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TAXING OFFICE

COURT OF JUDICATURE OF NORTHERN IRELAND

In the Matter of a Reference under Section 36 of The Criminal Justice Act 1988

THE KING

v

ROBERT GEORGE DAVID ANDERSON

DECISION ON COSTS

BEFORE MASTER MOORE:

Introduction:

[1] The Defendant's Solicitors (Madden & Finucane) and Counsel (Mr Gregory Berry KC & Mr Luke Curran BL) requested a review of my assessment of their fees in respect of a DPP reference application to the Court of Appeal under section 36 of the Criminal Justice Act 1988.

[2] The representatives are requested to consider the terms of this decision and to inform the Taxing Office in writing within one week as to whether there is any reason why the judgment should not be published on the Judiciary NI website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale, then it may be published in its present form.

[3] The Defendant (Robert Anderson) was convicted on 16 April 2024 by a jury after a trial, on several counts of indecent assault contrary to section 52 of the Offences against the Person Act 1861. He was sentenced on 5 November 2024 by HHJ Kerr KC to a determinate custodial sentence of 18 months, together with a 5-year Restraining Order.

[4] The section 36 reference application was brought by the DPP on the basis that the sentence imposed was unduly lenient. Following a hearing on 12 June 2025 the Court of Appeal gave an ex-tempore decision, granted leave to have the sentence reviewed, allowed the DPP application and increased the sentence to 3

years' imprisonment. The court's reasons are set out in a short, reported judgment *R v Robert George David Anderson* [2025] NICA 33. Legal Aid was granted for the Defendant's Solicitor and two Counsel for the section 36 reference application.

Assessment of costs in a section 36 reference case:

[5] Costs for representation in proceedings before the Court of Appeal, where Legal Aid has been granted by the Court, are normally assessed in accordance with the procedures set out in Part 2 of the Criminal Defence Services (Remuneration) Order (NI) 2016 ("the 2016 Order"). Although the 2016 Order applies to the determination of remuneration payable to representatives in respect of "*proceedings in the Court of Appeal*", a section 36 reference is not included in the definition of either "*criminal defence services*" or "*relevant proceedings*" under the Order.

[6] Schedule 3 para 11(1) of the Criminal Justice Act 1988, provides that:

"Where on a reference to the Court of Appeal under section 36...a person whose sentencing is the subject of a reference...shall be entitled to the payment out of central funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this paragraph shall be ascertained, as soon as practicable, by the registrar of criminal appeals, or as the case may be, under Supreme Court Rules."

[7] Paragraph 12 of the Criminal Justice Act 1988 refers to the application of Schedule 3 in Northern Ireland, however apart from confirming that the Taxing Master will carry out the assessment, the procedure for ascertaining the costs of a Defendant's representative for a section 36 reference case in this jurisdiction is not defined in the legislation. As appears from para 11, the Taxing Master is required to ascertain what payments are "*reasonably sufficient to compensate*" the defendant for the cost of his representation.

[8] The practice in Northern Ireland for assessment of costs in DPP reference cases, has generally followed the process applicable to taxation of costs in a criminal appeal when the Court has granted Legal Aid. Articles 9-11 of the 2016 Order set out the requirements for the submission of claims and the determination of representatives' remuneration for criminal appeals. Article 13(1) provides for a review where a representative is dissatisfied with the amount of remuneration allowed by the Taxing Master. It has also been the practice in determining the amount of costs that the court will have regard to all the circumstances including the following factors set out in Order 62 Appendix 2 Part 1:

(a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved

(b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel

(c) the number and importance of the documents (however brief) prepared or perused

(d) the place and circumstances in which the business involved is transacted

(e) the importance of the cause or matter to the client

(f) where money or property is involved, its amount or value

(g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

[9] Although the Criminal Justice Act 1988 refers to costs being paid from central funds, in Northern Ireland the representatives' costs are usually paid by the Legal Services Agency, not from Central Funds.

The Solicitors' claim for costs:

[10] The claim by Madden & Finucane for work on the DPP reference included a short report on the case, an itemised time record and vouching documents for outlay. The solicitors' time claim is summarised below. The applicable hourly rate was £102 per hour up to 31 May 2025 and £155 for work thereafter. An uplift of 150% was also claimed. The total claim for the solicitor, based on hours plus the uplift, was £33,183.26, excluding VAT and outlay.

