

PART 76

COSTS

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SECTION 1: GENERAL

When this Part applies

- 76.1.**—(1) This Part applies where the court can make an order about costs under—
- (a) Part II of the Prosecution of Offences Act 1985(a) and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986(b);
 - (b) section 109 of the Magistrates' Courts Act 1980(c);
 - (c) section 52 of the Senior Courts Act 1981(d) and rule 76.6 or rule 76.7;
 - (d) section 8 of the Bankers Books Evidence Act 1879(e);
 - (e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(f);
 - (f) section 36(5) of the Criminal Justice Act 1972(a);

(a) 1985 c. 23.

(b) S.I. 1986/1335.

(c) 1980 c. 43; section 109(2) was amended by section 109 of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).

(d) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(e) 1879 c. 11.

(f) 1965 c. 69; section 2C was substituted with section 2, 2A, 2B, 2D and 2E, for the existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

- (g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988**(b)**;
- (h) section 14H(5) of the Football Spectators Act 1989**(c)**;
- (i) section 4(7) of the Dangerous Dogs Act 1991**(d)**;
- (j) Part 3 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008**(e)**; or
- (k) Part 1 or 2 of the Extradition Act 2003**(f)**.

(2) In this Part, ‘costs’ means—

- (a) the fees payable to a legal representative;
- (b) the disbursements paid by a legal representative; and
- (c) any other expenses incurred in connection with the case.

[Note. A costs order can be made under—

- (a) section 16 of the Prosecution of Offences Act 1985(g) (defence costs), for the payment out of central funds of a defendant’s costs (see rule 76.4);*
- (b) section 17 of the Prosecution of Offences Act 1985(h) (prosecution costs), for the payment out of central funds of a private prosecutor’s costs (see rule 76.4);*
- (c) section 18 of the Prosecution of Offences Act 1985(i) (award of costs against accused), for the payment by a defendant of another person’s costs (see rules 76.5 and 76.6);*
- (d) section 19(1) of the Prosecution of Offences Act 1985(j) and regulation 3 of The Costs in Criminal Cases (General) Regulations 1986, for the payment by a party of another party’s costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party (see rule 76.8);*
- (e) section 19A of the Prosecution of Offences Act 1985(k) (costs against legal representatives, etc.)—*
 - (i) for the payment by a legal representative of a party’s costs incurred as a result of an improper, unreasonable or negligent act or omission by or on behalf of the representative, or*
 - (ii) disallowing the payment to that representative of such costs (see rule 76.9);*
- (f) section 19B of the Prosecution of Offences Act 1985(l) (provision for award of costs against third parties) and regulation 3F of The Costs in Criminal Cases (General)*

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- (a) 1972 c. 71; section 36(5) was amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).
 - (b) 1988 c. 33; paragraph 11 of Schedule 3 was amended by section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 11 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
 - (c) 1989 c. 37; section 14H was substituted, together with sections 14, 14A-14G and 14J, for existing sections 14-17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).
 - (d) 1991 c. 65.
 - (e) S.I. 2008/1863.
 - (f) 2003 c. 41.
 - (g) 1985 c. 23; section 16 was amended by section 15 of, and paragraphs 14 and 15 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 150 of, and paragraph 103 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 7 of, and paragraph 7 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), sections 69 and 312 of, and paragraph 57 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44), section 58 of, and Schedule 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 2 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
 - (h) 1985 c. 23; section 17 was amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 4 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
 - (i) 1985 c. 23; section 18 was amended by section 15 of, and paragraph 16 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 26 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections 69 and 312 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).
 - (j) 1985 c. 23.
 - (k) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).
 - (l) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

