

**Paper for the Panel on  
Administration of Justice and Legal Services**

**Transcript Fees**

**Purpose**

This paper sets out the Judiciary's responses to the issues on transcript fees raised by the Panel on Administration of Justice and Legal Services, as recorded in paragraphs 20 and 28 of the minutes of the meeting on 23 June 2003.

**The Issues**

2. Paragraphs 20 and 28 of the minutes raise issues regarding the fees for providing transcripts of proceedings recorded by the DARTS Systems ("the transcript fee"). Paragraph 20 relates to members' concerns as to the effect of the level of transcript fees (of \$85 per page) on the litigant's ability to institute appeals and paragraph 28 raises the question of whether a party requesting a written judgment for the purpose of appeal should be required to pay for it.

**Impact of Transcript Fees on Appeals**

3. In principle, the Judiciary believes that a litigant should not be adversely affected in his ability to pursue appeals as a result of insufficient means to pay the transcript fees. To explain the position, the following appeals will be dealt with separately :

- (a) Criminal appeals (i) from the District Court and the Court of First Instance to the Court of Appeal; and (ii) from the Magistrates' Courts to the Court of First Instance.
- (b) Civil appeals (i) from the District Court and the Court of First Instance to the Court of Appeal; and (ii) from the Labour Tribunal/Small Claims Tribunal to the Court of First Instance.

***Criminal appeals from the District Court and the Court of First Instance to the Court of Appeal***

4. In relation to such criminal appeals, as provided for in the relevant practice direction, the position is as follows:

- (a) Notice of appeal with initial grounds of appeal should be filed in the first instance without waiting for any transcript.
- (b) The Appeals Registry of the Clerk of Court Office then prepares the appeal bundle and sends it to the parties. This would include:
  - (i) The transcript of the summing up and of sentencing (in the case of the Court of First Instance) and the transcript of the reasons for verdict and sentence (in the case of the District Court).
  - (ii) The transcript of other parts of the proceedings (e.g. evidence) where the court (i.e. a Justice of Appeal as the directions judge or the Registrar), on his own or on the application of any party, considers necessary. It should be noted that such consideration by the court serves as an effective safeguard against abuse of the use of transcript production, as was pointed out by the Chairman of the Panel (see para 19 of the minutes).
- (c) The appellant then files perfected grounds of appeal before the hearing which should contain references to the transcripts included in the appeal bundle.

5. In relation to such criminal appeals, the position as regards transcript fees for all transcripts included in the appeal bundle as set out above is as follows (See rule 63 of the Criminal Appeal Rules):

- (a) Where the appellant is legally aided, the Registrar has a discretion to waive the transcript fee and must do so on the direction of a judge. In practice, all legally aided appellants are provided with such transcripts without charge.
- (b) Where the appellant is unrepresented, the Registrar has a discretion to waive the transcript fee and must do so on the direction of a judge. In practice, all unrepresented appellants are provided with such transcripts without charge.

- (c) Where the appellant is not legally aided but is represented, a fee of \$17 per page as prescribed in rule 63 of the Criminal Appeal Rules is charged for such transcripts. It should be noted that where the appellant obtains an order for costs in his favour, the transcript fees are part of his costs which are recoverable from the prosecution subject to taxation.
- (d) In any other case, the Registrar also has a discretion to waive the transcript fee and must waive on the direction of a judge.

It should be noted that the criminal appeals in (a) and (b) in which transcripts are supplied free of charge make up about 90% of all criminal appeals.

### ***Criminal appeals from the Magistrates' Courts to the Court of First Instance***

6. Magisterial appeals are usually lodged under s.113 of the Magistrates Ordinance, Cap.227. For such appeals, the Magistrate is required by s.114(b) to prepare a statement of his findings on the facts and other grounds of his decision and must give a copy of such statement to both the appellant and the respondent.

7. In relation to such appeals, as provided for in the relevant practice direction, the position is as follows:

- (a) The Appeals Clerk of the Magistrates court prepares the appeal bundle. This would include Magistrate's statement of findings and the transcript of the proceedings relating to the plea, oral closing submissions, verdict, reasons for verdict, mitigation, sentence and reasons for sentence.
- (b) The transcript of other parts of the proceedings (e.g. evidence) will also be included in the appeal bundle where the court (i.e. the Registrar High Court or a Judge of the Court of First Instance) on his own or an application of any party considers it necessary.

