



Legal Aid  
Agency

# **Points of Principle of General Importance Manual**

Certified by the  
Costs Appeals Committee

# POINTS OF PRINCIPLE OF GENERAL IMPORTANCE

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# CONTROLLED WORK

LAA17

ADVICE AND ASSISTANCE ON LIVING WILLS\*

<b>DECISION NUMBER:</b>	<b>LAA 17</b>
<b>DATE:</b>	<b>22 September 1997</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA7/LIV/112112</b>

## POINT OF PRINCIPLE

It may be reasonable to provide legal advice and assistance in connection with preparing an "advance directive" where the individual concerned can satisfy the requirement in S.2 (2) and (3) of the Legal Aid Act 1988 that particular circumstances have arisen requiring such advice to be given.

This requirement might be satisfied if it can be shown that such a directive may be needed, i.e. that by virtue of the individual's current medical state there is a real probability of medical treatment being required in the future.

### **Guidance**

1. An advance directive enables a competent person to give instructions about what is to be done if he or she should subsequently lose the capacity to decide or to communicate. It may cover any matter on which the individual has decided views but most commonly arises in relation to decisions about medical treatment, particularly when a person has a serious life-threatening condition.
2. An advance directive may also be referred to as a "living will", "treatment refusal" or "refusal/release". It should include an informed authorisation or refusal of specific treatments. It cannot, however, insist on a specific treatment or require medical professionals to act contrary to the law e.g. active euthanasia.
3. The Costs Appeals Committee considers that legal advice and assistance in relation to an advance directive can be provided as long as the requirements in S.2(2) and (3) of the Legal Aid Act 1988 are satisfied, i.e. that particular circumstances have arisen in relation to the person seeking the advice.

4. Particular circumstances will only arise at the point when the individual realises that there is a real probability of suffering some form of future incapacity by virtue of a current condition, for example extreme age or terminal illness or diagnosis of a degenerative disease, which will prevent that person from expressing his or her wishes.
5. Particular circumstances may also arise where an individual holds a strong religious or moral belief e.g. a Jehovah's witness who wishes to decline a blood transfusion.
6. The crucial point is that the need for legal advice and assistance must stem from the particular circumstances of the individual and these circumstances should already have arisen when legal advice is sought. A person facing a hypothetical risk would not satisfy this test and would therefore not be eligible for advice under the scheme e.g. concern about the possible threat of sudden incapacity or death through a freak accident.
7. A minor illness or recurring minor medical condition would not generally satisfy this test, as such circumstances would not normally justify the preparation of an advance directive. In other words, there must be some relationship between the particular circumstances which have arisen and the need for legal advice and assistance in relation to an advance directive.
8. It is considered that the preparation of an advance directive would be unlikely in all but exceptional cases to take more than one hour in total (including taking instructions/attending on the client).

**CLA36 IMMIGRATION AND ASYLUM CASES: WAITING TIME AFTER INTERVIEWS**

<b>DECISION NUMBER:</b>	<b>CLA 36</b>
<b>DATE:</b>	<b>18 August 2003</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/KRI/121775</b>

**POINT OF PRINCIPLE**

In immigration and asylum cases, it may not be unreasonable to claim for a representative's waiting time notwithstanding that an interview is over, provided that there is evidence on the file of the reason why the representative remained, such as the need to collect a copy of the notes of the interview, or to await a decision of the Higher Executive Officer concerning the client's immigration status.

<b>DECISION NUMBER:</b>	<b>CLA50</b>
<b>DATE:</b>	<b>13 FEBRUARY 2009</b>

### **POINT OF PRINCIPLE**

The application of the “3 month rule” in Clause B.11 and B.12 of the General Civil Contract Schedule is a penalty for late submission and not an assessment decision. Accordingly, deductions made under the rule should not be extrapolated over a file sample under Rule 2.15 of the General Civil Contract Specification.

### **GUIDANCE**

The rule for assessment is set out in General Civil Contact Specification Rule 2.14, which provides that you may only claim for work that has been actually and reasonable done and supported by evidence on the file. The findings of overclaiming and lack of reasonableness of costs claimed are then extrapolated/applied across a range of files, which is to reflect the level of overclaiming identified in the audit.

The “3 month rule” is not an assessment of costs to which extrapolation can be made but a penalty for late submission.

## CLA 51 COMPLETING WELFARE BENEFIT FORMS

<b>DECISION NUMBER:</b>	<b>CLA51</b>
<b>DATE:</b>	<b>20 DECEMBER 2010</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>WAT/132877</b>

### POINT OF PRINCIPLE

“Assisting a client with IB50 (and other forms) can fall within Paragraph 16.3 of the Unified Contract Specifications where an issue of law arises and advice on that issue is necessary for the form to be completed correctly”.

### **GUIDANCE**

This Point of Principle (‘PoP’) was made in the context of a large number of applications in relation to assessments of Welfare Benefits, and was worded by Costs Appeal Committee (‘CAC’) itself. The wording of the PoP requested, “Completion of the Incapacity for Work IB50 review form involves issues of law and it is important that the form is completed in the appropriate legal terms”, was not accepted by the CAC.

The PoP as certified is essentially a reminder of the wording of Paragraph 16.3 of the Unified Contract Specification (now 10.78 of the 2010 Standard Civil Contract Specification), which refers to “certain sections of the application for Disability Living Allowance” as an example of a benefit application where legal issues may arise, but does not state that DLA is the only such benefit. The PoP confirms that, under this Contract provision, assistance with an application form for welfare benefits is capable of being claimed as Contract Work in specified circumstances. It does not, however, suggest that these circumstances will generally apply in relation to the IB50/ESA50 form, and nor is it specific to those forms. No legal issue was considered to have arisen in the cases before the Committee.

Providers seeking to claim for time in assisting with completion of forms should identify the legal issue particular to their client’s circumstances that arises and why legal advice is required to complete the form correctly. It is not sufficient to state that entitlement to the benefit is based on legal provisions, or to point to a general incongruity between the questions on a form and the statutory framework underpinning the relevant benefit. Nor can an assumption as to how the benefit authorities will treat an application create a current legal issue. Moreover, the fact that the client has difficulty in completing the form and may benefit from assistance, for instance in having questions explained or in articulating their condition, does not of itself mean that it is legal assistance that is required. In refusing to certify a separate application, the CAC stated “*the vulnerability of a client does not render a matter legal where otherwise it would not be*”.

This PoP relates only to Paragraph 16.3 of the Unified Contract Specification. Its main relevance under the fixed fee schemes should therefore be in relation to time claimed on exceptional cases.

However, where assistance with an application for (or review of continuing entitlement to) a welfare benefit is the only matter dealt with, the question of whether a Matter Start was justified at all will also depend on whether the provisions of Paragraphs 5.11 (funding code criteria), 16.1 (restrictions on welfare benefits checks) and 16.2 (whether the matter could easily have been dealt with by the client). These provisions are reproduced at Paragraphs 3.41(a), 10.76 and 10.77 of the 2010 Standard Civil Contract Specification. Given that the client will always be able to submit an application or review form without specialist legal assistance, and the client themselves will not know whether such assistance will affect the benefit they will obtain, it is particularly important for Providers to assess whether the individual circumstances of the client mean that there is sufficient benefit in incurring legal costs when deciding whether to grant funding pursuant to Criterion 5.2.1.

If a Matter Start is justified for other welfare benefits issues, any assistance in relation to welfare benefits forms must be carried out under the same Matter, and cannot justify a separate Matter Start.

The current PoP was not made in relation to the welfare benefits Matter Start Rules (Paragraphs 16.6 or 16.7 of the Unified Contract Specification; Paragraphs 10.81 and 10.82 of the 2010 Standard Civil Contract Specification). Paragraphs 16.7/10.82 make clear that provision of assistance in relation to more than one benefit is not in itself sufficient to justify more than one Matter Start. In particular, an application for or review of existing entitlement to a benefit cannot constitute a problem in respect of which proceedings can be issued or other remedies pursued (Paragraphs 5.8(b) (i)/3.42(b) (i))

A second Point of Principle had been sought to the effect that assistance in relation to an IB50 review form and application for Disability Living Allowance would satisfy the above provisions if the conditions of Paragraph 5.9 Unified Civil Contract Specification were met. The CAC stated on this application: *"This cannot be certified as a PoP. Separate matters should not be opened at this stage. Work on assistance with iB50 and DLA forms may be claimable if the criteria stated in the new PoP above are met, but all work should be claimed within the same matter unless and until more than one matter becomes a substantive dispute for the client. The initial assessment of the client's benefit situation, and advice arising, should be dealt with holistically and as one matter. The guidance at 5.8-5.12 of the Unified Contract Specification deals with this point"*.



**CLA 54 THE MEANING OF “MEETING” CONTAINED WITHIN PARAGRAPH 10.55(I) OF THE UNIFIED CIVIL CONTRACT FAMILY SPECIFICATION**

<b>DECISION NUMBER:</b>	<b>CLA54</b>
<b>DATE:</b>	<b>20 DECEMBER 2010</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/VIC/132907</b>

**POINT OF PRINCIPLE**

The word “meeting” in paragraph 10.55(i) of the Unified Contract Specification must be widely interpreted to encompass the direct giving of substantive instructions to progress matters, whether this is on a face to face basis or by telephone, video conferencing or, for clients who by reason of disability cannot use the phone, by instant messaging.

**GUIDANCE**

1. This guidance is intended to supplement the PoP. The Pop applies to assessment decisions (including recoupments) made on or after 20 December 2010. Assessments made prior to that date are not affected and remain subject to the guidance previously published on our website .
2. It should be noted that there is currently a consultation ongoing to amend the current Family Specification to the Unified Contract in respect of Phase 2 fees and other matters. If these changes proceed new criteria will apply to the decision to move to level 2, in place of the “second meeting” test. At present it is anticipated that this change will apply to decisions to grant level 2 on or after 2 May 2011. If so the above Pop would not be relevant to any grant of Level 2 under the new rules.
3. The PoP indicates that the second meeting does not need to be face-to-face to meet the requirements of level 2. If a second meeting is required this could, provided the other conditions are met, take place by telephone, video conferencing or instant messaging.
4. The criteria set out in paragraph 10.55 of the Family Specification has not, however, changed. This states that:

“You may only grant Family Help (Lower) where all relevant Funding Code criteria are satisfied, taking into account guidance from those criteria in Volume 3 of the LSC Manual (or as published on our website). Family Help (Lower) may not be granted for those disputes which do not require or involve more than one meeting with the Client, whether or not followed up by written or telephone advice.”

In order for these requirements to be met the meeting must therefore be “required” under the auspices of paragraph 10.55(i).

5. In addition, work which, under the Funding code guidance, should have been carried out at Level 1 must still be carried out at that level. The Costs Appeal Committee has also confirmed that the identification of mediation as suitable and referral of the client to a mediator is part of the initial advice and assessment carried out under Level 1. The Level 1 fee also covers the initial meeting with the client and any work immediately following from the meeting, such as a letter of advice following the meeting, making a telephone call on behalf of the client or writing to the other party on behalf of the client in order to move the case forward as well as referring the client to another organisation. It also covers general advice about the dispute and methods of dispute resolution. Legal Help should also be used for completing the application for a public funding certificate where negotiation and work under Level 2 is not appropriate eg the other party has failed to respond to any correspondence.
6. Secondly, in accordance with the certified PoP, the meeting must encompass the direct giving of substantive instructions to progress matters ie the meeting must not just take place but must also be “required”. A telephone call to confirm information or that a draft letter can be sent or to update a client is not the giving of substantive instructions and will not therefore satisfy this requirement. A meeting where instructions are received solely to apply for a funding certificate would not meet the requirements for a second meeting.
7. Whether a face to face meeting is necessary or appropriate will depend on the circumstances of the client and the issues which need to be discussed. It is recognised that in some cases a face to face meeting is not possible, perhaps because the client is in prison or is unable to travel to the office because of distance. Where a face to face meeting is not appropriate a meeting may take place by telephone or video conference (including Skype).
8. In order for the level 2 fee to be claimed there must be clear evidence on the file that the second meeting has taken place by telephone or video conference and why the meeting was required. This must be by way of an attendance note which records that a meeting took place and what instructions were given and what discussions took place.
9. The PoP also goes on to say that instant messaging may be used for clients who, by reason of disability, cannot use the phone. Instant messaging is not the same as email or text. Any meeting taking place by instant messaging must take place in real time, must involve the client giving substantive instructions and again evidence of this will be required on the file.