- Regulations 1986(a), for the payment by a person who is not a party of a party's costs where there has been serious misconduct by the non-party (see rule 76.10);*
- (g) *section 109 of the Magistrates' Courts Act 1980, section 52 of the Senior Courts Act 1981 and rule 76.6, for the payment by an appellant of a respondent's costs on abandoning an appeal to the Crown Court (see rule 76.6);*
- (h) *section 52 of the Senior Courts Act 1981 and—*
- (i) *rule 76.6, for the payment by a party of another party's costs on an appeal to the Crown Court in any case not covered by (c) or (g),*
- (ii) *rule 76.7, for the payment by a party of another party's costs on an application to the Crown Court about the breach or variation of a deferred prosecution agreement, or on an application to lift the suspension of a prosecution after breach of such an agreement;*
- (i) *section 8 of the Bankers Books Evidence Act 1879, for the payment of costs by a party or by the bank against which an application for an order is made (see rule 76.7);*
- (j) *section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965, for the payment by the applicant for a witness summons of the costs of a party who applies successfully under rule 28.7 to have it withdrawn (see rule 76.7);*
- (k) *section 36(5) of the Criminal Justice Act 1972 or Schedule 3, paragraph 11, of the Criminal Justice Act 1988, for the payment out of central funds of a defendant's costs on a reference by the Attorney General of—*
- (i) *a point of law, or*
- (ii) *an unduly lenient sentence*
- (see rule 76.4);*
- (l) *section 159(5) of the Criminal Justice Act 1988, for the payment by a person of another person's costs on an appeal about a reporting or public access restriction (see rule 76.6);*
- (m) *section 14H(5) of the Football Spectators Act 1989, for the payment by a defendant of another person's costs on an application to terminate a football banning order (see rule 76.7);*
- (n) *section 4(7) of the Dangerous Dogs Act 1991, for the payment by a defendant of another person's costs on an application to terminate a disqualification for having custody of a dog (see rule 76.7);*
- (o) *article 14 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(b), corresponding with section 16 of the Prosecution of Offences Act 1985 (see rule 76.4);*
- (p) *article 15 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with section 18 of the Prosecution of Offences Act 1985 (see rule 76.6);*
- (q) *article 16 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19(1) of the 1985 Act (see rule 76.8);*
- (r) *article 17 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19A of the 1985 Act (see rule 76.9);*
- (s) *article 18 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19B of the 1985 Act (see rule 76.10);*
- (t) *section 60 or 133 of the Extradition Act 2003 (costs where extradition ordered) for the payment by a defendant of another person's costs; or*
- (u) *section 61 or 134 of the Extradition Act 2003(c) (costs where discharge ordered) for the payment out of central funds of a defendant's costs.*

(a) S.I. 1986/1335; regulation 3F was inserted by regulation 7 of S.I. 2004/2408 and amended by regulations 2 and 5 of S.I. 2008/2448.

(b) S.I. 2008/1863.

(c) 2003 c. 41; sections 61 and 134 were amended by paragraphs 12, 13 and 16 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

See also the Criminal Costs Practice Direction.

Part 68 (Appeal to the Court of Appeal about conviction or sentence) contains rules about appeals against costs orders made in the Crown Court under the legislation listed in (c) above.

Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against costs orders made under the legislation listed in (e) and (f) above.

As to costs in restraint or receivership proceedings under Part 2 of the Proceeds of Crime Act 2002(a), see rules 61.19 to 61.22.

A costs order can be enforced—

- (a) against a defendant, under section 41(1) or (3) of the Administration of Justice Act 1970(b);*
- (b) against a prosecutor, under section 41(2) or (3) of the Administration of Justice Act 1970;*
- (c) against a representative, under regulation 3D of The Costs in Criminal Cases (General) Regulations 1986(c) or article 18 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008; or*
- (d) against a non-party, under regulation 3I of The Costs in Criminal Cases (General) Regulations 1986(d) or article 31 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(e).*

See also section 58, section 150(1) and Part III of the Magistrates' Courts Act 1980(f) and Schedule 5 to the Courts Act 2003(g).]

Costs orders: general rules

76.2.—(1) The court must not make an order about costs unless each party and any other person directly affected—

- (a) is present; or
- (b) has had an opportunity—
 - (i) to attend, or
 - (ii) to make representations.

(2) The court may make an order about costs—

- (a) at a hearing in public or in private; or
- (b) without a hearing.

(3) In deciding what order, if any, to make about costs, the court must have regard to all the circumstances, including—

- (a) the conduct of all the parties; and
- (b) any costs order already made.

(4) If the court makes an order about costs, it must—

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- (a) 2002 c. 29.
 - (b) 1970 c. 31; section 41(3) is amended by section 62 of, and paragraph 35 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.
 - (c) S.I. 1986/1335; regulation 3D was inserted by article 2 of S.I. 1991/789 and amended by regulation 6 of S.I. 2004/2408.
 - (d) S.I. 1986/1335; regulation 3I was inserted by regulation 7 of S.I. 2004/2408.
 - (e) S.I. 2008/1863.
 - (f) 1980 c. 43; section 58 was amended by section 33 of, and paragraph 80 of Schedule 2 to, the Family Law Reform Act 1987 (c. 42); a relevant amendment was made to section 150(1) by paragraph 250 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).
 - (g) 2003 c. 39; Schedule 5 was amended by articles 2, 4, 6, 7 and 8 of S.I. 2006/1737. It is further amended by section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), with effect from a date to be appointed.

