

2025.06.24

3.5 Connétable A.S. Crowcroft of St. Helier of H.M. Attorney General regarding legal cost reimbursement for acquitted individuals or those with no evidence presented against them (OQ.154/2025):

Where a person is tried in the Magistrate's Court or Royal Court and is either found innocent or acquitted due to no evidence being presented by the prosecution, and awarded costs, will His Majesty's Attorney General advise what proportion of the person's legal costs will be reimbursed and, if the proportion is not 100 per cent, explain why?

Mr. M. Jowitt, H.M. Solicitor General (rapporteur):

The proportion of a successful defendant's costs which will be reimbursed to them from the public purse is an amount that is assessed to be reasonably sufficient to compensate them for costs reasonably and properly incurred and which are reasonable in amount. That is the Costs in Criminal Cases (Jersey) Law 1961. The amount that might be recovered may be 100 per cent of what they have spent on the lawyer, it may be less and, in some instances, it may be appreciably less. The question is not how much they have in fact spent on their lawyer but whether what they have spent is properly incurred and is reasonable in amount. If the amount of those costs cannot be agreed with the prosecution, then those costs will be assessed by a taxation officer whose job it will be to determine whether the costs claimed have been properly incurred and are reasonable in amount. One of the things a taxation officer will consider when carrying out that assessment is the fee rates for lawyers which have been fixed by the Bailiff and which are known as Factor A rates. Those rates set out for taxation purposes the maximum hourly rates applicable to private practice lawyers. Because the Jersey legal market is a free market, defendants who are too wealthy to qualify for legal aid are free to instruct their lawyer of choice. Lawyers are free to set their own fee levels. In many instances those levels will be higher, and sometimes significantly higher than the Factor A rates set by the Bailiff. That discrepancy between what the Court determines the public purse should pay to reimburse a successful defendant and what the defendant's lawyers have charged them, will in many instances explain why what a successful defendant recovers after taxation is less than what they have spent.

The Deputy Bailiff:

You need to bring your answer to an end now because it has been nearly 2 minutes.

The Solicitor General:

Yes, I am grateful. That is all I will say. Taxing officers have a responsibility not to write a blank cheque on the public purse; they assess for reasonableness and make an order accordingly.

The Deputy Bailiff:

A supplementary and then questions from Deputy Warr and Deputy Gardiner.

3.5.1 The Connétable of St. Helier:

I am troubled by the use of the word "wealthy". Is there not a problem that hard-working local families with a mortgage may be deterred from seeking to prove their innocence because of the risk of financial ruin? I am aware of a particular case in which the costs are tens of thousands of pounds more than have been awarded. I am not sure, having looked at them, that they were improperly incurred or indeed that they were unreasonable.

The Solicitor General:

I did not use the word “wealthy” in any sense to connate wealth. I meant to say that you have too much wealth, it may be quite a low standard to qualify for free legal aid.

[10:30]

I am aware of the case which the Connétable refers to. That was a case in which the fees were subject to taxation. The taxing officer determined that the reasonable amount of fees was considerably lower than that which had been charged by the lawyer.

3.5.2 Deputy D.J. Warr of St. Helier South:

If it is agreed that more financial assistance should be given to Islanders to meet their legal costs in cases where they are acquitted of a crime, what potential sources of funding are there?

The Deputy Bailiff:

Solicitor, can you answer this question or not?

The Solicitor General:

I do not think that is a question I can answer. It is probably a policy question for others.

The Deputy Bailiff:

Is there any other question you wanted to ask?

Deputy D.J. Warr:

If he cannot answer the question, I guess I cannot really follow that up.

The Deputy Bailiff:

It is not really a question for the Solicitor.

3.5.3 Deputy I. Gardiner of St. Helier North:

Would the Solicitor General advise if the fees established by the Bailiff’s office are publicly available so people can assess what lawyer they can afford to hire to be able to reimburse 100 per cent?

The Solicitor General:

Yes, the Factor A rates are publicly available on the Jersey Legal Information Board. I should say that lawyers really ought to have a duty at the outset to advise a client, not only what their own fees are, but what the Factor A rates are and explain that even if a defendant is acquitted they may well recover less in costs than they have spent. That information enables a defendant, as it were, to shop around for a more reasonably-priced lawyer.

3.5.4 Deputy I. Gardiner:

If the rates that are published on their website are realistic for the private market that currently exists in Jersey and if there is a duty of the lawyer to inform that their charges are higher than the rate the Bailiff pays?

The Solicitor General:

I am so sorry, I am not sure I understood the question. Can I ask the Deputy to repeat it?

Deputy I. Gardiner:

First question: the rates that are currently available, are they average, above the average, less than average on the private market? The second part was if there is a duty of the private lawyer to inform their client about the existing rates that they will be reimbursed?

The Solicitor General:

Well they are the rates that have been determined by the Bailiff to be appropriate and reasonable to reimburse lawyers' fees in the private sector on taxation. Is there a duty? In my view, there is a duty on a lawyer to inform a client of the financial ramifications of that lawyer acting for them.

3.5.5 The Connétable of St. Helier:

I hope I am not being impertinent if I could just begin by saying I feel slightly uncomfortable asking these questions with you in the Chair. I think perhaps it would have been more appropriate for the Greffier to have chaired this particular question. I do not know whether you want to respond to that now or ...

The Deputy Bailiff:

Well there is no facility to obviously ask questions of a Presiding Officer, it is simply Question Time and you should not feel at all uncomfortable but I can see the point you make. I will bear that in mind if similar questions are asked in the future.

The Connétable of St. Helier:

I am grateful. His Majesty's Solicitor General seems to me to be pointing the finger to some extent at overcharging lawyers in the Island for the difficulty that some people find themselves in when seeking justice. Is it not the case that the Law Officers' Department does have to bear some responsibility in this matter because it is that department that can escalate a case and mean that it is prolonged and perpetuated and ends up costing the litigants far more than they anticipated?

The Solicitor General:

I am not going to comment on a particular case. The Law Officers' Department prosecutes when the prosecutor's test is met and continues for as long as there is a realistic prospect of conviction. If the Law Officers/the Attorney General is deemed to have behaved inappropriately in a particular prosecution, it is always open to a Court to order that costs are paid on what is called the "indemnity basis", which is a somewhat more punitive basis and means more can be recovered. The case which the Connétable I know has foremost in his mind was not a case which resulted in an award cost on the indemnity basis.