**CLA 55 EVIDENCE OF MEANS FOR CONTROLLED WORK CASES**

<b>DECISION NUMBER:</b>	<b>CLA 55</b>
<b>DATE:</b>	<b>6 October 2011</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/KEI/133307</b> <b>CA4/WLC/133340</b>

**POINT OF PRINCIPLE**

The effect of paragraphs 6.1 and 6.2 of Section B6 of the Funding Code, and paragraphs 2.4 and 2.5 of Section 2 of the Unified Contract Specification are as follows:

1. Where it is not practicable to obtain evidence of eligibility before commencing work, there must be an assessment of means on the basis of whatever information is available from the client, and that assessment must be recorded on the form which is signed by the client as his or her affirmation of eligibility.
2. 2.5 of the Contract also states that, in these circumstances, it is necessary for the provider to require the client to provide evidence of means as soon as practicable. This is an on-going contractual duty until it has been fulfilled and a claim for payment should not be made to the LSC without such evidence having been obtained and retained on the file.
3. In any case which on audit is found to have no such evidence on file, the preliminary decision will be to nil assess. A provider appealing or seeking review of such decision will have to provide evidence of eligibility at the time the form was signed and a satisfactory explanation as to why a claim was submitted for payment without such evidence being on file. If these two requirements are fulfilled, the reviewer/ICA will be able to exercise discretion to allow payment in appropriate circumstances.

**CLA 56 POWERS OF ASSESSORS WHEN ASSESSING A PROVIDER'S EXERCISE OF DEVOLVED POWERS**

<b>DECISION NUMBER:</b>	<b>CLA 56 (amended)</b>
<b>DATE:</b>	<b>31 May 2012 and 17 October 2012 (amended 24 January 2014)</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>RWN/134425 &amp;TAT/135708</b>

### **POINT OF PRINCIPLE**

At all times where a supplier exercises devolved powers to provide advice assistance or representation, it is only open to the LSC assessor and/or ICA to reject the claim on the basis of section 5 of the Funding Code where the supplier's decision was manifestly unreasonable. However, the supplier must be aware that the continuing obligation to review merits and sufficient benefit is fundamental to the legal aid scheme, and therefore such review should be continued throughout the exercise of devolved powers.

This Point of Principle applies to both Civil and Criminal legal aid matters.

**CLA 57      THIRD PARTIES COMPLETING A LEGAL HELP FORM ON BEHALF OF THE CLIENT**

<b>DECISION NUMBER:</b>	<b>CLA 57</b>
<b>DATE:</b>	<b>18 July 2012</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>KHA/134604</b>

**POINT OF PRINCIPLE**

If a third party signs a Legal Help form at the direction of the client (the client being unable so to do in person for reasons of health or disability), either in his own name or that of the client, that does not invalidate the form as long as there is sufficient evidence on the file (such as an attendance note) to demonstrate that the form was properly executed by that third party with the client's approval.

## CLA 58 MERGER OF EMERGENCY AND SUBSTANTIVE CERTIFICATES

<b>DECISION NUMBER:</b>	<b>CLA 58</b>
<b>DATE:</b>	<b>20 March 2013</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>RWN/134425</b>

### POINT OF PRINCIPLE

Where an emergency certificate is subsumed into a substantive certificate, the scope of the substantive certificate will apply to all work done since the initial grant of emergency legal aid. Any restrictions on the emergency certificate which are not replicated in the main certificate therefore become retrospectively inapplicable.

However, if there is no substantive grant made, the scope of the emergency certificate remains in force. In order to comply with the requirements of the Funding Code in relation to scope and exercise of devolved powers in emergency grants, the supplier should ensure that the scope is specific to the single immediate step which is required to be taken. Failure to do so means the supplier runs the risk of the LSC approving the grant of emergency funding in more restricted terms. Should further work become essential within the 4-week life of the emergency grant, an amendment should be self-granted under devolved powers, again limited to the single immediate step required, and the amendment reported to the LSC.

**CLA 59 POWERS OF ASSESSORS WHEN ASSESSING A PROVIDER'S EXERCISE OF DELEGATED FUNCTIONS WHEN DETERMINING FINANCIAL ELIGIBILITY**

<b>DECISION NUMBER:</b>	<b>CLA 59</b>
<b>DATE:</b>	<b>22 November 2016</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>HAL/138352</b>

**POINT OF PRINCIPLE**

Where a provider exercises discretion as provided for under the relevant Financial Regulations an assessor may only overturn a determination that an individual qualifies for services where the provider's determination was manifestly unreasonable.

This point of principle applies to any aspect of the determination which requires a provider to exercise an element of discretion. It does not override any mandatory regulatory or contractual duty relating to the assessment of means. Any determination that an individual is financially eligible for legal services must comply with all relevant regulatory and contractual provisions. In complying with these provisions providers must have regard to the Lord Chancellor's Guidance issued in relation to determining financial eligibility.

This Point of Principle applies to both civil and criminal legal aid matters.

# CIVIL REPRESENTATION

## CLA1 MEANING OF THE LIMITATION 'LIMITED TO OBTAINING COUNSEL'S OPINION'

<b>DECISION NUMBER:</b>	<b>CLA 1 (Amended)</b>
<b>DATE:</b>	<b>4 September 1990 &amp; 20 January 1997</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>07/01/87/6807N - Civil &amp; CA4/SWE/110550</b>

### POINT OF PRINCIPLE

A certificate bearing a limitation containing the words "Limited to obtaining counsel's opinion" covers the obtaining of **one** opinion only (which may follow a conference). Work undertaken by a solicitor to clarify a genuine ambiguity in the opinion itself could, however, be allowed. If, at the time of receipt of counsel's written opinion, counsel is not in a position to advise on the settling of proceedings, no further work can be carried out until the limitation is removed or amended to allow either a further written opinion from counsel or further work by the solicitor.



**CLA 2: ALLOWANCE FOR CHECKING A BILL**

<b>DECISION NUMBER:</b>	<b>CLA 2 (Amended)</b>
<b>DATE:</b>	<b>1 October 1990 &amp; 23 November 1993 (amended by implication on c.i.f. of CPR)</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>04/01/89/559Y - Civil &amp; 04/01/88/17304D – Civil</b>

**POINT OF PRINCIPLE**

*[Practice Direction No. 2 of 1992 (Direction 2 paragraph 1.17) states that the drawing of a bill of costs is not fee earner work and, save in exceptional circumstances, no charge should be sought for such work. However,]* On an assessment to which Regulation 105 of the Civil Legal Aid (General) Regulations 1989 relates, where a claim is made for preparing the bill (and the case is not exceptional justifying such a payment), consideration should be given to making a small allowance which is for the solicitor's time in checking the bill, signing the Report on Case and complying with the other requirements of the Civil Legal Aid (General) Regulations 1989 and the Legal Aid Board generally. Normally an allowance of 10-20 minutes would be appropriate for cases within Regulation 105(3) (a) of the Civil Legal Aid (General) Regulations 1989 although a higher allowance may be appropriate for more complex cases.

**CLA 3****FAILURE TO REPORT A SIGNIFICANT CHANGE**

<b>DECISION NUMBER:</b>	<b>CLA 3</b>
<b>DATE:</b>	<b>1 October 1990</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>07/01/89/23205A - Civil</b>

**POINT OF PRINCIPLE**

If a solicitor fails to report a significant change, which is known to him, in either the circumstances of the assisted person or the case, costs subsequently incurred may be considered not to have been reasonably incurred and may be disallowed.

**CLA 4 INSPECTION OF ORIGINAL DOCUMENTS IN CLINICAL NEGLIGENCE CASES**

<b>DECISION NUMBER:</b>	<b>CLA 4</b>
<b>DATE:</b>	<b>3 December 1990</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>07/01/87/25673V - Civil</b>

**POINT OF PRINCIPLE**

When assessing the merits of possible medical negligence proceedings, it would not be reasonable for a solicitor to inspect the original records as a matter of course but where a solicitor has reason to believe that the copy records supplied are incomplete or inaccurate it would be reasonable for him to inspect the originals. Where cases fall within this principle, a certificate limited to obtaining or perusing medical records will cover inspection of original records.

**CLA 5                    RATES ALLOWABLE ON ASSESSMENTS UNDER REGULATION  
105**

<b>DECISION NUMBER:</b>	<b>CLA 5 (Amended)</b>
<b>DATE:</b>	<b>9 July 1991 &amp; 23 September 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>07/01/88/50022G - Civil &amp; CA4/DEL/109666</b>

**POINT OF PRINCIPLE**

Costs assessed under Regulation 105 of the Civil Legal Aid (General) Regulations 1989 should be assessed to ensure that the costs allowed are those which would, not should, be allowed on a taxation on the standard basis under rules of court. The rates which would be allowed are those which are being allowed in the court where the litigation was or most likely would have been issued and conducted. The expense rate chargeable will be the broad average direct cost of doing the work as allowed by the local taxing officer or District Judge. Regard may be had to the local Law Society survey on expense rates to determine the broad average direct cost. In areas where the survey expresses an hourly rate by one single composite figure, this is only an average figure. The seniority and expertise required by the particular case will be relevant to the hourly rate allowed to reflect the true broad average direct cost of the case.

**CLA 6****CONSIDERATION OF UNUSUAL OR SUBSTANTIAL PAPERS**

<b>DECISION NUMBER:</b>	<b>CLA 6</b>
<b>DATE:</b>	<b>19 November 1991</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>07/01/88/11505Q - Civil</b>

**POINT OF PRINCIPLE**

Where claims for costs are made for perusal of unusual or substantial papers, and the assessor or area committee is minded to disallow those costs in whole or in part, it will normally be necessary for the papers in question to be considered.

**CLA 7 SOLICITOR CONSIDERING MEDICAL RECORDS IN CLINICAL NEGLIGENCE CASES**

<b>DECISION NUMBER</b>	<b>CLA 7</b>
<b>DATE</b>	<b>27 April 1992</b>
<b>OFFICE REFERENCE NUMBER</b>	<b>05/01/89/12876H – Civil</b>

**POINT OF PRINCIPLE**

It is reasonable in medical negligence cases for the assisted person's solicitor to consider in detail copies of the medical records relevant to the issues in the case.

**Guidance**

1. The Costs Appeals Committee's decision was that it is reasonable in medical negligence cases for the assisted person's solicitor to consider in detail copies of the medical records relevant to the issues in the case.
2. The difficulty is in determining which medical records are relevant. It is accepted that a brief and quick perusal of the medical records may be necessary in order to identify which records are relevant. Having done that, the solicitor should be able to consider in detail only those which are relevant. It would not be reasonable to allow the solicitor to have carte blanche to consider in detail all medical records regardless of whether or not they are relevant. On the other hand it must be acknowledged that some limited amount of time is required to briefly peruse the records to ascertain which are relevant and which are not, and some limited payment should be allowed for doing that.