Preparation time	Grade A (solicitor)	105 hours 55 mins
	Grade C (clerk)	7 hours 30 mins
Hours in court	Grade A	1 hour 30 mins
	Grade C	1 hour 30 mins
Travel & waiting time		5 hours 55 mins
Mileage		72
Letters, emails and calls		382
Disbursements		£396

Counsel's claim for costs:

[11] Counsel submitted a report on case, together with the defence skeleton argument opposing the section 36 application. The report on case summarised the history of the case, the legal issues and the sentencing authorities considered by the Court of Appeal.

[12] Senior Counsel (Mr Berry KC) marked a brief fee of £65,000 plus VAT. Junior Counsel (Mr Curran BL) marked his fees at 2/3^{rds} of lead counsel (£43,333.33 plus VAT). There was no breakdown of the fees marked, however the fee-note referred to the brief fees allowed in two previous taxations of DPP reference cases [*R v Jeffrey Anderson* and *R v CD / aka Legge*].

The provisional assessment of costs:

[13] The total costs claimed (including fees, outlays and VAT) for the representation of Robert Anderson in opposing the DPP application were £170,215.90. In my provisional assessment of costs on 12 January 2026, I allowed the following fees (excluding VAT and outlay):

- | | | |
|-------|------------------------------|------------|
| (i) | Madden & Finucane Solicitors | £16,065.73 |
| (ii) | Gregory Berry KC | £35,000.00 |
| (iii) | Luke Curran BL | £23,310.00 |

Representatives' request for review of costs:

[14] On 23 January 2026, the representatives requested a review of the assessments. The Solicitors' submissions were set out in a short letter to the Taxing Office dated 23 January 2026. Madden & Finucane had taken over the case from EJ Lavery Solicitors and there were some difficulties in transferring the file. Although not in the form of specific objections (which would normally be required in a criminal appeal case under Article 13(3)) the letter sets out three main points:

- (i) That the preparation work claimed was reasonable and necessary.
- (ii) That the case was complex and of an exceptional nature.
- (iii) The case was important to the client.

[15] Counsel submitted that the brief fees allowed did not "adequately reflect the unusual complexity, exceptional factual and legal difficulty, extensive preparation and the substantial work involved". Furthermore, it was submitted that "the assessment was not in keeping with the assessments" in the *Jeffrey Anderson* and *CD/Legge* reference cases, which were used by counsel as comparators.

[16] Counsel also highlighted a number of additional features from this case:

- (i) The importance of the case to the Defendant.
- (ii) That there were a greater number of counts facing this Defendant than in the *CD/Legge* case and that the offences were more serious.
- (iii) The Defendant had significant medical issues.
- (iv) There was more complexity in preparing and opposing this DPP reference, as counsel had not appeared in the lower court.

- (v) That this reference raised issues of factual, evidential and legal complexity in an historic case, including an unusual point regarding a “measured reference”.
- (vi) There were a larger number of documents to consider including sentencing guideline cases to be researched.

The hearing:

[17] Mr Berry KC appeared at the costs’ hearing with Mr Curran BL. Their solicitor Mr Madden was unavailable. Ms. Boyle of Madden & Finucane attended Counsel.

[18] Senior Counsel’s main objection to the brief fee, which I had assessed at £35,000, was that this fee was not in keeping with fees allowed to Senior Counsel in two comparator cases. In the 2021 *Jeffrey Anderson* case, £95,000 was allowed to Counsel by Master McGivern. Mr Berry had direct knowledge of the Anderson case as unusually he had been required to submit an affidavit in the case. He also referred to the more recent taxation decision in *R v CD/Legge*, in respect of which I had assessed Senior Counsel’s brief fee at £40,000.

[19] I asked Counsel about the extent of the preparatory work for the Court of Appeal. Mr Berry had not been instructed by Robert Anderson in the trial, so he had to read himself into the case. There was some delay in being briefed, due to the issues regarding the transfer of papers. He quite candidly stated that when he read the Trial Judge’s charge to the jury, he knew that there was very little prospect of an appeal against conviction. The appeal against conviction (lodged by the previous solicitors) was therefore withdrawn at a very early stage.

[20] Senior Counsel did consult with the Defendant in prison (Mr Curran confirmed he did not attend this consultation). The Defendant was described as difficult and had unrealistic expectations, however he had been carefully advised that this was always going to be a case for a custodial sentence and indeed there was a real concern that the court could increase his sentence to 5 years. Counsel had viewed the case as one of limiting the damage for this Defendant stating that it was always going to be difficult to hold onto the original sentence.

