

	<b>RSD Internal Guidance</b>	<b>RIG-2012-02</b>	
<b>Prosecution costs</b>			
<b>Date of issue/ last review</b>	January 2017		<b>Date of next review</b> July 2019
<b>RIG postholder/owner</b>		Tom Wake, Regulatory Management Team	
<b>RIG cleared by</b>		Colin Greenslade Head of Strategy, Planning and Central Regulation	
<b>RIG type</b>		Policy_____ <input type="checkbox"/> Information_____ <input type="checkbox"/> Procedure_____ <input checked="" type="checkbox"/>	
<b>Target audience</b>	RSD_____ <input checked="" type="checkbox"/> RPP_____ <input checked="" type="checkbox"/>		Policy_____ <input type="checkbox"/> Inspectors_____ <input checked="" type="checkbox"/> Admin_____ <input checked="" type="checkbox"/>
<b><u>Keywords</u></b>	Prosecution; bill of costs; investigation costs; court proceedings		
<b><u>Summary</u></b>	This rail guidance document gives advice to inspectors on how to collect information about the costs of an investigation and prosecution that may be presented as a bill of costs in the courts at the end of a successful prosecution.		
<b><u>Original consultation</u></b>	Chris Simms, Legal; John Gillespie, Head of Safety Policy & Central Regulation Sue Johnson, Deputy Director Scotland and Safety Policy; William Keag, Regulatory Management Team		
<b><u>Subsequent consultation</u></b> (reviews only)	Helen Ayers, RMT 2017		

## **Issue**

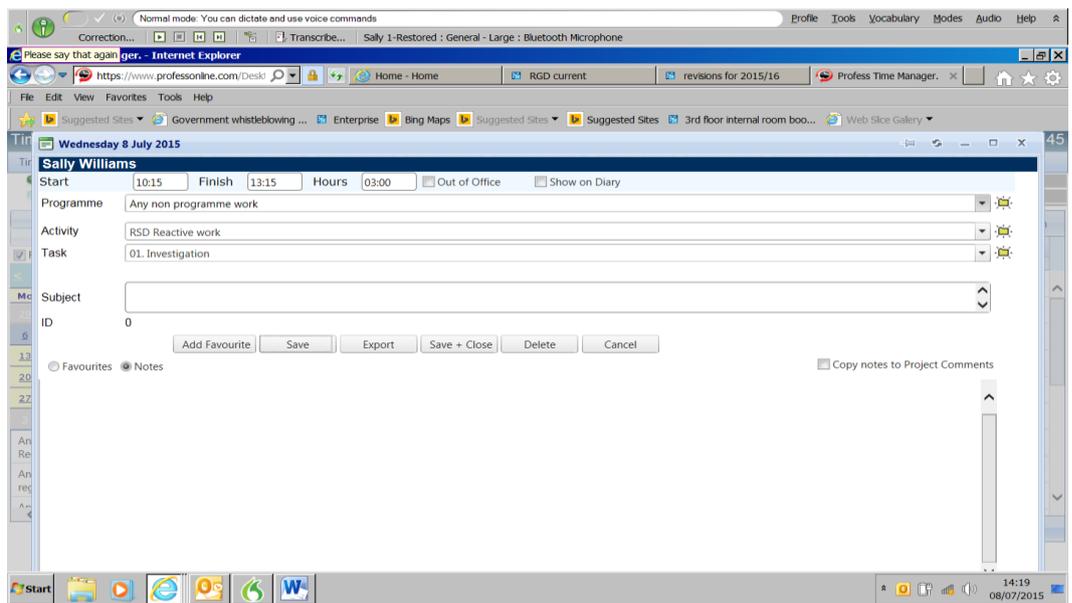
It is important that we accurately record our costs incurred during investigations that lead to prosecutions, so that we can properly apply to recover them. We have been challenged by defence lawyers about our application for full investigation and prosecution costs, particularly around the issue of costs incurred whilst another party such as BTP or RAIB, has primacy in the investigation. Clear records of costs make it possible to argue for our application.

## **Introduction**

1. The court may order a convicted defendant to pay what it considers to be “just and reasonable” costs to the prosecutor.
2. In the HSE case of R v Associated Octel Ltd (Costs), the Court of Appeal stated that the prosecution may claim the costs of carrying out the investigation with a view to prosecuting the defendant, provided a prosecution resulted and the defendant was convicted.
3. It is ORR policy to claim the costs we reasonably incurred in carrying out the investigation and bringing the prosecution. The award of costs is at the discretion of the court and may be less than the total amount sought by the prosecution.