**CLA 8                    ENHANCEMENT OF PRESCRIBED RATES FOR MEMBERSHIP OF  
LAW SOCIETY'S CHILDREN PANEL**

<b>DECISION NUMBER:</b>	<b>CLA 8 (Amended)</b>
<b>DATE:</b>	<b>26 October 1992 &amp; 23 September 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>05/01/92/15735, 05/01/91/24235W, 05/01/91/21194Q &amp; CA4/DEL/109666 - Civil</b>

**POINT OF PRINCIPLE**

Membership of the Law Society's Children Panel is itself an exceptional circumstance under Regulation 3(4) (c) (iii) of the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 which gives a discretion to the assessing officer to allow a larger amount than that specified where it appears to him to be reasonable to do so in any particular part of the bill of costs in question.

As a general rule, where a solicitor appeared as an advocate, this is not an exceptional circumstance. Where, however, a Children Panel solicitor appeared as an advocate in care proceedings, this will be an exceptional circumstance. Whether this justifies of itself allowance of a "larger amount" is a question for the exercise of discretion, in consideration of all the circumstances of the case. An uplift in hourly rate for panel membership in cases properly lasting more than two days would normally be justified.

<b>DECISION NUMBER:</b>	<b>CLA 9 (Amended)</b>
<b>DATE:</b>	<b>10 May 1993 &amp; 23 September 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/DEL/109666 - 11/01/91/1111A, 11/01/91/31113C, 11/01/91/32055B,11/01/91/32057D</b>

**POINT OF PRINCIPLE**

When considering a claim for enhanced rates on the basis of Regulation 3(4)(c)(iii) of the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 consideration should, when deciding if there are "any other exceptional circumstances" of the case, be given to whether any of the following exist:

1. Factors which might raise an exceptional circumstance:
  - (a) Innate difficulties of communication with the client, for example mental health problems, deaf, speech-impaired, or autistic clients, or clients requiring an interpreter (although attention should first be given as to whether this has been covered by longer than normal hours of attendance being claimed);
  - (b) a conflict of detailed expert evidence (as opposed to merely contested expert evidence, and/or a proliferation of expert witnesses);
  - (c) a hearing in excess of two days without counsel;
  - (d) conflict between the guardian ad litem and the child, where the child instructs his own solicitor.
  
2. Factors which might but not necessarily would raise exceptional circumstances:
  - (a) detailed contested allegations of sexual or serious abuse;
  - (b) a large number of parties with competing applications;
  - (c) involvement of children with different needs.



The transfer of the case to a care centre or from a care centre to the High Court is indicative of complexity and weight only and is not conclusive of exceptional circumstances. Where exceptional circumstances are said to arise there must be a factor, or combination of factors in the particular case which is exceptional or are unusual in care proceedings.

The factors set out above are not an exhaustive list. They relate to the circumstances of the case itself and not to claims for enhanced rates based on Regulations 3(4) (c) (i) and (ii) of the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 which have regard to the manner in which the work was done.

Where exceptional circumstances are sought to be established and solicitors seek remuneration on the basis of the exercise of the assessing officer's discretion pursuant to Regulation 3(4)(c) the solicitor must precisely identify the exceptional circumstances and those specific items of work in respect of which enhancement is sought.

[See Re: Children Act 1989 (Taxation of Costs) [1994] 2 FLR 934].

**CLA 10            NON-CONTENTIOUS WORK TO PUT INTO EFFECT AN ORDER IN  
FAMILY PROCEEDINGS**

<b>DECISION NUMBER:</b>	<b>CLA 10</b>
<b>DATE:</b>	<b>14 June 1993</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>15/01/90/18991T - Civil</b>

**POINT OF PRINCIPLE**

The rates of remuneration in the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 do not apply to non-contentious work undertaken on behalf of an assisted person as a direct result of a court order. The rates allowed should be those which are reasonable in all the circumstances of the case for privately funded non-contentious work.

<b>DECISION NUMBER:</b>	<b>CLA 11</b>
<b>DATE:</b>	<b>21 February 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>01/01/91/63249Q &amp; 01/01/91/52226J - Civil</b>

### POINT OF PRINCIPLE

Where the criteria for paying enhanced rates set out in Regulation 3(4) (c) of the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 are met, the relevant authority may exercise their discretion in determining the amount of costs to be allowed in accordance with Regulation 3(7) of the Legal Aid in Family Proceedings (Remuneration) Regulations 1991.

Following the decision of **Freeman v. Freeman [21.2.1992]**<sup>1</sup> such claims will be assessed on the basis of broad average direct cost of the work (the 'A' figure) to which is added a percentage uplift (the 'B' figure) to take into account all the relevant circumstances of the case.

<sup>1</sup> reported in Butterworths Costs Service

<b>DECISION NUMBER:</b>	<b>CLA 12</b>
<b>DATE:</b>	<b>17 May 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>01/01/91/05985X</b>

**POINT OF PRINCIPLE**

Work carried out by an in-house medico-legal assistant will generally be fee earning work. The hourly rate and mark-up applicable will be what is appropriate in all the circumstances having regard to the nature of the work carried out and the special skills and qualifications possessed by the person concerned.

**CLA14 ASSISTED PERSON'S TRAVELLING AND OTHER EXPENSES**

<b>DECISION NUMBER:</b>	<b>CLA 14</b>
<b>DATE:</b>	<b>27 June 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>09/01/93/06580J - Civil</b>

**POINT OF PRINCIPLE**

On the assessment of a bill, in respect of which, if it had been taxed, the County Courts Rules would have applied, when considering a claim for travel or other expenses, the appropriate authority shall allow, on the assessment, such expenses as would have been allowed under Order 38 Rule 15 County Courts Rules on taxation.

On the assessment of a bill, in respect of which, if it had been taxed, the Matrimonial Causes (Costs) Rules 1988 would have applied, when considering a claim for travel or other expenses, the appropriate authority shall allow, on the assessment, such expenses as would have been allowed under Rule 17 Matrimonial Causes (Costs) Rules 1988.

<b>DECISION NUMBER:</b>	<b>CLA 15</b>
<b>DATE:</b>	<b>26 September 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>01/01/90/17303D - Civil</b>

**POINT OF PRINCIPLE**

Practice Direction No. 2 of 1992 (Direction 2, paragraph 1.17) states that the drawing of a bill of costs is not fee earner work and, save in exceptional circumstances, no charge should be sought for such work.

However, where a claim is made for preparing the Board's Annual Report on Case and claim for costs form (and the case does not itself present exceptional circumstances), consideration should be given to making a small allowance which is for the solicitor's time in preparing and submitting the Annual Report on Case. Normally an allowance of 6 to 12 minutes would be appropriate although a higher allowance may be appropriate for more complex cases.

<b>DECISION NUMBER:</b>	<b>CLA 16</b>
<b>DATE:</b>	<b>18 October 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>06/01/91/20893K - Civil</b>

**POINT OF PRINCIPLE**

Where an application to the European Commission [*now the Court of First Instance of the European Communities*] is an essential preliminary step in court proceedings in England and Wales, such an application would be within the scope of a certificate granted to cover such court proceedings.

**CLA 17            ROUTINE LETTERS**

<b>DECISION NUMBER:</b>	<b>CLA 17</b>
<b>DATE:</b>	<b>24 July 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>05/01/94/11579B - Civil</b>

**POINT OF PRINCIPLE**

In Item 3 column 1 of Schedule 1 of the Legal Aid in Civil Proceedings (Remuneration) Regulations the words "which are not routine" relate to each of:

1. letters written,
2. letters received, and
3. telephone calls.



<b>DECISION NUMBER:</b>	<b>CLA 18</b>
<b>DATE:</b>	<b>21 November 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>03/01/94/5462J, 01/01/94/10360P, 01/01/94/16712U &amp; 01/01/94/82525T</b>

**POINT OF PRINCIPLE**

Remuneration under the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 or the Legal Aid in Family Proceedings Regulations 1991 includes all work undertaken in respect of anticipated or contemplated proceedings notwithstanding that no proceedings were actually issued.

<b>DECISION NUMBER:</b>	<b>CLA 19</b>
<b>DATE:</b>	<b>11 December 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>06/01/93/16964F - Civil</b>

**POINT OF PRINCIPLE**

An authority given under Regulations 59, 60 or 61 of the Civil Legal Aid (General) Regulations 1989 does not place a ceiling on the fees that can be claimed in respect of the disbursement so authorised. On assessment further consideration may be given to any additional sums claimed.

<b>DECISION NUMBER:</b>	<b>CLA 20</b>
<b>DATE:</b>	<b>11 December 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>03/01/94/18039E &amp; 03/01/94/18036B - Civil</b>

**POINT OF PRINCIPLE**

Where experts' fees are reduced on an assessment and the reduction is not accepted, reasons for the reduction must be given on application.

**CLA 21                    ENHANCEMENT OF PRESCRIBED RATES FOR MEMBERSHIP OF  
THE LAW SOCIETY'S CLINICAL NEGLIGENCE PANEL**

<b>DECISION NUMBER:</b>	<b>CLA 21</b>
<b>DATE:</b>	<b>23 September 1996, amended 19 May 2003</b>
<b>OFFICE REFERENCE NUMBERS:</b>	<b>CA4/DEL/109666, CA4/VER/122564</b>

**POINT OF PRINCIPLE**

Membership of the Law Society's Clinical Negligence Panel is not in itself an exceptional circumstance justifying payment of an enhanced rate under Regulation 5(1)(c) of the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994, but membership of the Panel may be a factor which contributes to a decision that enhanced rates are justified.

Factors which may indicate whether a clinical negligence case was conducted with exceptional competence, skill or expertise, so as to justify an enhancement under Regulation 5 (1)(a) of the same Regulations, include: the extent to which the solicitor relied on his or her own expertise rather than counsel; and whether the solicitor him- or herself has obtained the client's medical records, identified and assessed the relevant contents, and following that analysis, sent a detailed letter of instruction to the client's medical expert or experts.

**CLA 22: REVIEW AND SUPERVISION ON A FRANCHISED FILE**

<b>DECISION NUMBER:</b>	<b>CLA 22</b>
<b>DATE:</b>	<b>27 April 1998</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/BAL/112770</b>

**POINT OF PRINCIPLE**

Time properly spent by a franchised firm reviewing and supervising files to meet the franchising criteria is time properly chargeable provided that it coincides with the stage in the proceedings at which the file would normally be reviewed and work done would be recoverable on taxation as work reasonably done having regard to the needs of the case.

**N.B. THIS DECISION APPLIED TO ALL CIVIL LEGAL AID CERTIFICATES GRANTED ON OR AFTER 1 DECEMBER 1998.**

<b>DECISION NUMBER:</b>	<b>CLA 23</b>
<b>DATE:</b>	<b>26 October 1998</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/WIL/113645</b>

**POINT OF PRINCIPLE**

Work carried out by legal representatives in advising on, preparing for and, where appropriate attending a mediation hearing can in principle be allowable on assessment in a non-family case. In such cases an appropriate share of the reasonable costs of the mediation may also be claimed as a disbursement under the certificate.

**CLA 24            COMPLETION OF APPLICATION FORM FOR PAYMENT ON  
ACCOUNT**

<b>DECISION NUMBER:</b>	<b>CLA24</b>
<b>DATE:</b>	<b>22 February 1999</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/FAR/114522</b>

**POINT OF PRINCIPLE**

Where a claim is made for completing the Board's form CLA28/CLAIM4 (Application for a Payment on Account) consideration should be given to making a small allowance for the solicitor's time in preparing and submitting the form. Normally an allowance of six minutes will be appropriate.