- (a) specify who must, or must not, pay what, to whom; and
 - (b) identify the legislation under which the order is made, where there is a choice of powers.
- (5) The court must give reasons if it—
- (a) refuses an application for a costs order; or
 - (b) rejects representations opposing a costs order.
- (6) If the court makes an order for the payment of costs—
- (a) the general rule is that it must be for an amount that is sufficient reasonably to compensate the recipient for costs—
 - (i) actually, reasonably and properly incurred, and
 - (ii) reasonable in amount; but
 - (b) the court may order the payment of—
 - (i) a proportion of that amount,
 - (ii) a stated amount less than that amount,
 - (iii) costs from or until a certain date only,
 - (iv) costs relating only to particular steps taken, or
 - (v) costs relating only to a distinct part of the case.
- (7) On an assessment of the amount of costs, relevant factors include—
- (a) the conduct of all the parties;
 - (b) the particular complexity of the matter or the difficulty or novelty of the questions raised;
 - (c) the skill, effort, specialised knowledge and responsibility involved;
 - (d) the time spent on the case;
 - (e) the place where and the circumstances in which work or any part of it was done; and
 - (f) any direction or observations by the court that made the costs order.
- (8) If the court orders a party to pay costs to be assessed under rule 76.11, it may order that party to pay an amount on account.
- (9) An order for the payment of costs takes effect when the amount is assessed, unless the court exercises any power it has to order otherwise.

[Note. Under the powers to which apply rule 76.8 (costs resulting from unnecessary or improper act, etc.) and rule 76.9 (costs against a legal representative), specified conduct must be established for such orders to be made.]

The amount recoverable under a costs order may be affected by the legislation under which the order is made. See, for example, section 16A of the Prosecution of Offences Act 1985(a).

Under section 141 of the Powers of Criminal Courts (Sentencing) Act 2000(b) and section 75 of the Magistrates' Courts Act 1980(c), the Crown Court and magistrates' court respectively can allow time for payment, or payment by instalments.]

Court's power to vary requirements under Sections 2, 3 and 4

76.3.—(1) The court may—

- (a) extend a time limit for serving an application or representations under section 2, 3 or 4 of this Part, even after it has expired; and

(a) 1985 c. 23; section 16A was inserted by paragraphs 1 and 3 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(b) 2000 c. 6.

(c) 1980 c. 43, section 75 was amended by section 11 of, and paragraph 6 of Schedule 2 to, the Maintenance Enforcement Act 1991 (c. 17).

- (b) consider an application or representations—
 - (i) made in a different form to one set out in the Practice Direction, or
 - (ii) made orally instead of in writing.
- (2) A person who wants an extension of time must—
 - (a) apply when serving the application or representations for which it is needed; and
 - (b) explain the delay.

SECTION 2: COSTS OUT OF CENTRAL FUNDS

Costs out of central funds

- 76.4.**—(1) This rule applies where the court can order the payment of costs out of central funds.
- (2) In this rule, costs—
- (a) include—
 - (i) on an appeal, costs incurred in the court that made the decision under appeal, and
 - (ii) at a retrial, costs incurred at the initial trial and on any appeal; but
 - (b) do not include costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the person who incurred the costs; or
 - (b) on its own initiative.
- (4) Where a person wants the court to make an order that person must—
- (a) apply as soon as practicable; and
 - (b) outline the type of costs and the amount claimed, if that person wants the court to direct an assessment; or
 - (c) specify the amount claimed, if that person wants the court to assess the amount itself.
- (5) The general rule is that the court must make an order, but—
- (a) the court may decline to make a defendant’s costs order if, for example—
 - (i) the defendant is convicted of at least one offence, or
 - (ii) the defendant’s conduct led the prosecutor reasonably to think the prosecution case stronger than it was; and
 - (b) the court may decline to make a prosecutor’s costs order if, for example, the prosecution was started or continued unreasonably.
- (6) If the court makes an order—
- (a) the court may direct an assessment under, as applicable—
 - (i) Part III of The Costs in Criminal Cases (General) Regulations 1986(a), or
 - (ii) Part 3 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(b);
 - (b) the court may assess the amount itself in a case in which either—
 - (i) the recipient agrees the amount, or
 - (ii) the court decides to allow a lesser sum than that which is reasonably sufficient to compensate the recipient for expenses properly incurred in the proceedings;
 - (c) an order for the payment of a defendant’s costs which includes an amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative, must include a statement to that effect.

(a) S.I. 1986/1335; relevant amending instruments are S.I. 1999/2096 and S.I. 2008/2448.

(b) S.I. 2008/1863.

(7) If the court directs an assessment, the order must specify any restriction on the amount to be paid that the court considers appropriate.

(8) If the court assesses the amount itself, it must do so subject to any restriction on the amount to be paid that is imposed by regulations made by the Lord Chancellor.

[Note. See also rule 76.2.

