



Access to Justice Act 1999

1999 CHAPTER 22

PART VI

IMMUNITY AND INDEMNITY

Justices and their clerks

98 Justices and clerks: immunity from costs

(1) In the Justices of the Peace Act 1997, after section 53 insert—

“53A Costs in legal proceedings

- (1) A court may not order any justice of the peace or justices' clerk to pay costs in any proceedings in respect of any act or omission of his in the execution (or purported execution) of his duty—
 - (a) as such a justice; or
 - (b) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice.
- (2) Subsection (1) above does not apply in relation to—
 - (a) any proceedings in which a justice or justices' clerk is being tried for an offence or is appealing against a conviction; or
 - (b) any proceedings in which it is proved that a justice or justices' clerk acted in bad faith in respect of the matters giving rise to the proceedings.
- (3) Where a court is prevented by subsection (1) above from ordering a justice or justices' clerk to pay costs in any proceedings, the court may instead order the making by the Lord Chancellor of a payment in respect of the costs of a person in the proceedings.
- (4) The Lord Chancellor may by statutory instrument make regulations specifying—

Status: This is the original version (as it was originally enacted).

- (a) circumstances when a court shall or shall not exercise the power conferred on it by subsection (3) above; and
 - (b) how the amount of any payment ordered under that subsection is to be determined.
- (5) No regulations may be made under subsection (4) above unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (6) In this section references to a justices' clerk include any person appointed by a magistrates' courts committee to assist a justices' clerk.”
- (2) In the Magistrates' Courts (Northern Ireland) Order 1981, after Article 6 insert—

6A “Costs in legal proceedings

- (1) A court may not order any resident magistrate, justice of the peace or clerk of petty sessions to pay costs in any proceedings in respect of any act or omission of his in the execution (or purported execution) of his duty—
 - (a) as such a magistrate or justice; or
 - (b) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a magistrates' court.
 - (2) Paragraph (1) does not apply in relation to—
 - (a) any proceedings in which a resident magistrate, justice of the peace or clerk of petty sessions is being tried for an offence or is appealing against a conviction; or
 - (b) any proceedings in which it is proved that a resident magistrate, justice of the peace or clerk of petty sessions acted in bad faith in respect of the matters giving rise to the proceedings.
 - (3) Where a court is prevented by paragraph (1) from ordering a resident magistrate, justice of the peace or clerk of petty sessions to pay costs in any proceedings, the court may instead order the making by the Lord Chancellor of a payment in respect of the costs of a person in the proceedings.
 - (4) The Lord Chancellor may by regulations specify—
 - (a) circumstances when a court shall or shall not exercise the power conferred on it by paragraph (3); and
 - (b) how the amount of any payment ordered under that paragraph is to be determined.
 - (5) Regulations under paragraph (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.”
- (3) In—
- (a) Article 145A of the Magistrates' Courts (Northern Ireland) Order 1981 (county court judge hearing certain appeals to be treated like resident magistrate in relation to immunity), and
 - (b) paragraph 2A of Schedule 2 to the Children and Young Persons Act (Northern Ireland) 1968 (member of panel formed under paragraph 1 of that Schedule to be so treated),

after “6” insert “, 6A”.

99 Justices and clerks: indemnity

In section 54 of the Justices of the Peace Act 1997 (indemnity for justices and their clerks)—

- (a) in subsection (1)(a)(i) (which refers to proceedings against a justice, clerk or assistant clerk), omit “against him”, and
- (b) in subsection (2)(b)(i) (which makes provision for the indemnification of a justice, clerk or assistant clerk on a discretionary basis), after “funds” insert “unless it is proved, in respect of the matters giving rise to the proceedings or claim, that he acted in bad faith”.

100 Assistant justices' clerks: immunity from action

In each of sections 51 and 52 of the Justices of the Peace Act 1997 (immunity for acts of justices and justices' clerks within and beyond jurisdiction), number the existing provision as subsection (1) and after it insert—

“(2) In this section references to a justices' clerk include any person appointed by a magistrates' courts committee to assist a justices' clerk.”

General Commissioners of income tax and their clerks

101 General Commissioners: immunity from action

In section 2 of the Taxes Management Act 1970 (General Commissioners), after subsection (8) insert—

“(9) No action shall lie against a General Commissioner in respect of any act or omission of his—

- (a) in the execution of his duty; and
- (b) with respect to any matter within his jurisdiction.

(10) No action shall lie against a General Commissioner in respect of any act or omission of his—

- (a) in the purported execution of his duty; but
- (b) with respect to any matter not within his jurisdiction,

unless it is proved that he acted in bad faith.”

102 General Commissioners: immunity from costs and expenses

In the Taxes Management Act 1970, after section 2 insert—

“2A General Commissioners: costs and expenses in legal proceedings

(1) A court may not order a General Commissioner to pay costs or (in Scotland) expenses in any proceedings in respect of any act or omission of his in the execution (or purported execution) of his duty as a General Commissioner.

(2) Subsection (1) above does not apply in relation to—

Status: This is the original version (as it was originally enacted).