**CLA 25 USE OF LOCAL SOLICITOR AGENTS**

<b>DECISION NUMBER:</b>	<b>CLA 25</b>
<b>DATE:</b>	<b>26 April 1999</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/COL/115031</b>

**POINT OF PRINCIPLE**

Where a claim for costs includes travelling time, the assessor may consider whether it would have been more reasonable to instruct a solicitor agent than to incur the travelling time and cost. The assessor will consider whether there are any factors which would have made it reasonable for the solicitor to undertake the work. If the assessor considers that it was unreasonable for the solicitor to incur the travel time and cost, the assessor will reduce or disallow travelling costs to the extent that they exceed the costs which would have been allowed if an agent had been instructed. The sum for time and costs in these circumstances will include a notional allowance for:

1. an agent undertaking the work;
2. a fee-earner arranging the agent and preparing a letter or other form of instruction; and
3. considering any reports or correspondence received from the agent.



<b>DECISION NUMBER:</b>	<b>CLA 26</b>
<b>DATE:</b>	<b>2 November 2000</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CLA4/SIM/117708</b>

**POINT OF PRINCIPLE**

In determining the extent to which indexing and pagination of disclosed medical records is fee-earner work or administrative, it is relevant to consider whether the work involves only indexing and paginating, or also includes analysis of the contents of the disclosed documents, identification of missing documents and parts of documents, and consideration of how the disclosed documents should be presented to make the issues clear. While merely listing and numbering pages should not be remunerated as fee-earner work, the elements of the work which demand more than administrative skills can properly be charged at fee-earner rates. It is for the solicitor in each case to justify a claim for work done at fee-earner rates.

**CLA39            COMPLETING APPLICATION FORM IN PUBLIC LAW CHILDREN  
ACT WORK**

<b>DECISION NUMBER:</b>	<b>CLA/39</b>
<b>DATE:</b>	<b>16 February 2004</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/GUE/126216</b>

**POINT OF PRINCIPLE**

Time spent completing an application for funding in Special Children Act proceedings is treated as work done by a fee-earner under the Certificate.

**Guidance**

The point of principle relates only to Special Children Act Proceedings, defined in Section 2 of the Funding Code, where the applicant is a child, its parent or a person with parental responsibility; or where a child is not, but wishes to be, represented on an application for a secure accommodation order. In these cases, funding is available without reference to the client's means, or the standard Funding Code criteria for Legal Representation at paragraph 5.4 of the Funding Code. As long as the application is made at the first available opportunity, and arrives in the regional office within three working days of the solicitor being instructed, the costs incurred by the solicitor from receiving instructions to act in the proceedings are deemed to be within the certificate (Funding Code Procedures C7). Consequently, where the form arrives in the regional office within the time limit, the costs of completing the application for funding (CLSAPP5) are deemed to be within the scope of the certificate. In all other circumstances, costs incurred before the grant of funding are not within the scope of the certificate and may be met either under Legal Help or by the client paying privately.

**CLA 40                      CONSEQUENCES OF SOLICITOR'S FAILURE TO COMPLY WITH REGULATIONS OR CONTRACT**

<b>DECISION NUMBER:</b>	<b>CLA 40</b>
<b>DATE:</b>	<b>12 June 2004</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/HEN/126054</b>

**POINT OF PRINCIPLE**

If a solicitor fails to comply with a requirement in regulations or a contract governing the conduct of publicly funded cases, with the result that the Fund incurs loss, the Commission may defer, or withhold payment of, the solicitor's profit costs. The loss resulting from the solicitor's act or default must be quantified. If there is a series of breaches, the loss flowing from each must be identified separately.

**GUIDANCE**

The Commission's powers to withhold payment of profit costs are in Regulation 102 Civil Legal Aid (General) Regulations 1989 (as amended) in relation to licensed work and Rule 1.14 of the General Civil Contract Specification in relation to work performed under that contract.

The default referred to above may take a number of forms. Common examples are failure to report:

- (i) that costs have exceeded a pre-CIS costs condition, or are no longer justified in the light of the prospective benefit and the prospects of success. The Costs Appeals Committee considers that grossly inaccurate reporting on the amount of costs incurred constitutes a failure to report; or
- (ii) that property has been recovered or preserved and that the Commission's charge should be registered before it is put at risk.

The regional office must be able to show:

- (i) that there was a breach of a requirement imposed on the solicitor by regulation or the contract;
- (ii) that as a result of that breach, the Fund has incurred a loss (such as a liability to pay the solicitors) when there would have been no such liability but for the solicitor's breach.

**CLA42**

**REDUCTION OF PAYMENTS PURSUANT TO REGULATION  
105(10) CIVIL LEGAL AID (GENERAL) REGULATIONS 1989**

<b>DECISION NUMBER:</b>	<b>CLA 42</b>
<b>DATE:</b>	<b>18 October 2004</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>BRA/126881 &amp; TOM/126882</b>

**POINT OF PRINCIPLE**

In deciding whether to reduce the amount paid to a firm under the provisions of Regulation 105(10) of the Civil Legal Aid (General) Regulations 1989 (as amended) the assessor must look at the facts of the particular case and apply the discretion afforded under the Regulation properly and proportionately. The assessor should note that the percentage reductions suggested in the Civil Bills Assessment Manual are merely a guide and where the solicitor explains the delay of submission, the assessor should decide whether the suggested reduction is reasonable and proportionate in all the circumstances.

**CLA43**

**REMUNERATION RATES FOR PROCEEDINGS WHICH, IF ISSUED, COULD ONLY HAVE BEEN ISSUED IN THE HIGH COURT**

<b>DECISION NUMBER:</b>	<b>CLA 43</b>
<b>DATE:</b>	<b>15 March 2005</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>SCO/127532</b>

**POINT OF PRINCIPLE**

If there is clear evidence on the file that litigation if issued, could only or would have been issued in the High Court, then it should be paid at the High Court prescribed rates.

**CLA44**

**PAYMENT WHERE WORK IN THE FAMILY PROCEEDINGS COURT IS OUTSIDE THE SCOPE OF THE CERTIFICATE**

<b>DECISION NUMBER:</b>	<b>CLA 44</b>
<b>DATE:</b>	<b>21 December 2005</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>MAL/128390</b>

**POINT OF PRINCIPLE**

Where a legal aid/public funding certificate contains a limitation that proceedings are to be issued in the Family Proceedings Court but the proceedings are in fact issued in a different Court then no costs relating to the issue or conduct of the proceedings may be paid by the Commission as these would be outside the scope of the certificate granted. Solicitors must check the limitations on the certificate and seek an amendment if they wish to act outside them

<b>DECISION NUMBER:</b>	<b>CLA 46</b>
<b>DATE:</b>	<b>22 May 2006</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>ABI/128731</b>

**POINT OF PRINCIPLE**

The paginated indexed bundle of documents which is before the Committee should be provided to both parties in order that the Appellant, the Commission, and the Committee are working from the same bundle.

**CLA49**

**REASONS FOR WHEN INSTRUCTIONS TO THIRD PARTIES IS CLAIMABLE**

<b>DECISION NUMBER:</b>	<b>CLA49</b>
<b>DATE:</b>	<b>OCTOBER 2008</b>
<b>OFFICE REFERENCE NUMBER</b>	

**POINT OF PRINCIPLE**

A letter of instruction to any third party for which a disbursement is claimable is a chargeable item of work.

**GUIDANCE**

It involves decision making by the fee-earner as to the appropriateness and necessity of utilising the third party and which third party, as well as a contractual commitment to pay the disbursement. Even if the outcome is only to get an interpreter to an appointment, this vital to progress the matter.



**CLA 52 CLAIMING COSTS WHEN SUBMITTING CLSCLAIM2 FORM**

<b>DECISION NUMBER:</b>	<b>CLA52</b>
<b>DATE:</b>	<b>1 FEBRUARY 2011</b>
<b>OFFICE NUMBER:</b> <b>REFERENCE</b>	<b>CA4/TRP/133124</b>

**POINT OF PRINCIPLE**

A claim for work done in preparing and submitting the CLS Claim2 form, together with the covering letter, is remunerable as contract work even if the costs of the substantive work are met in full by the other side on an inter partes basis.

**GUIDANCE**

This PoP follows from the Costs Assessment Guidance at Paragraphs 2.61 and 15.18. Time is allowable for completion of the CLS Claim2 even if other legal aid only costs are not being claimed. This should be in the range 12 to 18 minutes. This work does not form part of the detailed assessment proceedings (if any) – Paragraph 15.17. Hence, the costs fall within the final limitation on the public funding certificate and will create a statutory charge on any property recovered or preserved by the client.

**CLA 53      INSTRUCTING ALTERNATIVE ADVOCATE TO ATTEND HEARING**

<b>DECISION NUMBER:</b>	<b>CLA53</b>
<b>DATE:</b>	<b>1 FEBRUARY 2011</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/MOR/133047</b>

**POINT OF PRINCIPLE**

If it is appropriate to instruct an advocate to attend a hearing, that instruction may be of an internal advocate or counsel, and reasonable preparation time incurred is claimable in the usual way.

**GUIDANCE**

Where it would be reasonable and proportionate to instruct counsel, it may be reasonable instead to instruct a more experienced advocate internally, in which case reasonable time in communication between the fee earners and/or preparation will be claimable. This is in effect an application of the principles contained in Paragraphs 2.36 and 2.37 of the Costs Assessment Guidance. Any instruction of an advocate must be based on what is most cost effective and in the best interests of the client. It would not be reasonable simply on the basis of the conducting fee-earner's unavailability for a hearing, save where this was unavoidable (Paragraph 2.41). Therefore, no extra costs would be claimable where the unavailability arose from the fee-earner's absence on holiday or allowing different appointments to be fixed for the same time. Any doubt as to the reasonableness of the extra costs will be resolved against their being claimable, since assessments of Contract Work are carried out on the Standard Basis.

# FAMILY GRADUATED FEES

## CLA30 COUNSEL'S TRAVELLING TIME AND EXPENSES: FAMILY GRADUATED FEES

<b>DECISION NUMBER:</b>	<b>CLA 30</b>
<b>DATE:</b>	<b>19 May 2003</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/RAD/122788</b>

### POINT OF PRINCIPLE

Where a solicitor shows that the conduct of proceedings required specialist counsel, and that no specialist barrister was available from chambers within 40 km of the town in which the proceedings took place, the Commission may pay counsel's travel expenses and costs if they were reasonably and necessarily incurred. Factors affecting the decision whether counsel's travel expenses may be allowed include: the complexity of the issues; the distance between counsel's chambers and the court where the proceedings took place; counsel's possession of particular expertise relevant to the case; the location of the solicitor and client; and the need for continuity, particularly if there has been an earlier meeting or conference between counsel and the lay client.

### Guidance

This relates to travel costs where the case has required the use of specialist counsel.

Where it is reasonable to use specialist counsel the travel expenses and costs must have been reasonably and necessarily incurred.

Factors determining the reasonableness are:

1. complexity of the issues;
2. distance;
3. counsel's expertise;
4. location of solicitor and client;

5. the need for continuity (particularly if the client had previously been represented by the particular counsel).

**CLA 31 SPECIAL ISSUE PAYMENTS CERTIFIED AT MORE THAN ONE HEARING**

<b>DECISION NUMBER:</b>	<b>CLA 31</b>
<b>DATE:</b>	<b>19 May 2003</b>
<b>OFFICE REFERENCE NUMBERS:</b>	<b>CA4/122349/ITA; BUX/122670; RIL/122669</b>

**POINT OF PRINCIPLE**

If a judge certifies the same special issue at more than one hearing in a single set of proceedings, Article 10(7) of the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 provides that only one Special Issue Payment (SIP) may be made. But a SIP may be made in respect of each different special issue certified, whether at the same hearing or at separate hearings. If different counsel represent the client at successive hearings and submit claims for the same SIP, the first claim to be received will be paid.

**GUIDANCE**

Application for the verification of SIPs must be made at the conclusion of each particular hearing.

