

LSA Circular 04/24

22 May 2024

Dear Practitioner,

Counsel Certification in Summary Cases

This Circular will be of interest to practitioners dealing with summary cases.

1. Background

- 1.1 The Agency has identified that in a small number of summary cases counsel has been certified; this is ultra vires by virtue of Article 28(2) of the 1981 Order:

Article 28(2) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 states:

Free legal aid given for the purposes of any defence before a magistrates' court shall not include representation by counsel except in the case of an indictable offence where the court is of opinion that, because of circumstances which make the case unusually grave or difficult, representation by both solicitor and counsel would be desirable.

- 1.2 Limited certificates granted for counsel in summary cases are also considered ultra vires.
- 1.3 Under the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 there are no fees set for counsel in respect of summary cases.

2. What this means in cases where counsel has been certified in summary cases

2.1 In a small number of cases payment has been sought by counsel and in some of these cases payment was made in error. The Agency will write to counsel who received payment for a summary case and indicate that as we do not consider payment should have been made we will recoup the sums paid.

2.2 In cases where payment has been sought but not yet paid the fee line will be withdrawn, with the explanation referencing this Circular.

3. What this means from now on

3.1 This matter has been brought to the attention of the Court and the Agency will put in place measures to identify cases which purport to include certification for counsel in summary matters and will write to the relevant solicitor highlighting that in the Agency's view such certificates have no lawful basis.

Yours faithfully,



Paul Andrews
Chief Executive