- (a) any proceedings in which a General Commissioner is being tried for an offence or is appealing against a conviction; or
 - (b) any proceedings in which it is proved that a General Commissioner acted in bad faith in respect of the matters giving rise to the proceedings.
- (3) Where a court is prevented by subsection (1) above from ordering a General Commissioner to pay costs or expenses in any proceedings, the court may instead order the making by the relevant Minister of a payment in respect of the costs or expenses of a person in the proceedings.
- (4) The relevant Minister may by regulations made by statutory instrument make provision specifying—
- (a) circumstances when a court shall or shall not exercise the power conferred on it by subsection (3) above; and
 - (b) how the amount of any payment ordered under that subsection is to be determined.
- (5) No regulations may be made under subsection (4) above unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (6) In this section “relevant Minister” means the Lord Chancellor or, in Scotland, the Secretary of State.”

103 General Commissioners and clerks: indemnity

In the Taxes Management Act 1970, after section 3 insert—

“3A General Commissioners and clerks: indemnity

- (1) A General Commissioner or a clerk may be indemnified by the relevant Minister in respect of—
- (a) any costs or (in Scotland) expenses which the General Commissioner or clerk reasonably incurs in or in connection with proceedings in respect of anything done or omitted in the exercise (or purported exercise) of his duty as a General Commissioner or clerk;
 - (b) any costs or expenses which he reasonably incurs in taking steps to dispute any claim which might be made in such proceedings;
 - (c) any damages awarded against him or costs or expenses ordered to be paid by him in any such proceedings; and
 - (d) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim,
- unless it is proved, in respect of matters giving rise to the proceedings or claim in question, that he acted in bad faith.
- (2) A General Commissioner or a clerk shall be indemnified by the relevant Minister in respect of any such costs or expenses, damages or sums as are mentioned in subsection (1)(a) to (d) above if, in respect of the matters giving rise to the proceedings or claim in question, he acted reasonably and in good faith.

Status: This is the original version (as it was originally enacted).

- (3) Any question whether, or to what extent, a person is to be indemnified under this section shall be determined by the relevant Minister.
- (4) A determination under subsection (3) above with respect to any such costs or expenses or sums as are mentioned in subsection (1)(a), (b) or (d) above may, if the person claiming to be indemnified so requests, be made in advance before they are incurred or the settlement made.
- (5) Any such determination in advance for indemnity in respect of costs or expenses to be incurred—
 - (a) shall be subject to such limitations, if any, as the relevant Minister thinks proper and to the subsequent determination of the amount of the costs or expenses reasonably incurred; and
 - (b) shall not affect any other determination which may fall to be made in connection with the proceedings or claim in question.
- (6) In this section “clerk” means—
 - (a) any person appointed to be a clerk or assistant clerk to the General Commissioners for any division; or
 - (b) a person who assists any such person;and “relevant Minister” means the Lord Chancellor or, in Scotland, the Secretary of State.”

Coroners

104 Indemnity

- (1) In the Coroners Act 1988, after section 27 insert—

“27A Indemnity

- (1) A coroner shall be indemnified by the relevant council (without having to lay before them an account under section 27 above) in respect of—
 - (a) any costs which he reasonably incurs in or in connection with proceedings in respect of anything done or omitted in the exercise (or purported exercise) of his duty as a coroner;
 - (b) any costs which he reasonably incurs in taking steps to dispute any claim which might be made in such proceedings;
 - (c) any damages awarded against him or costs ordered to be paid by him in any such proceedings; and
 - (d) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim.
- (2) Subsection (1) above applies in relation to proceedings by a coroner only if and to the extent that the relevant council agrees in advance to indemnify him.
- (3) A coroner may appeal to the Secretary of State, or to any person appointed by the Secretary of State for the purpose, from any decision of the relevant council under subsection (2) above.
- (4) Any amount due to a coroner under this section shall be paid—

Status: This is the original version (as it was originally enacted).

- (a) in the case of a metropolitan or non-metropolitan district council or London borough council, out of the general fund;
- (b) in the case of a non-metropolitan county council in England, out of the county fund;
- (c) in the case of the council of a Welsh principal area, out of the council fund; and
- (d) in the case of the Common Council, out of the City fund.

- (5) In the case of a coroner for a coroner’s district which—
- (a) consists of two or more metropolitan districts, special non-metropolitan districts or London boroughs;
 - (b) lies partly in each of two or more Welsh principal areas; or
 - (c) lies partly in each of two or more non-metropolitan counties in England,

any amount due to the coroner under this section shall be apportioned between the councils of those districts, boroughs, areas or counties in such manner as they may agree or, in default of agreement, as may be determined by the Secretary of State.”

- (2) In the Coroners Act (Northern Ireland) 1959, after section 5 insert—

“5A Indemnity

- (1) A coroner shall be indemnified by the Lord Chancellor in respect of—
- (a) any costs which he reasonably incurs in or in connection with proceedings in respect of anything done or omitted in the exercise (or purported exercise) of his duty as a coroner;
 - (b) any costs which he reasonably incurs in taking steps to dispute any claim which might be made in such proceedings;
 - (c) any damages awarded against him or costs ordered to be paid by him in any such proceedings; and
 - (d) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim.
- (2) Sub-section (1) applies in relation to proceedings by a coroner only if and to the extent that the Lord Chancellor agrees in advance to indemnify him.”