



The Attorney General Falkland Islands

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The Attorney General's Guidance on Prosecution Cost Orders

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1. Introduction

1. Criminal offending is prosecuted by the Attorney General on behalf of the State and criminal proceedings are therefore commenced in the name of the Crown. The reason for this is because it is the responsibility of the State to protect society by upholding the Rule of Law and laying charges against those accused of criminal offending where there is sufficient evidence to charge the person and charging is in the public interest.
2. Part 30 of the Criminal Procedure and Evidence Ordinance 2014 gives the Courts the power to order a person convicted of a criminal offence to pay the costs of the prosecution.
3. Where a defendant is convicted of a criminal offence the general policy is that the prosecution will seek a costs order against the defendant in order to recover, on behalf of the public purse, some of the cost involved in bringing the criminal proceedings.
4. The purpose of this guidance document is to set out the circumstances in which the prosecution will seek a costs order and to set out a scale of costs which provides guidance on the level of costs incurred in various types of proceedings.
5. The scale of costs is a guideline and the amount of costs sought in individual cases will depend on the circumstances of each case.

2. Scope

6. Prosecution costs exclude the costs of the investigation, which must be met by the Royal Falkland Islands Police or the Department of the Falkland Islands Government that investigated the criminal offence.
7. The prosecution can only apply to recover costs that have been incurred directly as a result of the criminal proceedings. Such costs generally cover the work of prosecution lawyers in reviewing the case, providing advice, reaching charging decisions, serving court papers and preparing and presenting the case at court. Prosecution costs can also include the attendance of expert witnesses called by the prosecution or the preparation of expert reports where the report was not commissioned as part of the investigation.

3. Power to Award Costs

8. The power to make a costs order is exercised by the Courts and the prosecution has no automatic right to a costs order being made.
9. The award of costs is governed by Part 30 of the Criminal Procedure and Evidence Ordinance 2014. Some of the circumstances in which the prosecution can be awarded costs are:
 - (a) Where a defendant is convicted of an offence.
 - (b) Where a defendant appeals against conviction or sentence and the appeal fails.
 - (c) Where a defendant makes an application without reasonable or proper grounds.
 - (d) Where a person has wasted costs by acting unnecessarily or improperly.
10. When the Court makes a cost order the award must be a sum that appears to be just and reasonable in the circumstances of the case. The prosecution is not required to present a detailed schedule of costs and the court approaches the issue in general terms.
11. The Court will not generally make a cost order unless the defendant has the means to pay within a reasonable period of time.

4. Application for Costs

12. The prosecution will make an application for costs unless there is a good reason not to make an application. Circumstances in which it may **not** be appropriate to make an application for costs include:
- (a) Cases where the circumstances of an individual case mean that it would be unmeritorious or impractical to make an application.
 - (b) There is clear information that the defendant is in such dire financial circumstances that the Court is likely to consider the award of costs as oppressive.
 - (c) A substantial custodial sentence is likely to be imposed.
 - (d) In exceptional cases where there is clear information that the award of costs will cause undue hardship.

5. Wasted Costs

13. The Court can order a legal representative or third party to pay costs incurred as the result of an improper, unreasonable or negligent acts or omission by them or any of their employees. This type of order is known as a wasted costs order.
14. The Court can award costs where the Court thinks that it is unreasonable to expect a party to incur those costs, in the light of the negligent act or omissions of another party or person. The costs awarded should be by way of compensation and the Court should not add to this figure to show its disapproval.
15. The prosecution will ask the Court to make a wasted costs order where:
 - (a) There has been an unnecessary or improper act or omission; and
 - (b) Costs have been incurred as a result of that act or omission.
16. The prosecution will only make an application for a wasted costs order where the act or omission relied upon is very clear. The prosecution may be put to proof on the causal link between any alleged default and the costs claimed and a clear causal link must therefore exist.
17. Applications for wasted costs orders should be made sparingly, but there are some lapses in standards which can never be excused, for example gross inefficiency or serious impropriety. Some lapses can result in such inconvenience or substantial costs that the prosecution ought to apply for costs in order to recover for the public purse the needless waste of public money.

6. Scale of Costs

18. Applications for costs will either be for the full amount of prosecution costs incurred or for a contribution towards the costs incurred. Applications for full prosecution costs will only be made where the circumstances of a case dictate that such an application is appropriate and the defendant has the means to pay.
19. The scale of prosecution costs set out below relates to situations where the prosecution only seeks a contribution towards the cost of the proceedings. The scale of costs does not therefore reflect the total cost involved in a prosecution which is much greater than the contribution that is sought.
20. The scale of prosecution costs anticipates the standard categories of criminal proceedings within the Falkland Islands and sets out a standard amount that will be sought by way of a contribution towards the prosecution costs. The scale takes into account that different categories of criminal proceedings have different levels of complexity and sets out "lower", "average" and "higher" contribution figures so that applications can reflect the complexity of the proceedings. The scale acts as guidance only and there may be cases where it is justifiable to seek an amount of costs, higher or lower, that differs from the figure suggested on the scale.
21. The scale of prosecution costs relates only to single defendant cases and in cases involving multiple defendants the application for costs will differ.
22. It should also be remembered that in the Falkland Islands the prosecution conducts more work per criminal case than in England and Wales due to the fact that only the prosecution, and not the Royal Falkland Islands Police or other Investigating Department, has the authority to commence a prosecution. This means that in each and every case the prosecution will have reviewed the case file and issued a full written charging decision.

PROSECUTION SCALE OF COSTS

TYPE OF PROCEEDINGS	LOWER	AVERAGE	HIGHER
Summary Offence Guilty Plea by Post	N/A	£100	N/A
Summary Offence Guilty Plea at First Hearing	N/A	£150	N/A
Summary Offence Guilty Plea at Subsequent Hearing	£160	£200	£250
Summary Offence Guilty Plea at Trial	£250	£300	£350
Summary Offence After Trial	£850	£1100	£1500
Indictment Offence Guilty Plea at First Hearing	£250	£300	£350
Indictment Offence Guilty Plea at Subsequent Hearing	£1100	£1500	£2000
Indictment Offence Guilty Plea at Trial	£2500	£3000	£3500
Indictment Offence After Trial	£3750	£4750	£5750
Appeal Proceedings Against Sentence	£400	£500	£600
Appeal Proceedings Against Conviction	£650	£750	£850

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