



## **Legal Aid – Custody Issues Scheme**

### **Procedures & Guidelines for claiming Expert Witness Fees and the Commissioning of Reports**

**June 2013**

#### **1. General**

This document contains important information regarding the correct procedure for the engagement of the services of an expert witness (e.g. a medical expert) or the commissioning of a report and the subsequent submission of claims under the Legal Aid – Custody Issues Scheme. All solicitors and service providers should make themselves familiar with these guidelines as claims submitted in an incorrect format or without the required information will be returned by the Board to the relevant solicitor for further attention.

This document should be read in conjunction with the Legal Aid – Custody Issues Scheme Provisions and Guidance Document which is available at the contact details set out in Paragraph 7.

#### **2. The necessity for the services of an expert witness**

Under the Scheme, the services of an expert witness or the commissioning of a report should only be sought where it is essential to the proper preparation and conduct of the client's case. In such circumstances it will be the responsibility of the relevant solicitor to, at the earliest possible opportunity, notify the Court of their intention to engage with an expert witness or to commission a report. Further, at the end of the proceedings, if the Court is satisfied that the services of the expert witness(es) or the commissioning of a report(s) were essential to the proper preparation and conduct of the case, the Court shall include in its final Order a recommendation to the Legal Aid Board specifying which witnesses and / or reports were essential and should be covered by the Scheme.

#### **3. Consideration of a claim**

When considering a claim for payment in respect of an expert witness or the commissioning of a report the Board will, taking into account the provisions of the Scheme, have regard to the Court's recommendation and will only authorise the payment of reasonable costs and in circumstances where the engagement has been recommended as essential to the proper preparation and conduct of the client's case. The solicitor who engages the expert witness or commissions a report is responsible for explaining to the Court the relevance of the expert witness or the report to the issues pleaded and certifying their involvement in accordance with the provisions of Paragraph 6. It should be noted that claims for fees in respect of expert witnesses or

the commissioning of reports may not pre-empt the final Court Order recommending to the Legal Aid Board that the Legal Aid – Custody Issues Scheme should be applied.

It should be further noted that where an expert witness produces a report on behalf of the client, but the report of that expert witness is not subsequently used by the client's solicitor, the cost of a second report by the same or a different expert witness on the topic will not be reimbursed under the Scheme.

#### **4. The fees / expenses payable for expert witnesses / report commissioning**

Subject to the consideration of all claims on an individual basis under the Scheme's provisions and with effect from the 1<sup>st</sup> June 2013, the fees and expenses payable in respect of the engagement of an expert witness or the commissioning of a report will not exceed those fees and expenses as set out in Appendix A of this document. Such amounts may be updated as appropriate and as required by the Minister for Justice and Equality.

It should be noted that the list of experts and reports outlined in Appendix A does not purport to be exhaustive. Rather, it is intended to provide guidance as to the fees and expenses that may be considered for payment under the Legal Aid – Custody Issues Scheme.

Should a solicitor wish to make a case for the payment of a higher fee in respect of an expert witness than those set out in Appendix A, the case for the higher fee should be submitted in writing along with all relevant documentation to support the claim. This should be done in conjunction with the submission of the overarching claim as set out in Paragraphs 5 and 6 below. It should be noted that to facilitate consideration of the payment of higher fees than those set out in Appendix A, it would be necessary to submit a detailed and very compelling case to support the claim. The Legal Aid Board will consider all claims on their merits but it may be noted that the Board considers that the fees and expenses set out in Appendix A will represent reasonable recompense for the vast majority of claims that will arise under the Scheme.

#### **5. The submission of a claim**

All claims for fees under the Legal Aid - Custody Issues Scheme should only be submitted by the solicitor on record. An expert witness or the provider of a report should ensure that all original invoices pertaining to a case are forwarded to the relevant solicitor by the earliest possible date. This will ensure that their claim may be included with the submission of the solicitor's overarching claim for fees after the proceedings have concluded. In addition to the amounts claimed, each invoice should contain a specific invoice number and an invoice date. Each invoice submitted should relate to one client / case only and that client's name and the Court Record Number must be clearly referenced.

In turn, the relevant solicitor should ensure that all invoices in respect of the service along with any other claims arising (including counsel) are submitted with their own claim for legal fees. Claims for payment should not be submitted piecemeal as this causes unnecessary delays in the overall consideration of a claim. The claim should include a copy of the Court Order that made the recommendation to the Legal Aid

Board in relation to the reimbursement of costs pertaining to the engagement of an expert witness or the commissioning of a report.

#### **6. Certification obligations of the solicitor**

Under the Scheme, a solicitor who engages an expert witness or who commissions a report is responsible for:

- clarifying the necessity of engaging the service and the relevance of such service to the issues pleaded and certifying that it was essential to the proper preparation and conduct of the client's case and that the person or company providing the services had the appropriate competence to provide a professional service,
- where appropriate, certifying that the service provider attended on the dates and times directed by the solicitor and also certifying the accuracy of the hours worked and the amount claimed,
- ensuring that an original invoice with a unique invoice number from the relevant company (which must include full details of the services provided) is submitted for consideration,
- collating and ensuring that all aspects of the claim, including documents from the solicitor firm, junior (and, where applicable, senior) counsel, expert witnesses and other relevant service providers are submitted together in one single claim immediately after the case is finalised,
- ensuring that, for audit purposes, they retain evidence of the services commissioned (including copies of reports etc.).