Article 10(7) restricts SIP payment to only once per proceeding.

That restriction relates to each of the seven special issues so, if different SIPs are verified at different hearings, more than one claim may be made provided each special issue is only paid once.

For example:

Hearing 1 - Expert and conduct SIPs verified

Hearing 2 - Foreign element and conduct verified

The CLAIM5's are submitted sequentially

In the claim for Hearing 1, the expert and conduct SIP will be paid, but in respect of Hearing 2 only the foreign element may be paid. Similarly, the automated SIPs (multiple parties, litigant in person and more than one child) are only paid once even though they may feature in (and be verified for) many hearings during the proceedings.

In the event that different counsel are instructed to attend at different hearings and SIPs are verified in each, the counsel to claim the SIPs payment first will be paid by the Commission in accordance with the principles set out above.

<b>DECISION NUMBER:</b>	<b>CLA 32</b>
<b>DATE:</b>	<b>23 June 2003</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/THO/123627; SLY/123416; MCR/123465</b>

**POINT OF PRINCIPLE**

The cost of instructing counsel in the family proceedings court may be allowed on assessment, even though the solicitor had no prior authority; but only if the solicitor shows that he or she was unable to get authority before incurring the expenditure.

**CLA 33 ENTITLEMENT TO A SETTLEMENT SUPPLEMENT IN INJUNCTION PROCEEDINGS**

<b>DECISION NUMBER:</b>	<b>CLA 33</b>
<b>DATE:</b>	<b>21 July 2003</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/THO/123707</b>

**POINT OF PRINCIPLE**

Under Article 12 (1) Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001, a settlement supplement is payable where a settlement leads to the resolution of a set of proceedings. A settlement cannot lead to the resolution of proceedings within Function F2 where, in enforcement proceedings, the Judge is left to decide the penalty for breach of an injunction, whether the breach is admitted or not.

<b>DECISION NUMBER:</b>	<b>CLA 41</b>
<b>DATE:</b>	<b>19 April 2004</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/HOD/126345</b>

**POINT OF PRINCIPLE**

A “main hearing”, as defined in Article 2 Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001, involves determination and consideration of the principal issues in dispute between the parties. In ancillary relief proceedings it is unlikely that the hearing of an application for an injunction will amount to a “main hearing”. In proceedings solely for an injunction, neither an application without notice, nor one for enforcement, can constitute the “main hearing”.



<b>DECISION NUMBER:</b>	<b>CLA 45</b>
<b>DATE:</b>	<b>25 April 2006</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>Sab/128675</b>

**POINT OF PRINCIPLE**

Article 5(1) (C) and (2) of the CLS (Funding) (Counsel in Family Proceedings) Order 2001 (as amended), provides that the High Court uplift is applied to the graduated fee including any court bundle payment. This includes court bundle payments made within the provisions of Article 11(1) (c). The High Court uplift therefore applies to any hours of special preparation certified by reason of the court bundle being over 700 pages. The High court uplift does not otherwise apply to special preparation fees under Article 11.

# CRIMINAL LEGAL AID

## CRIMLA 1 PHOTOCOPYING

<b>DECISION NUMBER:</b>	<b>CRIMLA 1 (Amended)</b>
<b>DATE:</b>	<b>18 December 1989 &amp; 30 January 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>5/9/10813 &amp; 2751/93/1144 - Criminal</b>

### POINT OF PRINCIPLE

The making of copies of documents is part of the solicitor's normal overhead expense, and thus would not normally be remunerated separately. However an allowance may be made for copying in unusual circumstances or where the documents copied are unusually numerous in relation to the nature of the case. The cost should be claimed as a disbursement. If copies have been made out of the office the actual cost should be claimed. If made in the office a charge equivalent to the commercial cost should be claimed. A charge based on the time expended by a member of the solicitor's staff will not be allowed.

See Criminal Bills Assessment Manual (CBAM) 4.11

**CRIMLA 2      CONFIRMATION TO CLIENTS OF NEXT HEARING DATE AND  
FINAL OUTCOME**

<b>DECISION NUMBER:</b>	<b>CRIMLA 2 (Amended)</b>
<b>DATE:</b>	<b>6 March 1990 &amp; 24 July 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>7/2/27126 &amp; 15/3/018093 - Criminal</b>

**POINT OF PRINCIPLE**

The solicitor may, if he considers it appropriate, write to his client and, in the case of a youth, his parent or other carer after each court appearance giving details of the decision of the court and the client's next appearance before the court. The solicitor may also write to his client and, in the case of a youth, his parent or other carer at the conclusion of the matter giving the decision of the court.

See CBAM 2.7

## CRIMLA 3 MEDICAL OR PSYCHIATRIC REPORTS IN MITIGATION \*

<b>DECISION NUMBER:</b>	<b>CRIMLA 3 (Amended)</b>
<b>DATE:</b>	<b>27 March 1990 &amp; 24 July 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>12/9/19329 &amp; 2791/95/000159 - Criminal</b>

### POINT OF PRINCIPLE

Where it appears a court may be considering a disposal under the Mental Health Act, only in exceptional cases will the cost of medical or psychiatric reports be allowed for use in mitigation on conviction where no request has been made by the court.

#### **Guidance**

This guidance is written in order to clarify the circumstances in which applications for prior authority in criminal cases for the commissioning of medical reports may be considered. Such requests have been refused previously on the basis of point of principle CRIMLA3 on the assumption that the court may order the report and the costs would be met from central funds. The courts have recently given guidance which shows that the courts will only pay for written medical reports out of central funds in very limited circumstances.

Essentially, the Board's basic starting point in respect of medical reports is that if the court would normally pay the costs of the report out of central funds then it should do so, notwithstanding the existence of a legal aid order. The court will only pay for reports in certain very limited circumstances. These are:

1. the court has ordered the report to be prepared, and
2. the report is required for the purposes of determining whether to make a hospital or guardianship order, or a probation order requiring medical treatment for a mental condition.

If both these conditions apply then an application for prior authority should be refused. If they do not, then an application for prior authority may be granted, subject to the usual principles.

If a request has been made of the court but the court has refused to order the report, then the application may be considered in the normal way. If the court has ordered the report and the solicitors submit an application for prior authority to support the same, area offices should first clarify the basis on which the court has ordered the report. Once the purpose is known, the area office will be in a position to judge whether it is one which will attract payment out of central funds, and hence whether to grant a prior authority. Sometimes the court will be persuaded to "order" a report in circumstances in which the report would not be payable out of central funds. This should not affect the decision to grant a prior authority.

The circumstances in which a medical report may be requested by the court are set out in Regulation 25 of the Costs in Criminal Cases (General) Regulations 1986 and Section 19(3) of the Prosecution of Offences Act 1985. A written report may only be ordered in cases to which section 32(2) of the Criminal Justice Act 1967 applies.

This covers the following:

1. For the purposes of determining whether or not to make an order under section 3 of the Powers of the Criminal Courts Act 1973 (probation orders requiring treatment for a mental condition); or
2. For the purposes of determining whether or not to make an order under section 37 of the Mental Health Act 1983 (hospital orders and guardianship orders); or
3. Otherwise for the purposes of determining the most suitable method of dealing with an offender; or
4. In the exercise of the powers conferred by section 30 of the Magistrates' Court Act 1980 (remanding a defendant for medical examination before disposal after a summary trial).

Whilst section 32(2) does theoretically allow the court to order a medical report for the purposes of determining a suitable method of dealing with an offender, it is clear from guidance issued to Crown Court judges that court orders should only be made for medical reports where the report is required because the judge is considering a hospital/guardianship order or probation order requiring medical treatment for a mental condition.

A medical report will not therefore be ordered or paid for from central funds if it is required to assist a solicitor to advise on the appropriate plea or to mitigate the seriousness of the offence on sentencing.

CRIMLA3 in its amended form states:-

"Where it appears a court may be considering a disposal under the Mental Health Act, only in exceptional cases will the cost of medical or psychiatric reports be allowed for use in mitigation on conviction where no request has been made by the court".

This point of principle is intended to mean that if the court is considering a disposal under the Mental Health Act and the solicitor makes a request for prior authority to the Board for the cost of the medical report, the application would only be allowed in exceptional cases if no request has been made of the court. The Board's first position would be to say that the court should order the cost of the report and an application should be made to the court. If in an exceptional case the application has been refused a prior authority may be considered by the Board. If it has never been made then it will be exceptional for the Board to consider granting a prior authority.

In considering any application by a solicitor for prior authority to cover the commissioning of a medical report, area offices should assume judges will not normally order medical or psychiatric reports except where there is likely to be a Mental Health Act disposal or a probation order requiring medical treatment for a mental condition. On occasion, in granting an adjournment to allow a report to be prepared for sentence, a judge will agree that a report would assist the court and may be persuaded to "order it". Area offices should treat any suggestion by solicitors that the court has "ordered" the report with caution and must enquire whether the court ordered it for a likely disposal for a mental condition.

The courts have recently revised guidance so that orders made by the courts should state the section/Act under which the order is made. Only if the court has ordered it and the purpose is to enable disposal under the Mental Health Act or a probation order requiring medical treatment will a prior authority be refused as the cost of the report would be payable out of central funds. In all other circumstances the commissioning of a medical report, whether before or after conviction, may be considered by way of an application for prior authority.

Solicitors will always need to illustrate that it is a reasonable and necessary disbursement for the proper conduct of the proceedings. Area offices and area committees may then assess whether it is reasonable and justified for the authority to be granted.

See CBAM 4.3

**CRIMLA 4      ENHANCED RATES: FOREIGN LANGUAGE SPOKEN BY SOLICITOR**

<b>DECISION NUMBER:</b>	<b>CRIMLA 4</b>
<b>DATE:</b>	<b>27 March 1990</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>5/9/1556 - Criminal</b>

**POINT OF PRINCIPLE**

When a solicitor who is able to speak a foreign language is able to deal with a case without an interpreter, enhanced rates may be allowed.

See CBAM 7.3

**CRIMLA 5      SUBSTANTIATION OF CLAIMS**

<b>DECISION NUMBER:</b>	<b>CRIMLA 5</b>
<b>DATE:</b>	<b>27 March 1990</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>12/9/12266 - Criminal</b>

**POINT OF PRINCIPLE**

In the absence of evidence to substantiate claims for work done, the Board will not normally allow those claims. Items claimed should be supported by proper records.

As amended by GCC: see CBAM 2.5



**CRIMLA 6      WORK DONE AFTER AMENDMENT SHOWING CHANGE OF SOLICITOR**

<b>DECISION NUMBER:</b>	<b>CRIMLA 6 (Amended)</b>
<b>DATE:</b>	<b>14 May 1990 &amp; 28 September 1998</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>5/9/12949 - Criminal &amp; CA5/BRO/113947</b>

**POINT OF PRINCIPLE**

The Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 do not permit payment for work after the amendment of a criminal legal aid order to the solicitor no longer assigned under that order, save for work reasonably carried out before the solicitor was aware of the transfer.

See CBAM 6.6

**CRIMLA 7 ATTENDANCE AT FORMAL REMAND HEARINGS**

<b>DECISION NUMBER:</b>	<b>CRIMLA 7</b>
<b>DATE:</b>	<b>14 May 1990</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>12/9/20379 - Criminal</b>

**POINT OF PRINCIPLE**

Attendance at formal remand hearings should not be necessary unless the solicitor is aware that he has an application to make or oppose, or the court appearance presents a convenient and economical opportunity for the solicitor to obtain further instructions from a client who is in custody.