An order for the payment of costs out of central funds can be made—

- (a) *for a defendant—*
 - (i) *on acquittal,*
 - (ii) *where a prosecution does not proceed,*
 - (iii) *where the Crown Court allows any part of a defendant's appeal from a magistrates' court,*
 - (iv) *where the Court of Appeal allows any part of a defendant's appeal from the Crown Court,*
 - (v) *where the Court of Appeal decides a prosecutor's appeal under Part 66 (appeal to the Court of Appeal against ruling at preparatory hearing) or Part 67 (appeal to the Court of Appeal against ruling adverse to prosecution),*
 - (vi) *where the Court of Appeal decides a reference by the Attorney General under Part 70 (reference to the Court of Appeal of point of law or unduly lenient sentence),*
 - (vii) *where the Court of Appeal decides an appeal by someone other than the defendant about a serious crime prevention order, or*
 - (viii) *where the defendant is discharged under Part 1 or 2 of the Extradition Act 2003;*
(See section 16 of the Prosecution of Offences Act 1985 and regulation 14 of The Costs in Criminal Cases (General) Regulations 1986(a); section 36(5) of the Criminal Justice Act 1972 and paragraph 11 of Schedule 3 to the Criminal Justice Act 1988; article 14 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008; and sections 61 and 134 of the Extradition Act 2003.)
- (b) *for a private prosecutor, in proceedings in respect of an offence that must or may be tried in the Crown Court;*
(See section 17 of the Prosecution of Offences Act 1985 and regulation 14 of The Costs in Criminal Cases (General) Regulations 1986.)
- (c) *for a person adversely affected by a serious crime prevention order, where the Court of Appeal—*
 - (i) *allows an appeal by that person about that order, or*
 - (ii) *decides an appeal about that order by someone else.*
(See article 14 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008.)

Where the court makes an order for the payment of a defendant's costs out of central funds—

- (a) *the general rule is that the order may not require the payment of any amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative (including expert witness costs), but if the defendant is an individual then an order may require payment of such an amount in a case—*
 - (i) *in a magistrates' court, including in an extradition case,*
 - (ii) *in the Crown Court, on appeal from a magistrates' court,*
 - (iii) *in the Crown Court, where the defendant has been sent for trial, the High Court gives permission to serve a draft indictment or the Court of Appeal orders a retrial and the defendant has been found financially ineligible for legal aid, or*

(a) S.I. 1986/1335; regulation 14 was amended by regulations 2 and 11 of S.I. 2008/2448.

- (iv) *in the Court of Appeal, on an appeal against a verdict of not guilty by reason of insanity, or against a finding under the Criminal Procedure (Insanity) Act 1964(a), or on an appeal under section 16A of the Criminal Appeal Act 1968(b) (appeal against order made in cases of insanity or unfitness to plead); and*
- (b) *any such amount may not exceed an amount specified by regulations made by the Lord Chancellor.*

(See section 16A of the Prosecution of Offences Act 1985(c), sections 62A, 62B, 135A and 135B of the Extradition Act 2003(d) and regulations 4A and 7 of The Costs in Criminal Cases (General) Regulations 1986(e).)]

SECTION 3: PAYMENT OF COSTS BY ONE PARTY TO ANOTHER

Costs on conviction and sentence

76.5.—(1) This rule applies where the court can order a defendant to pay the prosecutor's costs if the defendant is—

- (a) convicted or found guilty;
 - (b) dealt with in the Crown Court after committal for sentence there;
 - (c) dealt with for breach of a sentence; or
 - (d) in an extradition case—
 - (i) ordered to be extradited, under Part 1 of the Extradition Act 2003, or
 - (ii) sent for extradition to the Secretary of State, under Part 2 of that Act.
- (2) The court may make an order—
- (a) on application by the prosecutor; or
 - (b) on its own initiative.
- (3) Where the prosecutor wants the court to make an order—
- (a) the prosecutor must—
 - (i) apply as soon as practicable, and
 - (ii) specify the amount claimed; and
 - (b) the general rule is that the court must make an order if it is satisfied that the defendant can pay.
- (4) A defendant who wants to oppose an order must make representations as soon as practicable.
- (5) If the court makes an order, it must assess the amount itself.

[Note. See—

- (a) *rule 76.2;*
- (b) *section 18 of the Prosecution of Offences Act 1985(f) and regulation 14 of The Costs in Criminal Cases (General) Regulations 1986; and*
- (c) *sections 60 and 133 of the Extradition Act 2003.*

(a) 1964 c. 84.

(b) 1968 c. 19; section 16A was inserted by section 25 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(c) 1985 c. 23; section 16A was inserted by paragraphs 1 and 3 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(d) 2003 c. 41; sections 62A and 62B were inserted by paragraphs 12 and 15 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and sections 135A and 135B were inserted by paragraphs 12 and 18 and Part 4 of that Schedule.