[21] Mr Berry had not kept a record of the time involved and didn’t want to estimate the time spent. He was approached in January 2025 to come into the case but was only briefed in April 2025 after the dispute with the previous solicitor was resolved. He described considerable work on the relevant authorities and drafting the skeleton argument. In particular, he had spent time discussing the unusual “measured reference” point with Junior Counsel, as this case involved historic sex offences and they were not aware of the point being raised previously in this jurisdiction. Mr Curran explained that more research was required to look into this novel point given the historic nature of these offences.

[22] I asked what fees had been marked by Senior Counsel for the DPP who moved the section 36 reference application. Mr Berry was not aware of Ms Ivers' fees but candidly stated that they would likely be a fraction of fees paid to the Defendant. He did not consider that opposing counsel's fees are comparable as DPP panel counsel are on specific fee scales or rates and are guaranteed a level of instruction by the prosecution. Mr Berry is not on the DPP panel.

[23] In respect of the solicitors' objections, although Ms Boyle had worked on this file and attended one consultation and the hearing, she was not the solicitor with carriage of the case. She stated that Madden & Finucane relied on the points set out in the letter requesting this review.

Consideration / determination:

[24] Having considered all the written and oral submissions regarding the representatives' objections to my provisional assessment of costs which should reasonably be allowed, my conclusions in respect of this review are as follows.

[25] In a reference case, the test to be applied by the Taxing Master under Schedule 3 para 11 of the Criminal Justice Act 1988, is to ascertain what funds are reasonably sufficient to compensate the Defendant's representatives for expenses properly incurred. This is essentially a test of reasonableness, which in my view involves a similar exercise to the determination of fees for criminal appeals under the 2016 Order and also in respect of the standard basis taxation of Legal Aid costs under Order 62.

[26] In respect of the determination of fees in a criminal appeal, Article 10 of the 2016 Order requires the Taxing Master to assess what work *was reasonably undertaken and properly done*, based on information provided by the representatives. Representatives are required to detail the work done, the time spent and any relevant or special circumstances relating to the case. The discretionary factors set out in Order 62 Appendix 2 Part 1 are also applicable when costs for criminal cases in the Court of Appeal are taxed.

Relevance of comparator cases:

[27] In this case Senior Counsel marked a brief fee of £65,000, primarily by reference to two comparator cases. The request for a review of the brief fee allowed (£35,000) largely focuses on the argument that similar cases should receive similar fees and that in this case the brief fee should not have been less than the fee (£40,000) allowed in the lower comparator case of *CD*.

[28] Comparator cases are sometimes referenced in support of fees claimed and can be helpful in taxation to demonstrate that the fees claimed are reasonable and reflective of the work needed on the case. Such evidence tends to be limited in detail and the comparability is often questionable. In *Adair and others v Lord Chancellor* [1996] NIJB 237 Carswell LJ highlighted the difficulties presented by arguments regarding the relevance of brief fees allowed in other cases. *Adair* involved a review of taxed fees in a complex criminal case and one

issue was the relevance of fees paid to prosecuting counsel. Although the court concluded that on taxation, regard may be had to the fees of another party in the case, “any comparison has to be done with care and caution, mindful of the differences in the responsibilities of each” [per Carswell LJ at para 254].

[29] In *Carse v Carse* [2000] NIQB the Taxing Master was criticised for giving excessive weight to comparables in determining Counsel’s fees in contested matrimonial proceedings. Girvan J, sitting with an assessor, summarised the difficulty presented by comparators as follows:

“While comparable fee claims and allowances are relevant, as indicative of the going rate in the market, considerable care must be taken in looking at comparables. As in any field of evaluation the evidential weight attaching to comparable values will depend very much on the comparability.”

Therefore, the approach of the Court has always been that evidence of comparable fees, in particular fees from other cases, needs to be treated with caution.

[30] It is also important to point out that the information available to the Taxing Office in respect of previous taxation cases is often quite limited. In *R v Jeffrey Anderson*, Senior Counsel marked a composite brief fee of £120,000 and accepted the Master’s provisional assessment of his fee at £95,000. There does not appear to have been any hearing on the costs. I do not have details regarding the legal and factual issues in that case or most importantly, the full extent of the work done by the representatives. From the limited information available, that case appears to have been more protracted and involved different legal and factual issues. In the absence of detailed information which might allow proper comparison of fees claimed and assessed, I do not consider that it is reasonable to place much weight on fees allowed to counsel in the *Jeffrey Anderson* case.

