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Dear Mr Swann,

**Public Accounts Committee Evidence Session on the Northern Ireland Audit Office's
Report on Managing Legal Aid**

I have been asked to reply to your letter of 19 September to the Taxing Master.

A response from the Taxing Master to the questions raised in your correspondence is attached.

Yours sincerely,

**MAURA CAMPBELL
PRINCIPAL PRIVATE SECRETARY TO THE LORD CHIEF JUSTICE**

Mr Robin Swann
Chairperson
Public Accounts Committee
Room 371
Parliament Buildings
Ballymiscaw
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1. Under Section 59(1) of the Judicature (Northern Ireland) Act 1978 the costs of and incidental to all proceedings in the High Court and the Court of Appeal, including the administration of estates and trusts, shall be in the discretion of the court and the court shall have power to determine by whom and to what extent the costs are to be paid. The Court's discretion must be exercised subject to the Rules of the Court of Judicature and to the express provisions of any other statutory provision.

Under Section 60(1) the jurisdiction of the High Court and the Court of Appeal in relation to the taxation of costs shall be vested in the Master (Taxing Office) or such other statutory officer as may be designated for the purpose by the Lord Chief Justice and shall be exercised in accordance with rules of court. To date no other statutory officer has been so designated.

As well as various other duties, the Taxing Master is responsible for the assessment (or taxing) of bills of costs in High Court Civil Cases, Court of Criminal Appeal cases and also adjudicates on appeals and redeterminations in respect of decisions made by the Legal Services Agency. In some cases Legal Representatives have the right to apply to the High Court for a review of a decision made by the Taxing Master.

On the taxation of an assisted person's costs which are payable out of the legal aid fund, the Taxing Master is acting in an inquisitorial capacity and has a duty to protect the fund.

The assessment process is therefore carried out under a High Court order directing taxation of costs and involves consideration of the following:

- (a) Whether the hourly rates claimed are applicable
- (b) Whether the work claimed for is covered by the relevant legal aid certificate
- (c) Whether the number of hours marked are proportionate and properly claimed
- (d) Whether the costs claimed are reasonable in the overall context of the case
- (e) Whether the complexity and seriousness of the case merits an uplift on the usual hourly rate
- (f) To take account of the objections or justifications made by the lawyers and any objections from the Legal Services Agency in a formal court setting.

2. Decisions as to whether costs should be adjusted are taken in line with applying the above criteria and within the statutory framework:

- The Legal Aid Advice and Assistance Order
- The Rules of the Court of Judicature
- The Solicitors (Northern Ireland) Order
- Criminal Defence Services (Remuneration) Order
- Criminal Legal Aid Rules

All of the above are publically available on line. There is also a considerable amount of reference material in the form of legal texts books, authorities and judicial decisions relating to costs.

3. The experience of the Taxing Master in dealing with every claim for taxation in legal aid cases assures consistency along with the comprehensive/systematic application of the relevant statutes and rules.

On occasion, particularly in important cases, written decisions are published. All decisions in appeals to the Taxing Master are sent to the Legal Services Agency.

4. Taxed bills of costs issue to the respective Solicitors and must be presented to the LSA along with the Taxing Master's Certificate detailing the allowable costs and the High Court orders under which the taxation has been carried out.

5. If required statistical data should be requested via the Chief Executive of the NICTS, Ronnie Armour.

6. The Taxing Master must deal with each case on its own merits. The fact that a bill of costs is reduced is not necessarily evidence of fraud.

When the Master reduces a bill it is because the costs claimed are disproportionate or are considered to have been not reasonably incurred or due to delay in submitting the claim etc. They are not reduced on a suspicion that the work claimed for has not been genuinely incurred. Were there to be such a suspicion, the Taxing Master may request to see all the papers concerned with the case and may call the legal representative to appear before her. Following this a more solid suspicion of fraudulently claimed costs may be referred to the Law Society, the LSA or even the PSNI who may investigate the allegations.

7. The current Taxing Master, appointed in June 2015, has not as yet referred any cases of suspected fraud to the relevant professional bodies but believes that concern has been raised in the past in relation to a small number of legal practitioners. It is understood that the Law Society of Northern Ireland treat any such referral from a member of the Judiciary as a disciplinary matter.