See CBAM 3.1

**CRIMLA 9 ATTENDANCES ON CLIENTS REMANDED IN CUSTODY AT A DISTANCE (LOCAL COURT)**

<b>DECISION NUMBER:</b>	<b>CRIMLA 9</b>
<b>DATE:</b>	<b>4 September 1990</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>9/0/1308 - Criminal</b>

**POINT OF PRINCIPLE**

Where a solicitor is representing a client in a local court where that solicitor normally practises and the client is remanded in custody at a distance, then the solicitor will normally be permitted to attend this client in custody to take instructions, although in all cases all the circumstances should be taken into account, including, by way of example, the nature and seriousness of the charge, whether the client is under a disability, the relationship, if any, between the solicitor and client, the practicability of taking instructions at court and the likelihood of the client being granted bail or being moved to a place of detention closer to the solicitor's office.

See CBAM 2.8

**CRIMLA 11 SEPARATE REPRESENTATION**

<b>DECISION NUMBER:</b>	<b>CRIMLA 11</b>
<b>DATE:</b>	<b>4 September 1990</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>15/9/25029 &amp; 15/9/6721 - Criminal</b>

**POINT OF PRINCIPLE**

Where the interests of justice require it, two or more legally aided defendants represented by the same firm of solicitors can be represented by separate advocates in court. It is for the solicitor to justify both the separate representation and the number of advocates used. Where separate representation is justified, the firm of solicitors may appear by in-house solicitor, solicitor agent or counsel, but where non-assigned counsel is briefed, the assessment will be on the maximum fee basis. Where it is sought to justify separate representation on the basis of interests of justice and it appears that there is a conflict which is such that the solicitor should withdraw from acting for one or more defendants, the Board should, in determining the solicitor's fees, consider whether it was reasonable for the solicitor to continue to act in those circumstances.

See CBAM 6.7

## CRIMLA 13 ENHANCED RATES IN CRIMINAL AND CARE CASES

<b>DECISION NUMBER:</b>	<b>CRIMLA 13 (Amended)</b>
<b>DATE:</b>	24 July & 4 September 1990, 9 March & 14 June 1993, 22 March, 17 May & 26 September 1994, 11 September 1995, 23 June 1997 & 22 September 1997, 23 February 1998
<b>OFFICE REFERENCE NUMBER:</b>	6/9/24623, 5/9/15663, 12/9/22686, 15/2/14819, 1/2/37546, 15/2/7595, 1/3/13813, 6/3/33022, 6/4/000150, 2908/93/7270, CA5/REV/111758, CA5/OBR/112905

### POINT OF PRINCIPLE

Where the criteria for paying enhanced rates in criminal proceedings under the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 are met, such claims will be assessed on the basis of the broad average direct cost of the work (the A figure), to which is added a percentage uplift (the B figure) to take into account all the relevant circumstances of the case.

The A figure will represent the broad average direct cost of undertaking the work. Factors to be taken into account in identifying this figure may include the rate likely to be allowed in an enhanced rates case by the appropriate Crown court for the relevant level of fee earner at the time to which the costs claim relates, and evidence of the results of surveys of local solicitors' expense rates for the locality in which the solicitor's office is situated.

As to the B figure, 35% should be considered as a starting point in respect of preparation. Solicitor advocacy would normally be expected to carry an uplift of 40-60%, and attendances with counsel 20%.

In the majority of cases where enhancement is claimed and allowed it will, nonetheless, be usual to pay travel and waiting without enhancement at the prescribed legal aid rate. Each case must be considered on its own particular merits having regard to all the relevant circumstances of the case. A claim for travel and waiting at the A figure may be allowed in exceptional cases. Even then travel and waiting would not be expected to attract an uplift on the A figure.

When enhanced rates apply to routine letters written and to telephone calls made or received and they are not timed, the method of assessment is to allow them at one-tenth of the hourly rate plus, in appropriate cases, an uplift for preparation.

Save for the purpose of CRIMLA 59, this decision only applies to cases where the legal aid order was granted prior to 1 October 1994.

See CBAM 7.2

**CRIMLA 15 PAYMENT OF WITNESS EXPENSES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 15</b>
<b>DATE:</b>	<b>1 October 1990</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>15/0/1942 - Criminal</b>

**POINT OF PRINCIPLE**

The effect of the provisions of Section 25(3) of the Legal Aid Act 1988 and Regulations 15 and 16 of the Costs in Criminal Cases (General) Regulations 1986 made under the Prosecution of Offences Act 1985 is that witness expenses, defined as including compensation for trouble or loss of time and out of pocket expenses, are not payable under a criminal legal aid order unless the court directs that they may not be paid from central funds. If the court does so direct then they may be paid under the legal aid order where they were reasonably incurred in accordance with Regulation 7 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

See CBAM 4.7

**CRIMLA 16 CORRECTION OF PROSECUTION PAPERS**

<b>DECISION NUMBER:</b>	<b>CRIMLA 16</b>
<b>DATE:</b>	<b>3 December 1990</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>12/9/15654 - Criminal</b>

**POINT OF PRINCIPLE**

The primary responsibility for the accuracy and admissibility of prosecution papers lies with the Crown Prosecution Service and in the event of inaccuracies or objections to admissibility these should, in the first instance, be drawn to the attention of the Crown Prosecution Service who should be invited to correct them. There may, however, be rare cases where it is justified for the defence solicitors to correct the prosecution papers.

See CBAM 2.6



**CRIMLA 17 ENHANCED RATES: REPRESENTATION OF SEVERAL DEFENDANTS DOES NOT OF ITSELF JUSTIFY**

<b>DECISION NUMBER:</b>	<b>CRIMLA 17</b>
<b>DATE:</b>	<b>11 February 1991</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1/0/46079 - Criminal</b>

**POINT OF PRINCIPLE**

The fact that a solicitor is representing several defendants does not of itself justify the payment of an enhanced rate within paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

See CBAM 6.7

**CRIMLA 18    ENHANCED RATES - IMMINENT HEARING - EXCEPTIONAL  
COMPETENCE CANNOT BE INFERRED**

<b>DECISION NUMBER:</b>	<b>CRIMLA 18</b>
<b>DATE:</b>	<b>11 February 1991</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>12/0/13866 – Criminal</b>

**POINT OF PRINCIPLE**

Where a solicitor takes over a case from previously instructed solicitors which requires work at short notice for an imminent hearing, this will usually constitute exceptional despatch within paragraph 3(a) of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 but whether exceptional competence is involved will depend on the circumstances of the case and cannot be inferred.

See CBAM 7.2

**CRIMLA 19      TRANSCRIPTION OF TAPED INTERVIEWS**

<b>DECISION NUMBER:</b>	<b>CRIMLA 19 (Amended)</b>
<b>DATE:</b>	<b>11 March 1991 &amp; 27 February 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>3/0/19419 &amp; 2903/93/000460 - Criminal</b>

**POINT OF PRINCIPLE**

Where a solicitor applies for prior authority to transcribe a tape whether audio or video using an outside agency and satisfies the area committee that such a transcript is necessary, then authority should normally be granted. Where a solicitor chooses to transcribe such a tape in-house, the work of transcription would not normally be regarded as fee earner's work and will not therefore be remunerated under the legal aid order. Consideration of the tapes to decide whether any part of them should be transcribed and the checking of the accuracy of any transcripts obtained constitute fee earner's work which may be remunerated as such.

See CBAM 4.8

**CRIMLA 20    ENHANCED RATES IN MURDER CASES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 20</b>
<b>DATE:</b>	<b>30 April 1991</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1/0/15403 - Criminal</b>

**POINT OF PRINCIPLE**

Murder cases are extremely serious and often fall within the exceptional circumstances limb of paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

See CBAM 7.3

**CRIMLA 21 ATTENDANCE ON CLIENTS REMANDED IN CUSTODY AT A DISTANCE (NON-LOCAL COURT)**

<b>DECISION NUMBER:</b>	<b>CRIMLA 21</b>
<b>DATE:</b>	<b>30 April 1991</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>12/9/16845 - Criminal</b>

**POINT OF PRINCIPLE**

Where a solicitor is representing a client in a court where that solicitor does not normally practise and the client is remanded in custody at a distance from the solicitor's office, then the solicitor may be permitted to attend the client in custody to take instructions if the circumstances of the case make this appropriate. Circumstances to be taken into account when reaching this decision include, by way of example, the nature and seriousness of the charge; whether the client is under a disability; the relationship, if any, between the solicitor and the client; the practicability of taking instructions at court and the likelihood of the client being granted bail or being moved to a place of detention closer to the solicitor's office.

See CBAM 2.8

**CRIMLA 22    ENHANCED RATES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 22</b>
<b>DATE:</b>	<b>9 July 1991</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>5/0/18176 - Care</b>

**POINT OF PRINCIPLE**

The circumstances of each case have to be examined to determine whether they are exceptional or whether the work has been done with exceptional competence and despatch. No one factor can be identified as inevitably justifying an enhanced rate. Substantial contested expert evidence is capable of constituting an exceptional circumstance so as to justify the allowing of an enhanced rate.

See CBAM 7.2

**CRIMLA 23      WORK COVERED AFTER SERVICE OF A NOTICE OF TRANSFER  
IN SERIOUS FRAUD CASES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 23</b>
<b>DATE:</b>	<b>9 July 1991</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>9/0/27044 - Criminal</b>

**POINT OF PRINCIPLE**

In serious fraud cases where a notice of transfer is served a legal aid order covering only proceedings in the magistrates' court continues in full force until the magistrates' court has discharged all its functions in relation to the proceedings.

Although after service of a notice of transfer the functions of the magistrates' court are limited to dealing with bail, witness orders and the grant of legal aid for the Crown Court, the work which may be carried out by the solicitor under the order until the magistrates have discharged all their functions is not limited to these matters. Work actually and reasonably done up until the last hearing in the magistrates' court may be incorporated in a bill to be assessed by the Board's area office and may be remunerated as being work preliminary in proceedings in the Crown Court in accordance with Section 19(2) of the Legal Aid Act 1988.

It therefore follows that where a through order is granted by the magistrates' court all work actually and reasonably done by the solicitor up until the last hearing in the magistrates' court should be incorporated in the bill to be assessed by the Board's area office.

See CBAM 3.6

**CRIMLA 24    ENHANCED RATES - LENGTH OF HEARING**

<b>DECISION NUMBER:</b>	<b>CRIMLA 24</b>
<b>DATE:</b>	<b>5 November 1991</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>12/1/007074 - Criminal</b>

**POINT OF PRINCIPLE**

The unusual length of a hearing is a factor which may justify payment of an enhanced rate on the basis of either paragraph 3(a) or (b) of Part I Schedule 1 to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

See CBAM 7.2



**CRIMLA 25    FACTUAL ENQUIRIES - USE OF ENQUIRY AGENT**

<b>DECISION NUMBER:</b>	<b>CRIMLA 25</b>
<b>DATE:</b>	<b>13 January 1992</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2/1/8070 - Criminal</b>

**POINT OF PRINCIPLE**

Whether it is reasonable for a solicitor to undertake factual enquiries himself or instruct an enquiry agent will depend on all the circumstances of the case including the nature of the case, the nature and number of enquiries to be undertaken, the travel involved and any unusual aspects of the case or the evidence.

Where a claim for profit costs for making enquiries is disallowed the Board may allow a notional amount, as part of the profit costs, for the instruction of an enquiry agent.

See CBAM 4.4

**CRIMLA 26 ERROR IN NOTIFICATION OF ASSESSMENT - NORMAL RULES OF ESTOPPEL APPLY \***

<b>DECISION NUMBER:</b>	<b>CRIMLA 26</b>
<b>DATE:</b>	<b>13 January 1992</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>6/0/18850 - Criminal</b>

**POINT OF PRINCIPLE**

Where an error occurs in the notification of the assessment of a criminal costs claim as a result of which the solicitor was misled the normal rules of estoppel apply.