The appeal bundle is supplied to the parties without charge.

### ***Summary Position of Criminal Appeals***

8. Having regard to paragraphs 4 to 7 above, the litigant's ability to

pursue criminal appeals from the District Court and the Court of First Instance as well as from the Magistrates' Courts should not be prejudiced as a result of insufficient means to pay the transcript fees.

***Civil appeals from the District Court and the Court of First Instance to the Court of Appeal***

9. In relation to such appeals, it is appropriate (a) to deal first with the position regarding judgments of the lower court, that is, the District Court or the Court of First Instance (“judgment of the lower court”); and (b) then to deal with the transcript of other parts of the proceedings, apart from the judgment, such as the evidence (“transcript of other parts of the proceedings”).

***Judgment of the lower court***

10. The position is as follows:

- (a) After trial, the court would usually hand down a written judgment which is supplied to the parties without charge. In the instances where the court delivers an oral judgment after trial, it would usually reduce it into writing and this is supplied to the parties without charge.
- (b) For interlocutory applications set down for hearing for say 2 hours or more (which would usually not be simple), the court would usually hand down a written judgment which is supplied to the parties without charge. In the instances where the court delivers an oral judgment, it would usually reduce it into writing and this is supplied to the parties without charge.
- (c) For simple interlocutory applications which are usually set down for hearing for less than 2 hours, the court often delivers an oral judgment. The court may reduce it into writing on its own initiative or on the request of a party and the written judgment will be supplied to the parties without charge. Where this is not done, and a party requests a transcript of the oral judgment from the DARTS recording, it will be supplied to the parties without charge. There may have been instances in the past where this practice was departed from but steps have been taken to ensure that this practice will be followed.

*Transcript of other parts of the proceedings*

11. In relation to civil appeals from the District Court and the Court of First Instance, the position as regards transcript fees for the transcript of other parts of the proceedings is set out below. It should be noted that unlike the position in criminal appeals (see para 4 above), it is usually the parties who decide whether and the extent to which the transcript of other parts of the proceedings such as the evidence should be included in the appeal bundle.

- (a) Where an application for legal aid has been made, the Director of Legal Aid is entitled to such transcripts without charge.
- (b) Where legal aid has been granted, the Director of Legal Aid is entitled to such transcripts without charge on behalf of the legally aided person.
- (c) Where the appellant is not legally aided, the position is as follows:
  - (i) The transcript fee of \$85 per page is charged. It should be noted that where a party obtains an order for costs in his favour, the transcript fees are part of his costs which are recoverable from the paying party subject to taxation.
  - (ii) In the case of a trial with witnesses, the judge in the lower court or the Court of Appeal has the power to waive the transcript fees in certain proceedings. The interpretation of the relevant rule as to the scope of the proceedings covered has not been tested in any case but it would appear to be limited to proceedings excepted from the Legal Aid Ordinance. (See Order 68 of the Rules of High Court and Order 68 of Rules of the District Court). Under the relevant rule, the court has the power to waive the fee for a transcript of the judgment and of the evidence. As explained above (para 10), the judgment after a trial with witnesses is supplied free of charge. As regards the transcript of the evidence, the court has to be satisfied under the relevant rule that the appellant is in such poor financial circumstances that the cost of a transcript would be an excessive burden on him and that there is reasonable ground of the appeal.

*Civil Appeals from the Labour Tribunal and Small Claims Tribunal to the Court of First Instance*

12. For tribunal appeals, the presiding officer/adjudicator is required in practice to write a full judgment on the case. A copy of the judgment will be provided to the parties without charge.

13. For the purpose of an appeal, transcripts of proceedings in Labour Tribunal and Small Claims Tribunal are usually not required.

*Summary Position of Civil Appeals*

14. Having regard to paragraphs 9 to 13 above, the litigant's ability to pursue civil appeals from the District Court and the Court of First Instance as well as from the Labour Tribunal and the Small Claims Tribunal should not be prejudiced as a result of insufficient means to pay the transcript fees.

**Other matters**

15. Having regard to the above clarifications, the Judiciary Administration regrets that its earlier statement on the courts having no discretion to waive or vary the transcript fee was over-simplified. This paper clarifies the position.

**Summary**

16. As stated in paragraphs 8 and 14 above, the litigant's ability to pursue criminal or civil appeals should not be prejudiced as a result of insufficient means to pay the transcript fees.