(e) S.I. 1986/1335; regulation 4A was inserted, and regulation 7 substituted, by regulations 4, 5 and 6 of S.I. 2012/1804.

(f) 1985 c. 23; section 18 was amended by section 15 of, and paragraph 16 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 26 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections 69 and 312 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

Under section 18(4) and (5) of the 1985 Act, if a magistrates' court—

- (a) *imposes a fine, a penalty, forfeiture or compensation that does not exceed £5—*
 - (i) *the general rule is that the court will not make a costs order against the defendant, but*
 - (ii) *the court may do so;*
- (b) *fines a defendant under 18, no costs order against the defendant may be for more than the fine.*

Part 68 (Appeal to the Court of Appeal about conviction or sentence) contains rules about appeal against a Crown Court costs order to which this rule applies.]

Costs on appeal

76.6.—(1) This rule—

- (a) applies where a magistrates' court, the Crown Court or the Court of Appeal can order a party to pay another person's costs on an appeal, or an application for permission to appeal;
- (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an appeal to that court, except on an appeal—
 - (i) section 108 of the Magistrates' Courts Act 1980(a), or
 - (ii) section 45 of the Mental Health Act 1983(b).

(2) In this rule, costs include—

- (a) costs incurred in the court that made the decision under appeal; and
- (b) costs met by legal aid.

(3) The court may make an order—

- (a) on application by the person who incurred the costs; or
- (b) on its own initiative.

(4) A person who wants the court to make an order must—

- (a) apply as soon as practicable;
- (b) notify each other party;
- (c) specify—
 - (i) the amount claimed, and
 - (ii) against whom; and
- (d) where an appellant abandons an appeal to the Crown Court by serving a notice of abandonment—
 - (i) apply in writing not more than 14 days later, and
 - (ii) serve the application on the appellant and on the Crown Court officer.

(5) A party who wants to oppose an order must—

- (a) make representations as soon as practicable; and

(a) 1980 c. 43; section 108 was amended by sections 66(2) and 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 23(3) of the Football Spectators Act 1989 (c. 37), section 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120(2) of, and paragraph 43 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 7(2) of the Football (Offences and Disorder) Act 1999 (c. 21), section 165(1) of, and paragraph 71 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and Schedule 3 to, the Football (Disorder) Act 2000 (c. 25), section 58(1) of, and paragraph 10 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 52(2) of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38) and section 64 of, and paragraph 10 of Schedule 3 to, the Animal Welfare Act 2006 (c. 45).

(b) 1983 c. 20.

- (b) where the application was under paragraph (4)(d), serve written representations on the applicant, and on the Crown Court officer, not more than 7 days after it was served.
- (6) Where the application was under paragraph (4)(d), the Crown Court officer may—
- (a) submit it to the Crown Court; or
 - (b) serve it on the magistrates' court officer, for submission to the magistrates' court.
- (7) If the court makes an order, it may direct an assessment under rule 76.11, or assess the amount itself where—
- (a) the appellant abandons an appeal to the Crown Court;
 - (b) the Crown Court decides an appeal, except an appeal under—
 - (i) section 108 of the Magistrates' Courts Act 1980, or
 - (ii) section 45 of the Mental Health Act 1983; or
 - (c) the Court of Appeal decides an appeal to which Part 69 applies (appeal to the Court of Appeal regarding reporting or public access restriction).
- (8) If the court makes an order in any other case, it must assess the amount itself.

[*Note. See also rule 76.2.*]

A magistrates' court can order an appellant to pay a respondent's costs on abandoning an appeal to the Crown Court.

The Crown Court can order—

- (a) *the defendant to pay the prosecutor's costs on dismissing a defendant's appeal—*
 - (i) *against conviction or sentence, under section 108 of the Magistrates' Courts Act 1980, or*
 - (ii) *where the magistrates' court makes a hospital order or guardianship order without convicting the defendant, under section 45 of the Mental Health Act 1983; and*
- (b) *one party to pay another party's costs on deciding any other appeal to which Part 63 applies.*

The Court of Appeal can order—

- (a) *the defendant to pay another person's costs on dismissing a defendant's appeal or application to which Part 66 (appeal to the Court of Appeal against ruling at preparatory hearing), Part 68 (appeal to the Court of Appeal about conviction or sentence) or Part 74 (appeal or reference to the Supreme Court) applies;*
- (b) *the defendant to pay another person's costs on allowing a prosecutor's appeal to which Part 67 (appeal to the Court of Appeal against ruling adverse to the prosecution) applies;*
- (c) *the appellant to pay another person's costs on dismissing an appeal or application by a person affected by a serious crime prevention order;*
- (d) *one party to pay another party's costs on deciding an appeal to which Part 69 (appeal to the Court of Appeal regarding reporting or public access restriction) applies.*

See section 109 of the Magistrates' Courts Act 1980(a); section 52 of the Senior Courts Act 1981(b) (which allows rules of court to authorise the Crown Court to order costs); section 18 of the Prosecution of Offences Act 1985; section 159(5) of the Criminal Justice Act 1988(c); and article 15 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(d).]

