

2018.11.20

9 Deputy M.R. Higgins of St. Helier of Her Majesty's Attorney General regarding instances in which a determination was made that their claims for costs payable to a defendant's advocate could be contested:[OQ.188/2018]

Further to written question 244/2018, will Her Majesty's Attorney General advise Members how his department determines whether the claim for costs payable to a defendant's advocate should be contested and what is the process for determining whether they are reasonable in amount in cases where the magistrate has ordered the defendant to be paid reasonable costs, including where the Crown has issued no evidence?

Mr. R.J. MacRae, H.M. Attorney General:

Where a defendant is acquitted in the Magistrate's Court, either because the prosecution has offered no evidence or he has been acquitted after a trial, the defence may apply to the magistrate for an order that they be paid their reasonable costs out of public funds. The application is made under Article 2.1(c) of the Costs in Criminal Cases (Jersey) Law 1961. If the court makes an order for payment of such costs, the defence sends a bill to my department. Usually the bill is not considered to be reasonable as it stands and is scrutinised, applying the principles outlined in practice directions issued by the Magistrate's Court and the Royal Court. Once the bill has been scrutinised in that way in my department, an offer is made to the defence of a sum thought to be a reasonable sum reasonably sufficient to compensate the defendant. There is then often a process of negotiation, which sometimes leads to an agreed sum. If a sum is agreed and the Magistrate's Court Greffier regards the sum as reasonable, then he will pay the bill. If he regards it as excessive, then he will order the bill to be taxed by him in that court. If there is not an agreement between the defence lawyers and my department, then the matter will be taxed by the magistrate and assessed by the Magistrate's Court Greffier in the usual way. In assessing the reasonability of the bill, both my department and, one would hope, the defence and certainly the Magistrate's Court Greffe apply the principles contained in a practice direction issued in 2005 in relation to taxation of costs in that court.

3.9.1 Deputy M.R. Higgins:

Can the Attorney General tell us what happens in circumstances where the lawyers do not feel that they are getting compensated for their efforts on behalf of their client? Are they entitled to claim it from their client?

The Attorney General:

If the defendant is not on legal aid - and most defendants are on legal aid - then if there is a gap between the sum which an acquitted defendant receives out of central funds and the sum which he has been invoiced by his lawyer, then he must bridge that gap himself by reference to his own funds.

3.9.2 Deputy M.R. Higgins:

Does the Attorney General feel that is just in the circumstances that when a person either has been charged with an offence and no evidence is put forward or they are found not guilty should end up paying money for something that they have not done or the court has judged they have not done? Is it reasonable that lawyers should be able to charge extra money in those circumstances? Because otherwise ...

The Deputy Bailiff:

Deputy, I am not sure you can ask the Attorney for an opinion on whether something is right or wrong. You can ask him what the law is and to provide information, but his view on whether it is just or not is neither here nor there. That is a political judgment, it seems to me.

Deputy M.R. Higgins:

Yes. Can I ask the Attorney General then whether he feels that lawyers' costs are excessive in many cases and leading to members of the public having to pay money themselves?

The Attorney General:

That is a difficult question for me to answer, but what I can inform the Deputy is that the statute is clear that the costs of the defence which are payable out of central funds, out of state funds, on an acquittal are limited to those which are reasonably sufficient to compensate the accused for expenses properly incurred.

[10:30]

If his lawyers have gone further than that and incurred greater expenses which are not reasonably sufficient to compensate the accused by taking a particular approach to the case and perhaps incurring costs unreasonably, then those costs are not to be met by the public pursuant to the 1961 law.