



Department of  
**Justice**

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**Consultation on Direction on Asylum and Immigration Legal  
Aid Remuneration**

**August 2019**

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## 1. Introduction

- 1.1 The Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 (the 2015 Order) provides that a solicitor representing a client shall receive 35% of the normal fee when an appeal before an Asylum and Immigration Tribunal is withdrawn on the day of the substantive hearing. Therefore, the reduced fee payable is £420 rather than the full fee of £1,200.
- 1.2 The fees were first set in August 2006 and transcribed into the 2015 Order. This reduced fee was originally designed for circumstances in which the appellant withdraws the appeal on the day of the hearing and does not wish to pursue the refusal of asylum further.
- 1.3 The Department of Justice has received a challenge that it is inappropriate for the reduced fee to be payable when the Home Office has withdrawn its decision on the day of the substantive hearing. The representation submits that it is inappropriate that the solicitor is penalised when they have done all the proper and time consuming work and ultimately been successful in their appeal, leading to the appeal being withdrawn.
- 1.4 The Department agrees that the full fee should be payable where the Home Office withdraws the decision under appeal on the day of the substantive hearing in circumstances where the solicitor has provided the relevant information to the Home Office in a timely manner to allow it to reconsider its decision. It proposes to issue a Direction to the Legal Services Agency NI (the Agency) advising that it shall interpret the fees payable in the 2015 Order in a manner which allows the full composite fee of £1,200 to be paid when the Home Office has withdrawn its decision on the day of the hearing, see **Annex A**. The reduced rate of 35% will still apply when the appellant withdraws the case on the day of the hearing for any other reason.
- 1.4 If the case is withdrawn prior to the day of the substantive hearing the rate of 20% of the composite fee will remain payable.

- 1.5 The Department has been made aware of the Home Office Guidance on withdrawing decisions and conceding appeals, where the initial decision by the Home Office is withdrawn as it is considered to be unsustainable. Where this applies, the Agency will expect that an application will have been made to the Tribunal for the appellant's costs.
- 1.6 **Please note: the changes in this consultation document are aimed only at assisting the Agency to interpret the definition of withdrawn in the situation where the Home Office withdraws its appeal on the day of the substantive hearing to allow for appropriate remuneration. Any review of the actual level of remuneration or of specific fees is a separate matter on which the Department may bring forward proposals in due course.**
2. Purpose of the Consultation
  - 2.1 This consultation is being carried out in order to provide consultees with the opportunity to identify any issues which the Department should consider prior to issuing the Direction to the Agency.
  - 2.2 Following consideration of responses to this consultation exercise, the draft proposals will be finalised and advanced as appropriate.
3. **Proposed Changes**
  - 3.1 It is proposed to issue a Direction to the Agency advising it to interpret and apply the fees payable in Table 1, Part 6 of Schedule 4 of the Civil Legal Services (Remuneration) Order 2015 as allowing the Full Composite Fee of £1,200 where the Respondent withdraws the decision under appeal on the same day as the substantive hearing and the information to allow reconsideration of the decision was provided in a timely manner.

Q1. Do you agree that the appellant's solicitor should be entitled to the Full Composite fee where the decision under appeal has been withdrawn by the Respondent (Home Office) on the same day as the substantive hearing?

3.2 The Direction provides that the withdrawal of the decision is effective when communicated to the Appellant or his/her Solicitor by the Respondent and the Agency shall require written confirmation evidencing when the decision was withdrawn. This confirmation shall be in the form of the Notice of Decision signed by the Judge of the First-tier Tribunal or Upper Tribunal together with any withdrawal decision letter or email issued by the Respondent, either of which must state clearly when the decision was withdrawn. This applies for payment of the Full Composite Fee, or 20% of the Composite Fee if the Respondent withdraws the case prior to the day of the substantive hearing.

Q.2 Do you agree that the solicitor should be required to provide written evidence of when the decision was withdrawn?

3.3 The solicitor must provide detail of whatever new evidence or reasons were submitted to the Respondent in advance of the decision being withdrawn by the Respondent. The solicitor will have been expected to have availed of the reconsideration facility offered by the Respondent in appeals before the First Tier Tribunal. This is the facility established to provide an opportunity for cases to be reconsidered where the Solicitor considers there is substantial new evidence or strong reasons for the decision to be reconsidered ahead of an appeal hearing.

Q.3 Do you agree the solicitor should avail of the reconsideration facility offered by the Home Office in appeals before the First Tier Tribunal?

3.4 The solicitor must provide details of the date they obtained the new evidence or became aware of the reasons which led to the Respondent withdrawing the decision. If the evidence or reasons were not submitted to the

Respondent promptly, without good reason, then the Agency may pay the 20% composite fee.

Q.4 Do you agree that the Agency may pay the 20% composite fee where the solicitor did not promptly submit new evidence or reasons which would have allowed the decision to be reconsidered?

3.5 Where the original Home Office decision is considered to be unsustainable, pursuant to the Home Office Guidance on Withdrawing decisions and conceding appeals – Guidance for presenting officers (see the Draft Direction), the Agency will expect that an application for the Appellant's costs will have been made to the Judge of the Tribunal. The Agency shall require written confirmation that this application has been made. If the representative is successful in the application for costs, the representative must confirm this to the Agency. The Agency will not pay any amounts to the representative, if costs are awarded to the Appellant.

Q.5 Do you agree that the solicitor should apply to the Tribunal for the Appellant's costs pursuant to the Home Office Guidance?

#### 4. Impact Assessments

4.1 The Department has completed screening exercises for the equality, rural needs, regulatory, human rights, and privacy impact of the proposed amendments.

4.2 The policy has been screened out in respect of each of the impacts.

4.3 These decisions will be reviewed following the completion of the consultation exercise, taking account of any additional evidence received. The reports of the screening exercises are appended to the consultation document.

Q.6 Do you have any comment on the impact screening conducted by the Department?

## 5. Responding to the Consultation

5.1 The DOJ invites views on any issues raised by this consultation document including the accompanying impact screenings. Please submit your response to this consultation to:

Legal Aid Technical Amendments Consultation  
Enabling Access to Justice Division  
Department of Justice  
Massey House  
Stormont Estate  
Belfast  
BT4 3SX

Email: [feefixes@justice-ni.x.gsi.gov.uk](mailto:feefixes@justice-ni.x.gsi.gov.uk)

Tel: 028 9016 9526

Text phone: 028 9052 7668

5.2 Responses must be received by **2pm, 9 October 2019**.

## 6. Next Steps

6.1 Following the consultation exercise, the draft proposals will be finalised and taken forward as appropriate.

## Annexes

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