(a) 1980 c. 43; section 109(2) was amended by section 109 of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).
 (b) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
 (c) 1988 c. 33.
 (d) S.I. 2008/1863.

Costs on an application

76.7.—(1) This rule—

- (a) applies where the court can order a party to pay another person's costs in a case in which—
 - (i) the court decides an application for the production in evidence of a copy of a bank record,
 - (ii) a magistrates' court or the Crown Court decides an application to terminate a football banning order,
 - (iii) a magistrates' court or the Crown Court decides an application to terminate a disqualification for having custody of a dog,
 - (iv) the Crown Court allows an application to withdraw a witness summons, or
 - (v) the Crown Court decides an application relating to a deferred prosecution agreement under rule 12.5 (breach), rule 12.6 (variation) or rule 12.7 (lifting suspension of prosecution);
- (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an application to that court under rule 12.5, 12.6 or 12.7.

(2) The court may make an order—

- (a) on application by the person who incurred the costs; or
- (b) on its own initiative.

(3) A person who wants the court to make an order must—

- (a) apply as soon as practicable;
- (b) notify each other party; and
- (c) specify—
 - (i) the amount claimed, and
 - (ii) against whom.

(4) A party who wants to oppose an order must make representations as soon as practicable.

(5) If the court makes an order, it may direct an assessment under rule 76.11, or assess the amount itself.

[Note. See—

- (a) *rule 76.2;*
- (b) *section 8 of the Bankers Books Evidence Act 1879(a);*
- (c) *section 14H(5) of the Football Spectators Act 1989(b);*
- (d) *section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(c); and*
- (e) *section 4(7) of the Dangerous Dogs Act 1991(d).*

Section 52 of the Senior Courts Act 1981 allows rules of court to authorise the Crown Court to order costs.]

(a) 1879 c. 11.

(b) 1989 c. 37; section 14H was substituted, together with sections 14, 14A-14G and 14J, for existing sections 14-17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).

(c) 1965 c. 69; section 2C was substituted with section 2, 2A, 2B, 2D and 2E, for the existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

(d) 1991 c. 65.

Costs resulting from unnecessary or improper act, etc.

76.8.—(1) This rule applies where the court can order a party to pay another party's costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party.

- (2) In this rule, costs include costs met by legal aid.
- (3) The court may make an order—
 - (a) on application by the party who incurred such costs; or
 - (b) on its own initiative.
- (4) A party who wants the court to make an order must—
 - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar), and
 - (ii) each other party;
 - (c) in that application specify—
 - (i) the party by whom costs should be paid,
 - (ii) the relevant act or omission,
 - (iii) the reasons why that act or omission meets the criteria for making an order,
 - (iv) the amount claimed, and
 - (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
 - (a) identify the party against whom it proposes making the order; and
 - (b) specify—
 - (i) the relevant act or omission,
 - (ii) the reasons why that act or omission meets the criteria for making an order, and
 - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A party who wants to oppose an order must—
 - (a) make representations as soon as practicable; and
 - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order, it must assess the amount itself.

[Note. See—

- (a) rule 76.2;*
- (b) section 19(1) of the Prosecution of Offences Act 1985(a) and regulation 3 of The Costs in Criminal Cases (General) Regulations 1986(b); and*
- (c) article 16 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(c).*

Under regulation 3(5) of the 1986 Regulations, if a magistrates' court fines a defendant under 17, no costs order to which this rule applies may be for more than the fine.

The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.]

(a) 1985 c. 23.

(b) S.I. 1986/1335; regulation 3 was amended by regulations 2 and 3 of S.I. 2008/2448.

(c) S.I. 2008/1863.

