco to U18	£1,249.76	£91
Environmental Protection (Noise)	£879.95	NIL
Environmental Protection (Noise)	£405.50	NIL
Environmental Protection (Noise)	£509.15	NIL

Food Hygiene Expenses	£5,000	£75 legal costs and £10 court costs
Health & Safety Offences	£3,000	£1,200 legal costs and £46 court costs
Dogs (NI) Order 1983 – no licence	£395.40	£132
Dogs (NI) Order 1983 – straying	£147	£116
Dogs (NI) Order 1983 – no licence and straying	£151	£119
Dogs (NI) Order 1983	£296.03	£116
Litter (NI) Order 1984	£151	£116
Litter (NI) Order 1984	£700.25	£16
Dogs (NI) Order – non payment of 4 FPN	£131	£116
Health & Personal Social Services (NI) Order 1978 as amended	£588.48	£75
Health & Personal Social Services (NI) Order 1978 as amended	£1111.50 + VAT plus Barrister costs of £250	£128
Food Labelling Regulations (NI) 1996 3 offences x 3 people	£539.63	£75 x 3
Food Labelling Regulations (NI) 1996	£1584.13	£100
Council Bye-Laws Consumption on Intoxicating Liquor in Designated Places 1994	£1118.50	£164
Dog displaying characteristics of a pitbull terrier under Dogs (NI) Order 1983 as amended by Dangerous Dogs (NI) Order 1991	£15,145.93 – includes cost of kennelling, identification of dog by expert witness, medical treatment of dog, solicitor fees.	£580
Dog displaying characteristics of a pitbull terrier under Dogs (NI) Order 1983 as amended by Dangerous Dogs (NI) Order 1991	£8,034.35 – includes cost of kennelling, identification of dog by expert witness, medical treatment of dog, solicitor fees.	NIL
Dog displaying characteristics of a pitbull	£36,453.88 – includes cost of kennelling,	NIL

terrier under Dogs (NI) Order 1983 as amended by Dangerous Dogs (NI) Order 1991	identification of dog by expert witness, medical treatment of dog, solicitor fees.	
Food Safety (NI) Order 1991 – mouse embedded in malt loaf	£659.75	£409.75
Health & Safety at Work (NI) Order 1978, Gas Safety (Installation and Use) Regulations (NI) 2004	£236	NIL
Dogs (NI) Order 1983	£1107.50	£200
Dogs (NI) Order 1983	£3133	£550 (£3796 were also spent on kennelling and vet costs by council, but reimbursed by defendant)
Consumption of Intoxicating Liquor in a Designated Place	£107.13	£94
Food Hygiene Regulations (NI) 2006	£593.75	£275
Public Health Nuisance caused by dirty yard	£191	£16
Dog biting person	£169	£91
Noise nuisance – barking dogs	£1650.25	£91
Street Trading without a licence	£172	£97
Noise Nuisance – quarrying activities	£8150.37	£100