#### **7. Querying the status of a claim**

Expert witnesses or the providers of reports should direct all queries in relation to their claim for payment to the relevant solicitor firm by whom they were engaged and to whom they submitted the claim. Solicitor firms should direct any queries they have in relation to a claim directly to the Legal Aid Board.

In addition, all queries in relation to the operation of this process or the manner by which claims will be considered under this document should also be addressed to the Legal Aid Board at the contact details set out below.

**Legal Aid Board**  
**Legal Aid - Custody Issues Scheme**  
**Criminal Legal Aid Section**  
**48/49 North Brunswick Street**  
**George's Lane**  
**Dublin 7**

**Phone: (01) 6469644**

**Email: [cischeme@legalaidboard.ie](mailto:cischeme@legalaidboard.ie)**

**Web: [www.legalaidboard.ie](http://www.legalaidboard.ie)**

## Appendix A

**Table 1: Fees Payable to Expert Witnesses**

<b>Expert</b>	<b>Preparation Fees (examination / report)</b>	<b>Attendance at Court Fees Full day / Half day</b>
Consultant medical practitioner, consultant psychiatrist, consultant pathologist	€120 per hour	€610 / €43.
Forensic scientist, psychologist, psychiatrist, surveyor, forensic accountant, accountant, engineer, medical practitioner, botanist, architect, veterinary surgeon, meteorologist	€100 per hour	€610 / €43.
Fire (assessor) and/or explosives expert	€90 per hour	€475 / €23
Fingerprint expert, motor assessor	€70 per hour	€475 / €23
Other Routine Technical Reports:- e.g. DNA analysis, cell site analysis; Ballistics reports; Analysis, Examination or Enhancement of CCTV/DVD/Disc Drive/SIM Card/ Audio; Site examination, measurement, mapping etc. associated with incidents/motor/traffic	€70 per hour	€475 / €23
Advocacy support (where a solicitor's client has an intellectual disability)	€70 per hour	€475 / €23
General Practitioner	€200 (Flat rate per Report)	
Urinalysis Report	€200 (Flat rate per Report)	
<p>It should be noted that where an expert witness is required to meet / interview the client and that person does not make him / herself available, then that cost must be borne by the client. The State will not pay the costs associated with missed appointments.</p>		
<p>Expert witnesses who are necessarily engaged from outside of the jurisdiction will be paid at the rates applicable in Ireland and the appropriate exchange rate to be applied will be the exchange rate applicable on the date of the invoice.</p>		

**Table 2: Expenses Payable to Expert and Non-Expert Witnesses**

<p><b>A. Travelling Costs.</b></p> <p>As appropriate, expert witnesses will be paid for travelling time necessary to the preparation of reports. Necessary travel time will be paid at half the relevant work rate as set out in Table 1 above.</p> <p>Travel time is not paid to expert witnesses in respect of court appearances as it is deemed to be included in the fee for the attendance at court.</p> <p>Expert witnesses who travel to Ireland from abroad will have such travel costs (air / ferry fares) paid on foot of receipts / tickets.</p>
<p><b>B. Mileage costs.</b></p> <p>Necessarily incurred mileage, as applicable, will be paid at a rate of 0.24c per km.</p>
<p><b>C. Other expenses.</b></p> <p>Reasonable vouched expenses, including accommodation, will only be paid on foot of receipts and subject to a maximum of €105 per 24 hours.</p> <p>Vouched parking costs will be reimbursed but will be subject to a maximum of €10 per day.</p>
<p><b>D. Non-expert witnesses.</b></p> <p>Should it be justified that the attendance of a non-expert witness was essential at a Court Hearing as part of the proper preparation and conduct of the client's case, such witnesses will be reimbursed for necessarily incurred expenses and loss of earnings on foot of the following provisions.</p> <p>All essential non-expert witnesses attending court should be informed in advance of their attendance that all claims in respect of expenses such as taxis, loss of earnings, parking, meals and travel must be supported by a voucher. Claims not supported by vouchers will not be considered for payment. Public transport should be used where possible. If the witness has to use his / her private car, mileage based on a round trip figure at the rates set out in Section B above will apply.</p> <p>Claims in respect of loss of earnings must be certified by the claimant's employer and state the gross and net loss of earnings being claimed. An individual who is self-employed must obtain a note from his accountant to the effect that his / her claimed loss of earnings is justified.</p> <p>There is an expectation that employees of State Bodies such as Local Authorities and Health Boards would not suffer loss of income or be obliged to take annual leave when attending Courts as witnesses in legally aided cases. Where such individuals wish to claim loss of earnings or compensation for having to take annual leave, they should be advised of the foregoing expectation and requested to approach their employer to discuss the matter.</p> <p>It is imperative that all witnesses must be informed to keep their expenses at a reasonable level, particularly if they have to travel from abroad.</p>

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