SECTION 4: OTHER COSTS ORDERS

Costs against a legal representative

- 76.9.**—(1) This rule applies where—
- (a) a party has incurred costs—
 - (i) as a result of an improper, unreasonable or negligent act or omission by a legal or other representative or representative’s employee, or
 - (ii) which it has become unreasonable for that party to have to pay because of such an act or omission occurring after those costs were incurred; and
 - (b) the court can—
 - (i) order the representative responsible to pay such costs, or
 - (ii) prohibit the payment of costs to that representative.
- (2) In this rule, costs include costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the party who incurred such costs; or
 - (b) on its own initiative.
- (4) A party who wants the court to make an order must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar),
 - (ii) the representative responsible,
 - (iii) each other party, and
 - (iv) any other person directly affected;
 - (c) in that application specify—
 - (i) the representative responsible,
 - (ii) the relevant act or omission,
 - (iii) the reasons why that act or omission meets the criteria for making an order,
 - (iv) the amount claimed, and
 - (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
- (a) identify the representative against whom it proposes making that order; and
 - (b) specify—
 - (i) the relevant act or omission,
 - (ii) the reasons why that act or omission meets the criteria for making an order, and
 - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A representative who wants to oppose an order must—
- (a) make representations as soon as practicable; and
 - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order—
- (a) the general rule is that it must do so without waiting until the end of the case, but it may postpone making the order; and
 - (b) it must assess the amount itself.

(8) Instead of making an order, the court may make adverse observations about the representative's conduct for use in an assessment where—

- (a) a party's costs are—
 - (i) to be met by legal aid, or
 - (ii) to be paid out of central funds; or
- (b) there is to be an assessment under rule 76.11.

[Note. See—

- (a) rule 76.2;
- (b) section 19A of the Prosecution of Offences Act 1985(a);
- (c) article 17 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(b).

The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.

Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against a costs order to which this rule applies.]

Costs against a third party

76.10.—(1) This rule applies where—

- (a) there has been serious misconduct by a person who is not a party; and
 - (b) the court can order that person to pay a party's costs.
- (2) In this rule, costs include costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the party who incurred the costs; or
 - (b) on its own initiative.
- (4) A party who wants the court to make an order must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar),
 - (ii) the person responsible,
 - (iii) each other party, and
 - (iv) any other person directly affected;
 - (c) in that application specify—
 - (i) the person responsible,
 - (ii) the relevant misconduct,
 - (iii) the reasons why the criteria for making an order are met,
 - (iv) the amount claimed, and
 - (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
- (a) identify the person against whom it proposes making that order; and
 - (b) specify—
 - (i) the relevant misconduct,

(a) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(b) S.I. 2008/1863.

- (ii) the reasons why the criteria for making an order are met, and
 - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A person who wants to oppose an order must—
- (a) make representations as soon as practicable; and
 - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order—
- (a) the general rule is that it must do so at the end of the case, but it may do so earlier; and
 - (b) it must assess the amount itself.

[Note. See—

- (a) rule 76.2;
- (b) section 19B of the Prosecution of Offences Act 1985 and regulation 3F of The Costs in Criminal Cases (General) Regulations 1986; and
- (c) article 18 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008.

The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.

Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against a costs order to which this rule applies.]

SECTION 5: ASSESSMENT OF COSTS

Assessment and re-assessment

- 76.11.**—(1) This rule applies where the court directs an assessment under—
- (a) rule 61.20 (Proceeds of Crime Act 2002 – rules applicable to restraint and receivership proceedings, assessment of costs);
 - (b) rule 76.6 (costs on appeal); or
 - (c) rule 76.7 (costs on an application).
- (2) The assessment must be carried out by the relevant assessing authority, namely—
- (a) the court officer, where the direction was given by a magistrates’ court or by the Crown Court; or
 - (b) the Registrar of Criminal Appeals, where the direction was given by the Court of Appeal.
- (3) The party in whose favour the court made the costs order (‘the applicant’) must—
- (a) apply for an assessment—
 - (i) in writing, in any form required by the assessing authority, and
 - (ii) not more than 3 months after the costs order; and
 - (b) serve the application on—
 - (i) the assessing authority, and
 - (ii) the party against whom the court made the costs order (‘the respondent’).
- (4) The applicant must—
- (a) summarise the work done;
 - (b) specify—
 - (i) each item of work done, giving the date, time taken and amount claimed,
 - (ii) any disbursements or expenses, including the fees of any advocate, and