[31] *R v CD/Legge* does have some similar features to this case in respect of the type of offences and the arguments around unduly lenient sentencing. I assessed those costs however it does not follow that the same brief fee should be allowed to counsel because the cases have some similar features. An obvious difference between the two cases is that in *R v CD/Legge* the DPP reference was successfully opposed and the sentence was not increased. More importantly, the CD reference resulted in an important judgment in which the Court of Appeal provided guidance for sentencing judges, which has been relied on in subsequent Crown Court cases and was indeed cited by the court when deciding this DPP reference case.

[32] I do not accept Counsel’s argument that this case presented “a more complex jurisprudential exercise” than in the CD reference case. The sentencing methodology adopted by the trial judge in respect of Robert Anderson was clearly wrong in principle and the aggravating factors in the case were readily identifiable. Furthermore, I do not consider that the fees in this case should be determined primarily by comparing and contrasting features of another

factually similar case. It is more important to clearly set out the work done actually by the representatives in this case.

[33] One further point must be made in relation to using comparator brief fees in this case. As acknowledged by the Court in the *Adair* case, there are cases where the court can consider the brief fees marked by opposing counsel in the same proceedings. In *Crozier v Lyons* [2004] NIQB 18, the court agreed that in some cases the fees marked by opposing counsel can provide a useful “cross-check” as to whether brief fees have been reasonably marked. In a case where the opposing counsel had the responsibility of formulating the section 36 reference application and successfully persuading the Court of Appeal that the sentence was unduly lenient, it is arguable that the fees for the DPP counsel should also be considered. I asked Mr Berry if he knew what fees were marked by senior counsel (Ms Ivers KC) for the DPP. Although he wasn’t aware of the fees paid to the DPP Counsel, Mr Berry was entirely candid in pointing out that those fees would likely have been much lower than the brief fee allowed to him.

[34] I am of the view that each taxation case turns on its own merits, that comparator fees are of limited value and there is a reasonable expectation that legal representatives (both solicitor and counsel) will demonstrate the reasonableness of their fees, primarily by reference to the work done on the case. There are a range of factors to be considered and the focus is not simply on the time spent. Every legal aid taxation involves a case-specific assessment of the reasonableness of costs claimed for work done on the case, taking into account the range of factors set out in Order 62 and any other applicable legislation relevant to costs.

Counsel's fees:

[35] In assessing Senior Counsel’s brief fee at £35,000 I had carefully considered all the submitted information. In their Report on Case, Counsel referred to the case involving exhaustive work, in-depth legal research and meticulous review of the evidence presented at the trial and sentencing. A 12-page skeleton argument was prepared setting out the relevant sentencing principles and the authorities. The skeleton argument succinctly covered the main sentencing issues which were the starting point (including the measured reference point), the discounting exercise and double jeopardy. The reference hearing was short and the court delivered an ex-tempore decision on the day.

[36] In my assessment the work on this reference was not time-consuming in terms of consultations, client meetings or court appearances. The number of documents to be considered was modest and the written and oral submissions opposing the reference were focused and concise. The legal issues were not unduly complex and apart from the measured reference point, the authorities considered in this reference were all well known to the respective legal teams and the court.

[37] I have carefully considered the other features of this case referred to by counsel.

(i) The importance of the case to the Defendant.

The importance of the case to the client is a relevant factor under Order 62. Although Counsel argued that the real potential for an increased sentence was a concern for the Defendant, this will be a feature of every reference case where the appeal court is asked to consider whether the sentence was unduly lenient.

(ii) That the abuse by Robert Anderson was arguably more serious than in CD.

R v Jeffrey Anderson, R v CD and indeed this case, each involved serious offences justifying custodial sentences, but it is difficult for me to fairly determine fees in one case, based on a comparison of the facts, offences and outcomes in other cases. In a case such as this I do not consider that the number of counts in one case is a distinguishing feature of another reference case, for the purpose of measuring fees.

(iii) That the Defendant had medical issues.

At the reference hearing the court did question the significance of the medical evidence, when taken at its height the most challenging medical issue appeared to be an exacerbation of the Defendant's psoriasis and depression. This issue was largely addressed in a relatively short medical report in the appeal bundle. It is difficult to see how the work required to oppose the reference was more complex or time-consuming due to this Defendant's medical condition.

(iii) There was complexity in preparing and opposing a DPP reference, when both solicitors and counsel had not retained been in the trial.