**Guidance**

1. This decision was reached following certification of a point of principle of general importance by an area committee in a criminal case in which the notification of the area office assessment included a typing error. The claim was submitted late and the area office intended to make a ten per cent deduction. Ten per cent was deducted from the claim and the figures were correctly shown in the notification to the solicitor. Unfortunately, the notification bore a typed note indicating that one percent had been deducted.
2. The solicitors argued that a point of principle was raised to the effect that area office errors bound the Board so that in the instant case only a one per cent deduction should be made. In reaching this decision the Costs Appeals Committee has accepted that where an error is unambiguous and relied upon by the solicitor then the Board is bound by it.
3. Solicitors may seek to rely on this decision where there is an error in their favour but area offices should note that they and the area committees must act in accordance with the relevant regulations. Therefore, this decision can only apply where discretion is being exercised in some way. It does not apply to an assessment based on the scale rates which is then incorrectly notified.
4. Area offices should seek further guidance from Head Office if a solicitor/counsel seeks to rely on this decision which does highlight the need to take care in the production of letters/documents notifying decisions.

See CBAM 10.9

**CRIMLA 30 WORK UNDERTAKEN PRIOR TO COMMITTAL: SCOPE OF  
MAGISTRATES' COURT ORDER \***

<b>DECISION NUMBER:</b>	<b>CRIMLA 30</b>
<b>DATE:</b>	<b>27 April 1992</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>8/1/24865 - Criminal</b>

**POINT OF PRINCIPLE**

Where a legal aid order is made to defend criminal proceedings in the magistrates' court and the case proceeds by way of committal to the Crown Court, the costs payable under the order will be limited to items of work relating to proceedings in the magistrates' court. It is for the solicitor to justify work undertaken while the proceedings are in the magistrates' court, taking into account the nature of the case and the issues involved, the time when the work was undertaken, the then state of proceedings, the nature of any evidence obtained and the effect of delaying the work to a date subsequent to committal.

**Guidance**

The Costs Appeals Committee did not wish to make a decision which could lead to delay in the Crown Court. However, whilst early preparation should be encouraged in certain circumstances, there is a limit on the amount of preparation for trial that should be carried out in the magistrates' court. That is where it would be more appropriate for the preparation to be carried out post committal.

In some cases it may be essential to obtain witness statements at an early stage, i.e. whilst the proceedings are still in the magistrates' court. For example, where there are witnesses whose evidence relates to issues of fact, such as witnesses to a fight, an accurate record of their recollection is important and it is therefore good practice to see such a witness as soon as possible. Similarly alibi witnesses whose recollection of where somebody was at a specific time may need to be spoken to whilst the events are fresh in their mind. On the other hand, character witnesses are the sort of witnesses whose evidence can be obtained at any time. Such witnesses do not need to be spoken to immediately and the taking of witness statements from them may properly be regarded as work to be done post committal. The same may be said of other witnesses whose evidence is not time critical, but who are just a part of the whole picture.

The same applies to disbursements, for example, experts' reports. If a medical report is being obtained on a defendant's medical state of health, it may be that the report will go to their state at the time of committing the offence in which case an early report may be necessary, or it may go to their general state of health such as, e.g. whether they could survive a sentence of imprisonment. Such evidence can reasonably be obtained post committal.

If solicitors see witnesses of fact as to the event very soon after receiving instructions, it will be easier for them to justify that it was necessary to do that work immediately, and prior to committal, than if there is delay of some weeks or months, and then long after the event, they take witness statements very shortly before the committal.

See CBAM 3.3

## CRIMLA 31 USE OF LOCAL SOLICITOR AGENTS

<b>DECISION NUMBER:</b>	<b>CRIMLA 31 (Amended)</b>
<b>DATE:</b>	<b>1 June 1992 &amp; 27 September 1993 &amp; 24 September 2001</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>3/1/26346, 3/1/26693 &amp; 11/3/0481 NQBIVNE17A54/A/K/1, CA5/FOS/119599</b>

### POINT OF PRINCIPLE

In evaluating whether it is appropriate to employ a solicitor agent for any particular hearing, the assigned solicitor should take into consideration all the circumstances of the case, including by way of example:

1. the nature and purpose of the hearing, and/or what could be achieved in furthering the preparation of the case and the efficient and expeditious disposal of the proceedings by personal attendance;
2. the nature, gravity and complexity of the proceedings;
3. the relationship between client and solicitor;
4. whether the client suffers from any disability; and
5. the availability of local agents.

In the absence of any factors justifying the assigned solicitor's attendance, the assigned solicitor will be expected to have regard to the cost-effectiveness of employing a local solicitor agent, having regard to the time that will be spent by the assigned solicitor in briefing the agent and the agent in preparing for the hearing, compared with the likely cost of attending in person, including the time that would be spent in travel and waiting.

If the assessor considers that it was unreasonable for the solicitor to incur the travel time and cost, the assessor will reduce or disallow travelling costs to the extent that they exceed the costs which would have been allowed if an agent had been instructed. The sum for time and costs in these circumstances will include a notional allowance for:

1. an agent undertaking the work;
2. a fee-earner arranging the agent and preparing a letter or other form of instruction; and
5. considering any reports or correspondence received from the agent.

See CBAM 2.12

**CRIMLA 32 ENHANCED RATES: ASSIGNMENT OF COUNSEL**

<b>DECISION NUMBER:</b>	<b>CRIMLA 32</b>
<b>DATE:</b>	<b>1 June 1992</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>3/1/25557 - Criminal &amp; 3/1/26693</b>

**POINT OF PRINCIPLE**

A finding by magistrates under Regulation 44(3)(a) of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 that a case is unusually grave or difficult, justifying the assignment of counsel under a legal aid order, does not override the discretion vested in the appropriate authority to consider whether the circumstances of paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 apply, and whether the case attracts fees at more than the relevant basic rate (enhanced rates).

See CBAM 9.1

**CRIMLA 33 TRAVEL - TIME SPENT AND COSTS INCURRED**

<b>DECISION NUMBER:</b>	<b>CRIMLA 33 (Amended)</b>
<b>DATE:</b>	<b>30 July 1992 &amp; 30 January 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>7/1/17279 &amp; 1604/93/9582 - Criminal</b>

**POINT OF PRINCIPLE**

In determining the amount to be allowed in respect of travel:

1. Prima facie the amount to be allowed is the cost of the time expended on and the expenses incurred in making the journey by public transport, provided that public transport is available and is reasonably convenient, having regard to the relevant circumstances in each case; and
2. Allowances made should include the time spent and expense incurred in getting from the starting point to the railhead or coach station and also the time spent and expense in getting from the terminus to the destination.

See CBAM 2.13

**CRIMLA 34 ASSESSMENT OF COSTS: LOCATION OF SOLICITOR'S OFFICE**

<b>DECISION NUMBER:</b>	<b>CRIMLA 34</b>
<b>DATE:</b>	<b>2 February 1993</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>22/1/9729 - Criminal</b>

**POINT OF PRINCIPLE**

The fact that the firm of solicitors assigned under a legal aid order is not local to the court does not in itself mean that their costs must be assessed as if they were a firm local to the court. Guidance has already been given on the correct approach in decisions CRIMLA 21 and 31.

See CBAM 2.12



**CRIMLA 35 TIME SPENT LISTENING TO TAPE RECORDINGS OF POLICE INTERVIEWS**

<b>DECISION NUMBER:</b>	<b>CRIMLA 35 (Amended)</b>
<b>DATE:</b>	<b>9 March 1993 and 23 September 2002</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>12/2/12240 - Criminal</b>

**POINT OF PRINCIPLE**

It is reasonable in principle for solicitors to listen to tape records of police interviews where the client cannot confirm that the summary is correct.

See CBAM 2.6

**CRIMLA 36 ENHANCED RATES - MEANING OF "EXCEPTIONAL"**

<b>DECISION NUMBER:</b>	<b>CRIMLA 36 (Amended)</b>
<b>DATE:</b>	<b>27 June 1994 &amp; 26 September 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>15/1/33663 - Criminal</b>

**POINT OF PRINCIPLE**

The proper test of "exceptional" within the phrase "exceptional circumstances of the case" in paragraph 3(b) of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 is the ordinary and actual meaning of the word "exceptional" i.e. "unusual or out of the ordinary".

See CBAM 7.1

**CRIMLA 37 THE RELATIONSHIP BETWEEN DECISIONS OF TAXING MASTERS, THE COSTS APPEALS COMMITTEE, COSTS COMMITTEES AND REGIONAL OFFICES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 37 (Amended)</b>
<b>DATE:</b>	<b>14 June 1993, 23 November 1993 and 17 November 2003</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1/2/21640; CA5/BUR/125064</b>

**POINT OF PRINCIPLE**

1. Decisions of the Costs Appeals Committee are binding on Costs Committees and regional offices.
2. Decisions of taxing masters and determining officers are not automatically binding on the Costs Appeals Committee, Costs Committees or regional offices.
3. If a conflict arises between a taxing master's decision and existing Commission practice or a Costs Appeals Committee decision, then the existing Commission practice or Costs Appeals Committee decision should be followed. In such circumstances, however, a Costs Committee should give consideration to certification of a point of principle of general importance.

See CBAM 11.4

**CRIMLA 38 REASONABLENESS OF UNDERTAKING WORK: SOLICITOR'S THEN KNOWLEDGE**

<b>DECISION NUMBER:</b>	<b>CRIMLA 38</b>
<b>DATE:</b>	<b>27 September 1993</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>12/1/20163 - Criminal</b>

**POINT OF PRINCIPLE**

When considering whether or not an item in a bill is reasonable, the correct approach is to consider whether it was reasonable for the solicitor, in the light of his then knowledge, to undertake the work.

See CBAM 2.2

**CRIMLA 39 USE OF MORE THAN ONE FEE EARNER AT INTERVIEWS OR CONFERENCE**

<b>DECISION NUMBER:</b>	<b>CRIMLA 39</b>
<b>DATE:</b>	<b>25 October 1993</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1/0/83648 - Criminal</b>

**POINT OF PRINCIPLE**

Where the circumstances of the case justify it, a charge may be made for the attendance of more than one fee earner at the same interview or conference.

See CBAM 2.8

**CRIMLA 40      MAGISTRATES' COURT STANDARD FEES:    DEFINITION OF A  
CASE: SERIES OF OFFENCES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 40</b>
<b>DATE:</b>	<b>22 March 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>5364/93/138</b>

**POINT OF PRINCIPLE**

For the purposes of interpreting the definition of a case as set out in Part III Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989, the following factors:

1. that all the offences are ones of dishonesty; or
2. that all the offences are finally disposed of at the same hearing

would not of themselves establish that two or more charges or information form or are part of a series of offences.

See CBAM 6.3

**CRIMLA 41      MAGISTRATES' COURT STANDARD FEES: CRACKED TRIALS:  
TIME OF DISCONTINUANCE AND GUILTY PLEAS: CATEGORY  
OF CASE**

<b>DECISION NUMBER:</b>	<b>CRIMLA 41 (Amended)</b>
<b>DATE:</b>	<b>17 May 1994, 24 July 1995 and 22 July 2002</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1/1/77/93/000122 &amp; 3265/94/001648</b>

**POINT OF PRINCIPLE**

For the purposes of magistrates' court standard fees (set out in the table annexed to paragraph 2 of Part III Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989):

1. **Category 2.2** - it is not essential for the change of plea to be notified on the day of trial provided that the proceedings were listed and fully prepared for trial.
2. **Category 2.3** - it is not essential for the proceedings to be discontinued on the day of trial provided that proceedings were listed and fully prepared for trial.
3. In relation to each category, a case is to be treated as "listed for trial" whenever it is adjourned following a "not guilty" plea.