- (iii) any circumstances of which the applicant wants the assessing authority to take particular account; and
- (c) supply—
 - (i) receipts or other evidence of the amount claimed, and
 - (ii) any other information or document for which the assessing authority asks, within such period as that authority may require.
- (5) A respondent who wants to make representations about the amount claimed must—
 - (a) do so in writing; and
 - (b) serve the representations on the assessing authority, and on the applicant, not more than 21 days after service of the application.
- (6) The assessing authority must—
 - (a) if it seems likely to help with the assessment, obtain any other information or document;
 - (b) resolve in favour of the respondent any doubt about what should be allowed; and
 - (c) serve the assessment on the parties.
- (7) Where either party wants the amount allowed re-assessed—
 - (a) that party must—
 - (i) apply to the assessing authority, in writing and in any form required by that authority,
 - (ii) serve the application on the assessing authority, and on the other party, not more than 21 days after service of the assessment,
 - (iii) explain the objections to the assessment,
 - (iv) supply any additional supporting information or document, and
 - (v) ask for a hearing, if that party wants one; and
 - (b) a party who wants to make representations about an application for re-assessment must—
 - (i) do so in writing,
 - (ii) serve the representations on the assessing authority, and on the other party, not more than 21 days after service of the application, and
 - (iii) ask for a hearing, if that party wants one;
 - (c) the assessing authority—
 - (i) must arrange a hearing, in public or in private, if either party asks for one,
 - (ii) subject to that, may re-assess the amount allowed with or without a hearing,
 - (iii) must re-assess the amount allowed on the initial assessment, taking into account the reasons for disagreement with that amount and any other representations,
 - (iv) may maintain, increase or decrease the amount allowed on the assessment,
 - (v) must serve the re-assessment on the parties, and
 - (vi) must serve written reasons on the parties, if not more than 21 days later either party asks for such reasons.
- (8) A time limit under this rule may be extended even after it has expired—
 - (a) by the assessing authority, or
 - (b) by the Senior Costs Judge, if the assessing authority declines to do so.

Appeal to a costs judge

- 76.12.**—(1) This rule applies where—
- (a) the assessing authority has re-assessed the amount allowed under rule 76.11; and
 - (b) either party wants to appeal against that amount.

- (2) That party must—
- (a) serve an appeal notice on—
 - (i) the Senior Costs Judge,
 - (ii) the other party, and
 - (iii) the assessing authoritynot more than 21 days after service of the written reasons for the re-assessment;
 - (b) explain the objections to the re-assessment;
 - (c) serve on the Senior Costs Judge with the appeal notice—
 - (i) the applications for assessment and re-assessment,
 - (ii) any other information or document considered by the assessing authority,
 - (iii) the assessing authority's written reasons for the re-assessment, and
 - (iv) any other information or document for which a costs judge asks, within such period as the judge may require; and
 - (d) ask for a hearing, if that party wants one.
- (3) A party who wants to make representations about an appeal must—
- (a) serve representations in writing on—
 - (i) the Senior Costs Judge, and
 - (ii) the applicantnot more than 21 days after service of the appeal notice; and
 - (b) ask for a hearing, if that party wants one.
- (4) Unless a costs judge otherwise directs, the parties may rely only on—
- (a) the objections to the amount allowed on the initial assessment; and
 - (b) any other representations and material considered by the assessing authority.
- (5) A costs judge—
- (a) must arrange a hearing, in public or in private, if either party asks for one;
 - (b) subject to that, may determine an appeal with or without a hearing;
 - (c) may—
 - (i) consult the assessing authority,
 - (ii) consult the court which made the costs order, and
 - (iii) obtain any other information or document;
 - (d) must reconsider the amount allowed by the assessing authority, taking into account the objections to the re-assessment and any other representations;
 - (e) may maintain, increase or decrease the amount allowed on the re-assessment;
 - (f) may provide for the costs incurred by either party to the appeal; and
 - (g) must serve reasons for the decision on—
 - (i) the parties, and
 - (ii) the assessing authority.
- (6) A costs judge may extend a time limit under this rule, even after it has expired.

[Note. The Criminal Costs Practice Direction sets out a form for use in connection with this rule.]

Appeal to a High Court judge

76.13.—(1) This rule applies where—

- (a) a costs judge has determined an appeal under rule 76.12; and

- (b) either party wants to appeal against the amount allowed.
- (2) A party who wants to appeal—
 - (a) may do so only if a costs judge certifies that a point of principle of general importance was involved in the decision on the review; and
 - (b) must apply in writing for such a certificate and serve the application on—
 - (i) the costs judge,
 - (ii) the other partynot more than 21 days after service of the decision on the review.
- (3) That party must—
 - (a) appeal to a judge of the High Court attached to the Queen’s Bench Division as if it were an appeal from the decision of a master under Part 52 of the Civil Procedure Rules 1998(a); and
 - (b) serve the appeal not more than 21 days after service of the costs judge’s certificate under paragraph (2).
- (4) A High Court judge—
 - (a) may extend a time limit under this rule even after it has expired;
 - (b) has the same powers and duties as a costs judge under rule 76.12; and
 - (c) may hear the appeal with one or more assessors.

[Note. See also section 70 of the Senior Courts Act 1981(b).]

Application for an extension of time under Section 5

- 76.14.** A party who wants an extension of time under rule 76.11, 76.12 or 76.13 must—
- (a) apply in writing;
 - (b) explain the delay; and
 - (c) attach the application, representations or appeal for which the extension of time is needed.

(a) S.I. 1998/3132.

(b) 1981 c. 54. The Act’s title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).