## **Prosecution costs: procedure**

4. Details of costs incurred by ORR in the course of an investigation that may be recoverable, should be carefully recorded using ORRtime, once it becomes clear that prosecution is a possibility, usually at the [‘Site Investigation’](#) stage and is irrespective of whether ORR, BTP or RAIB has primacy in the investigation.
5. Investigation and prosecution costs should be recorded on ORRtime. It is a good discipline to record time spent on the investigation that is relevant to a potential prosecution. Once a case has been approved for prosecution, a case reference will be set up on ORRtime. Any work carried out should be recorded as follows;
  - Programme: ‘Business as usual’ ;
  - Activity: ‘RSD Reactive Work’; and
  - ‘Task’: the name of the case can be found by clicking on the drop down menu.
6. It is very important that the record on ORRtime includes details about what the time has been spent on. This should be recorded in the notes section which can be accessed via a radio button as below.



7. There are occasions when we will be conducting an investigation in parallel with the primary investigator because we need to gather evidence for a different purpose than RAIB or BTP. For example, if we required evidence to support an alleged on breach of H&S legislation. However, we are likely to be challenged in court if it seems that we have duplicated investigation activity such as evidence gathering that could have been obtained from one of the other parties and need to be able to explain why we have followed our course of action.

8. The information on costs incurred should summarise the:

- work that has been carried out (This can be entered in the notes section on ORRtime);
- dates on which the work was done (enter on relevant date);
- time taken (this is entered on the daily entry);
- disbursements claimed; and
- circumstances in which the disbursements were incurred.

These details can be entered in the notes section of the entry on ORRtime.

9. The application for investigation and prosecution costs may include the following:

- a sum in respect of time spent by ORR staff solely for the purposes of investigating and preparing the prosecution (see below for further guidance), including the cost of following reasonable lines of enquiry which did not subsequently form part of the prosecution case;
- travel costs incurred by ORR in conducting the investigation and prosecution. This includes mileage to the investigation site(s) and court, calculated using ORR mileage rates in force at the relevant time;
- the cost of searches, such as those obtained from Companies House

and/or the Land Registry;

- witness costs, including allowances for loss of earnings, travelling costs and subsistence;
- experts' and interpreters' fees;
- fees for birth certificates and for searching registers;
- the cost of carrying out PNC (Police National Computer) checks;
- printing, photographic and/or copying costs invoiced to ORR by external providers;
- the cost of drawings and models; and
- the cost of any research and testing carried out specifically for the purpose of the investigation and prosecution.

10. The cost of investigating and bringing the prosecution may, depending on the circumstances of the case, include time spent by ORR staff (not only inspectors) on the following, for example:

- making the area safe;
- gathering evidence;
- taking witness statements and attending interviews under caution ('PACE interviews');
- serving enforcement notices in relation to the matters under investigation;
- travelling for the purposes of the investigation and prosecution (such as, gathering evidence, visiting witnesses and bereaved families, and attending court hearings);
- instructing experts;
- obtaining and receiving advice from lawyers, including solicitor agents;
- liaising with any victims, including bereaved families;
- the investigation report, information(s), summons(es), initial details of the prosecution case, Friskies schedule and prosecution bill of costs;
- carrying out the materials handling officer and disclosure officer roles (normally Grade G);
- responding to defence enquiries and correspondence; and
- contacting witnesses and arranging for their attendance at court.

The above should be recorded on ORRtime as per paragraphs 5 and 6 above.

11. The bill of costs is prepared by the Legal team. In preparing the bill of costs, time should be costed at full economic cost, which may be calculated for each grade from information obtainable from RSD admin support or finance. It should contain the following:

- the job title/grade of the person who did the work;
- dates of work carried out;
- details of the work undertaken;
- sums claimed; and
- any disbursements.

**Prosecution costs: apportionment of costs between co-defendants**

12. The court may apportion costs between co-defendants. If a court decides that one co-defendant is more responsible than the others for the criminal conduct for which they are convicted, then it may order that defendant to pay a greater share of the costs than he would have had to pay if he had been tried alone. This may be a share of the whole costs of the prosecution, including costs incurred before that defendant was brought into the proceedings.

**Action**

Inspectors should keep clear notes of costs incurred during investigations from an early stage, unless it is clear at the outset that prosecution is not likely. These costs should be recorded on ORRtime as per paragraph 5 above. Any chargeable time accrued prior to approval can be entered or updated on ORRtime post approval.

Once the case has passed to the Legal team, a bill of costs should be filled out at each stage of the court proceedings and copies taken to court. **Where ever possible, defendant(s) should be told about the costs in advance of a hearing at which sentence may be passed, to give an opportunity for coming to an agreement that the Court then approves.**

When inspectors anticipate a challenge to costs, this should be discussed with RMT and/or Legal in advance of the hearing.