Although I accept that some reading in time would be required of counsel who had not appeared in the trial, Mr Berry was not able to provide any indication of the time involved. I have reviewed the trial bundle and the papers lodged by the solicitors and the volume of documentation relevant to this reference was modest. Mr Berry KC had the benefit of an experienced Junior Counsel and Solicitor. The team quite properly concluded at an early point after the transfer of the file, that there was no prospect of an appeal against conviction or sentence and the sentence was very likely to have been increased. This case does not appear to be one where extensive preparatory time was required.

(iv) That there were a number of sentencing guideline cases researched and relied on in the Defendant's skeleton argument.

Given the nature of the DPP reference, it would be expected that both parties would carefully address the sentencing authorities, however the list of relevant cases, many of which would have been well-known to experienced counsel, is relatively short. The authorities were carefully explored in concise written arguments by both sides. I had noted that the measured reference point was raised by the Defence in respect of the starting point issue and it was dealt with

skillfully and appropriately by counsel. I had factored that into my original assessment of the brief fees.

[38] The assessment in this case required me to ascertain fees which would be reasonably sufficient to compensate the representatives for their work on this section 36 reference. In doing so I have taken into account all the written and oral submissions and applied the factors set out in Order 62 Appendix 2 Part 1. I consider that a brief fee of £35,000 represents fair and reasonable remuneration in this case. I cannot identify any other factors or special circumstances which would justify increasing the allowance to Counsel.

Solicitors' objections:

[39] In relation to the Solicitors' claim, it is unfortunate that I did not have the benefit of hearing from Mr Madden. I accept that he encountered some difficulty in securing the papers and that new counsel couldn't be briefed until the file was properly transferred. I am entirely satisfied however that the times allowed for preparation, consultation and court attendance were reasonable. My provisional assessment included the following allowances:

Preparation time:	Grade A (Solicitor)	45 hours (up to 1.6.25) 15 hours (1.6.25 - 12.6.25)
	Grade C	4 hours
Hours in court: (incl. consultation)	Grade A	2 hour 15 mins
	Grade C	0 hours
Travelling & waiting		2 hours 55 mins
Mileage		72
Letters, emails and calls		200 items allowed
Disbursements		£396

[40] I allowed an uplift of 85% on preparation work undertaken by the partner, which was arguably generous in respect of a case where it was clear from an early assessment by Senior Counsel that the sentence would be increased. The initial claim sought an uplift of 150%, which was entirely unrealistic. I have not been persuaded that this was a complex case for the Solicitor to conduct or that there were exceptional features which would justify an increase in the uplift. Madden & Finucane had the benefit of two experienced counsel. I agree that the application had important implications for this Defendant but that could be said of any Defendant who has been imprisoned and faces the potential for an increased sentence. Mr Anderson may have been difficult to manage but this is not a significant challenge for a solicitor with Mr Madden's experience.

[41] The Solicitor's time claim includes time for reviewing papers provided by the Defendant (before the formal transfer of the file from EJ Lavery) and for some work on progressing an appeal by the Defendant. Legal Aid was granted in this case for the representation in the DPP application, not for work in respect of an appeal against conviction or sentence. Mr Berry confirmed that the appeal against conviction was withdrawn at an early stage and the Court of Appeal granted funding only for the DPP reference.

[42] In my original assessment I did allow some time to review the previous solicitors' papers. The new solicitor was reasonably required to review the entire file, but the number of hours claimed was high. The focus of the preparatory work was to oppose the section 36 reference application, so it is difficult to understand why so much time was claimed for reviewing the ABE and trial transcripts. I have also reviewed the bundle for the hearing. The documents relevant to this reference were modest.

[43] The hourly rate increased on 1 June 2025 from £102 per hour to £155 per hour. It is notable that over 35 hours were claimed in the period 1st June to 12 June and this is very high for the preparation on what was a relatively straightforward case. Almost one full week of solicitors' chargeable time in June 2025 would not have been needed to prepare for this hearing. I allowed 15 hours for this period (not including the hearing which was separately timed and allowed) and I remain of the view that this time was reasonable.

[44] I also noted that 3 hours was claimed for reviewing the Defendant's medical records on 16 June 2025, four days after the court had delivered its ex-tempore decision which increased the sentence. This time claim was disallowed as the Defendant's sentence had already been increased by the court on 12 June (and the appeal against conviction had been abandoned in May).

[45] For the reasons set out above, I consider that the fees set out in my original assessment reasonably compensate the representatives for their work on this DPP reference application. I confirm the amount of remuneration allowed to both the Solicitors and Counsel and dismiss their objections. I make no order as to the costs of the review.

Dated 31st day of March 2026

Master (Taxing Office)