

Criminal Procedure Rule Committee
Invitation to comment on potential amendments to rules in CrimPR Part 46

Annexe 2
Extracts from Regulations

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Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013

2 Interpretation

In these Regulations—

“the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“advocate” means a person who is an authorised person for the purposes of section 18 of the Legal Services Act 2007 in relation to the exercise of a right of audience;

“criminal legal aid” means advice, assistance and representation made available under sections 13, 15 and 16 of the Act;

“the General Regulations” means the Criminal Legal Aid (General) Regulations 2013;

“junior advocate” means any advocate who is not a Queen's Counsel;

“provider” means a person who has entered into an arrangement with the Lord Chancellor under section 2(1) of the Act (arrangements) to provide criminal legal aid under Part 1 of the Act;

“relevant court” means the court before which the criminal proceedings are taking place or are to take place; and

“representation order” means a document which records a determination made under section 16 of the Act (representation for criminal proceedings).

9 Withdrawal of determinations by the court

(1) The court before which any criminal proceedings other than those listed in regulation 9(a), (b) and (d) to (i) of the General Regulations are taking place may withdraw a determination under section 16 of the Act that an individual qualifies for representation where—

- (a) the individual declines to accept the determination in the terms which are offered;
- (b) the individual requests that the determination is withdrawn; or
- (c) the provider named in the representation order which recorded the original determination declines to continue to represent the individual.

(2) Where the court withdraws a determination—

- (a) the court must provide written notification of the withdrawal to the individual in whose favour the original determination was made and to the provider named in the representation order which records the determination; and
- (b) the Director must provide written notification of the withdrawal to any advocate instructed in the proceedings.

10 Selection of representatives

This Part makes provision in relation to the right, conferred by section 27(4) of the Act (choice of provider of services etc), of an individual who qualifies for representation for the purposes of criminal proceedings by virtue of a determination under section 16 of the Act (representation for criminal proceedings), in accordance with Part 2 of these Regulations or Part 5 of the General Regulations, to select a representative.

11 Determinations by the relevant court under this Part

(1) The relevant court may make a determination under this Part only if it has considered an application made in accordance with paragraph (2).

(2) For the purposes of paragraph (1), an application must—

- (a) be made by the individual seeking the determination;

- (b) be in writing; and
 - (c) specify what the relevant court is being asked to determine and the grounds upon which it is being asked to do so.
- (3) When it makes a determination under this Part, the relevant court must give reasons.

12 Representation by a provider in criminal proceedings

In relation to any criminal proceedings described in section 14(a) to (f) and (h) of the Act (criminal proceedings), the right of an individual conferred by section 27(4) of the Act does not include the right to select a provider unless the provider—

- (a) is employed by the Lord Chancellor to provide criminal legal aid;
- (b) is permitted to provide criminal legal aid to the individual under the arrangements the Lord Chancellor has made with the provider; or
- (c) is representing the individual before the Court of Appeal in an appeal against a decision of the Upper Tribunal in proceedings in respect of a decision of—
 - (i) a decision of the Financial Conduct Authority;
 - (ia) a decision of the Prudential Regulation Authority;
 - (ii) the Bank of England; or
 - (iii) a person in relation to the assessment of any compensation or consideration under the Banking (Special Provisions) Act 2008 or the Banking Act 2009.

13 Selection of a provider by co-defendants

(1) Subject to paragraph (2), in relation to any criminal proceedings involving co-defendants, the right of an individual conferred by section 27(4) of the Act does not include the right to select a provider who is not also instructed by the individual's co-defendant (or by one of the individual's co-defendants, if there are more than one) unless the relevant court or the Director determines that—

- (a) there is a conflict of interest between the individual and that co-defendant; or
 - (b) there is likely to be a conflict of interest between the individual and that co-defendant.
- (2) Paragraph (1) does not apply where the provider selected by the individual is an advocate.
- (3) In this regulation “co-defendants” means defendants whose cases are to be heard together.

14 Change of provider

(1) Subject to paragraph (2), where an individual has selected a provider in criminal proceedings, the right conferred by section 27(4) of the Act does not include a right to select a provider in place of the original provider.

(2) The relevant court may determine that the individual can select a provider in place of the original provider in the circumstances set out in paragraphs (3) or (4).

(3) The circumstances are that the relevant court determines that—

- (a) there has been a breakdown in the relationship between the individual and the original provider such that effective representation can no longer be provided by the original provider; or
- (b) there is some other compelling reason why effective representation can no longer be provided by the original provider.

(4) The circumstances are that the relevant court determines that—

- (a) the original provider—

- (i) considers there to be a duty to withdraw from the case in accordance with the provider's professional rules of conduct; or
- (ii) is no longer able to represent the individual through circumstances outside the provider's control; and
- (b) the original provider has supplied the relevant court with details as to—
 - (i) the nature of any such duty to withdraw from the case; or
 - (ii) the particular circumstances that render the provider unable to represent the individual.

15 Choice of provider following withdrawal of a determination

- (1) Paragraph (2) applies where, in relation to an individual—
 - (a) a determination is withdrawn in accordance with regulation 26 of the General Regulations or regulation 9 of these Regulations; and
 - (b) a subsequent determination under section 16 of the Act that the individual qualifies for representation is made in respect of the same proceedings.
- (2) Subject to paragraph (3), the right of an individual conferred by section 27(4) of the Act does not include a right to select a provider other than the provider named in the original representation order.
- (3) The relevant court may determine that the individual can select a provider other than the provider named in the original representation order if that court determines that there are good reasons why a different provider should be selected.