**Guidance**

In all cases where a solicitor claims a Category 2 standard fee in these categories, the solicitor must show that the case was, in fact, fully prepared, and that it was reasonable in all the circumstances for the solicitor to prepare the case fully at the time.

In determining whether a case is to be treated as having been fully prepared for trial following adjournment after a not guilty plea, there should be available, proportionate to the charges to be tried: a proof from the defendant dealing with each of the points to prove; observations on and analysis of the prosecution evidence; consideration of disclosure issues; consideration of the identification of defence witnesses and at least, attempts to contact them: but a case may be fully prepared whether or not those witnesses have been warned to give evidence.

See CBAM 3.7

**CRIMLA 42 MAGISTRATES' COURT STANDARD FEES: BAIL ACT OFFENCES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 42 (Amended)</b>
<b>DATE:</b>	<b>17 May 1994 &amp; 11 September 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>3237.93.000290, 2988.93.003664, 2997.93.001264 &amp; 2997.93.001584</b>

**POINT OF PRINCIPLE**

Proceedings under section 6 of the Bail Act 1976 for failure to surrender to custody are not incidental to the original proceedings for which bail was granted and do constitute a separate case.

Relevant only to 1995 – 8 cases. See CBAM 6.5



## CRIMLA 43 USE OF ENQUIRY AGENTS FOR TRACING WITNESSES \*

<b>DECISION NUMBER:</b>	<b>CRIMLA 43</b>
<b>DATE:</b>	<b>27 June 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1364/93/805 - Criminal</b>

### POINT OF PRINCIPLE

If it is necessary to employ an enquiry agent to trace a potential witness, then the fee for doing so, together with the fee for obtaining a statement from the witness when traced, may be allowable as a disbursement.

#### **Guidance**

1. If a solicitor takes a statement from a witness, then such an attendance will form part of the solicitor's claim for profit costs having regard to Regulation 6(1)(a) of the Legal Aid in Criminal & Care Proceedings (Costs) Regulations 1989.
2. Employing an enquiry agent to trace and locate a witness will be regarded as a disbursement to be determined in accordance with Regulation 7 of the Legal Aid in Criminal & Care Proceedings (Costs) Regulations 1989.
3. Generally if an enquiry agent takes a proof statement from a witness (without there having been a need to trace him first) this will be regarded as fee earning work forming part of the solicitor's profit costs. Otherwise solicitors would be able to use enquiry agents the whole time to take witness statements. Such work would escape the standard fee scheme.
4. However, in cases where the witness must first be traced and then when found, a statement taken there and then, it is difficult in practice for the enquiry agent to apportion his bill between the tracing work which would normally be regarded as a disbursement and the interviewing work which would normally be regarded as fee earning work (profit costs). In order to avoid the apportionment problem, the Committee has reached decision CRIMLA 43 so that where there is tracing as well as interviewing, the whole of the claim is treated as a disbursements claim for the sake of simplicity. It should be stressed that where no *tracing* is required the enquiry agent's claim should be regarded as a profit costs claim.

See CBAM 4.4

**CRIMLA 44    MAGISTRATES' COURT STANDARD FEES:    EITHER WAY  
OFFENCES DISCONTINUED PRIOR TO MODE OF TRIAL**

<b>DECISION NUMBER:</b>	<b>CRIMLA 44</b>
<b>DATE:</b>	<b>30 January 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1272/94/66, 1280/94/621 &amp; 2988/94/003784</b>

**POINT OF PRINCIPLE**

A charge or summons for an offence which is triable either way which is discontinued or withdrawn before mode of trial is determined in accordance with the procedures set out in sections 19-23 of the Magistrates' Courts Act 1980 attracts a category 1 standard fee.

See CBAM 6.4

**CRIMLA 45      MAGISTRATES' COURT STANDARD FEES - CLAIMS WHICH  
ATTRACT A STANDARD FEE**

<b>DECISION NUMBER:</b>	<b>CRIMLA 45</b>
<b>DATE:</b>	<b>27 February 1995, 17 July 2000</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2652/93/001212</b>

**POINT OF PRINCIPLE**

A claim for costs is only to be dealt with in accordance with the standard fee regime if the claim falls within one of the categories specified in the table set out in paragraph 2(2) of Part III Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989. Claims which do not fall into any of those categories attract a non-standard fee.

If the court withdraws or revokes a legal aid order during the course of proceedings, and there has been no guilty plea or other specified case outcome (so the proceedings are not among the types of proceedings listed in the table in Part III Schedule 1 Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989), the solicitor should claim a non-standard fee.

If the court re-instates the order or grants a fresh order in the same proceedings, any further work will form part of the same 'case' for the purpose of the standard fee scheme.

**Guidance**

1. The solicitor should calculate the total costs of the case, including the work done under both the revoked order and the fresh or re-instated order. The costs should not include any work done when no legal aid order was in force. He or she should then submit a claim for the appropriate standard or non-standard fee in respect of the total costs, accompanied by a statement of the amount already paid, so that the regional office can calculate the amount allowable for the total costs of the case, deduct that already paid in respect of the revoked order, and pay the solicitor the balance at the conclusion of the proceedings.
2. If the solicitor claims a lower standard fee for the total costs of the case, he or she should state that the claim is a supplemental claim in a covering letter or on the back of the form and enclose a copy of the previous claim.

3. If the solicitor claims a higher standard fee or non-standard fee for the total costs of the case, he or she should indicate that the claim is a supplemental claim under the heading 'Claim details' and enclose a copy of the previous claim.

See CBAM 6.1

**CRIMLA 46      MAGISTRATES' COURT STANDARD FEES - NEWTON HEARINGS**

<b>DECISION NUMBER:</b>	<b>CRIMLA 46</b>
<b>DATE:</b>	<b>27 March 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2656/94/923553</b>

**POINT OF PRINCIPLE**

The fact that in a case to which the magistrates' court standard fees regime applies there is a hearing in accordance with the principles in R v. Newton [1982] 77 Cr App R 13 does not mean the case attracts a category 2 standard fee.

See CBAM 6.4

**CRIMLA 47    MAGISTRATES' COURT STANDARD FEES: ENHANCED RATES:  
USE OF UNASSIGNED COUNSEL**

<b>DECISION NUMBER:</b>	<b>CRIMLA 47</b>
<b>DATE:</b>	<b>16 May 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2656/93/919427</b>

**POINT OF PRINCIPLE**

A solicitor acting under a legal aid order granted on or after 1 June 1993 is entitled to claim for work done by unassigned counsel at an enhanced rate if the criteria in paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 apply to such work.

See CBAM 7.3

**CRIMLA 48    MAGISTRATES' COURT STANDARD FEES: SPECIAL REASONS HEARINGS**

<b>DECISION NUMBER:</b>	<b>CRIMLA 48</b>
<b>DATE:</b>	<b>16 May 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1780/94/107418</b>

**POINT OF PRINCIPLE**

In a case to which the magistrates' court standard fee regime applies, the fact that there is a "special reasons" hearing does not of itself mean that the case attracts a category 2 standard fee.

See CBAM 6.4

**CRIMLA 49 ATTENDANCE ON THE EDITING OF INTERVIEW TAPES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 49</b>
<b>DATE:</b>	<b>9 October 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1775/94/002870 - Crime</b>

**POINT OF PRINCIPLE**

Where there is only one interview tape in existence (without any copies) it is reasonable for a solicitor to attend and be present when the tape is opened and either edited or copied by the police.

See CBAM 2.8



**CRIMLA 50 MAGISTRATES' COURT STANDARD FEES: SERIES OF OFFENCES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 50 (Amended)</b>
<b>DATE:</b>	<b>9 October 1995, 21 November 1995 &amp; 24 June 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2994/94/236230 &amp; 2721/95/000328 - Crime</b>

**POINT OF PRINCIPLE**

Whilst offences may, subsequent to committal, appear on separate indictments, that does not of itself mean that they cannot form a series of offences and be classed as one case, although it is a strong indication that they are separate cases. A similar approach should be adopted for offences triable either way that are committed.

In summary only matters or either way offences tried by magistrates, where the magistrates have determined that the offences are incapable of being tried together, although it is a strong indication they are separate cases, it is possible for a series of offences to be established.

See CBAM 6.3

**CRIMLA 51 TRAVEL AND WAITING - ENHANCEMENT**

<b>DECISION NUMBER:</b>	<b>CRIMLA 51</b>
<b>DATE:</b>	<b>9 October 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>5013/95/892/Crime</b>

**POINT OF PRINCIPLE**

Where paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 applies, items or classes of work allowed at more than the prescribed rates can include travel and waiting time.

See CBAM 7.1

**CRIMLA 52      WORK REASONABLY UNDERTAKEN WHEN THE LEGAL AID ORDER COVERS BOTH SOLICITOR AND COUNSEL**

<b>DECISION NUMBER:</b>	<b>CRIMLA 52</b>
<b>DATE:</b>	<b>9 October 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2650/93/27585 - Crime</b>

**POINT OF PRINCIPLE**

Where a legal aid order is granted to cover both solicitor and counsel the solicitor is entitled to proper remuneration for considering such papers and other materials to the extent reasonably necessary to enable the solicitor to understand the case and properly instruct and attend on counsel.

See CBAM 9.6

**CRIMLA 53 AN AREA COMMITTEE'S DECISION TO PROCEED WITH AN APPEAL**

<b>DECISION NUMBER:</b>	<b>CRIMLA 53</b>
<b>DATE:</b>	<b>9 October 1995</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>01/04/94/2461 &amp; 01/04/94/3184 - Crime</b>

**POINT OF PRINCIPLE**

In looking afresh at a costs assessment the area committee has an unfettered discretion. The solicitor has a duty to place all relevant matters before the committee. There is no breach of natural justice in refusing to allow an adjournment at the solicitor's request nor to give reasons for the refusal to adjourn.

See CBAM 11.2

## CRIMLA 54 REVIEW AND SUPERVISION ON FRANCHISED FILE \*

<b>DECISION NUMBER:</b>	<b>CRIMLA 54 (Amended)</b>
<b>DATE:</b>	<b>21 November 1995 &amp; 27 April 1998</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2780/95/000155 - Crime, CA4/BAL/112770</b>

### POINT OF PRINCIPLE

Time properly spent by a franchised firm reviewing and supervising files to meet the franchising criteria is time properly chargeable provided that it coincides with the stage in the proceedings at which the file would normally be reviewed and the work done would be recoverable on taxation as work reasonably done having regard to the needs of the case.

#### **Guidance**

1. This decision was reached following certification of a point of principle by an area committee in a criminal matter involving a franchised firm of solicitors.
2. The solicitors acted in two criminal matters. In submission of their claim for costs they included a claim for the time spent in reviewing and supervising the file in accordance with the franchising criteria.
3. The Board's review and supervising criteria are set out in paragraphs 3.49 and 3.50 of the Franchising Specification.
4. In the particular case the solicitors operated a system of file review and supervision at three points in a criminal case: after the first hearing, at mode of trial and disposal (summary trial or committal).
5. The Costs Appeals Committee recognised that in a criminal case, where the timespan is relatively short, file review and supervision would ordinarily be undertaken at points that coincided with the requirement to review progress on the case anyway.
6. The decision confirms that time properly spent by franchised firms in the review and supervision of criminal files to meet the franchised criteria is chargeable. It is of course subject to the normal principles of assessment. This will include consideration as to whether it was reasonable to undertake the supervision/review at that point in the case and whether the amount of time spent was reasonable.

7. Area offices should note that paragraph 3.50 of the franchising specification does not require every case file to be reviewed. Similarly, whilst there must be a supervisor for franchised files the extent of supervision will vary depending on, amongst other things, the experience of the case worker.
8. Where costs for supervision and review are claimed the area office may wish to seek, if appropriate, an explanation of the reasons why the nature of the case made the supervisor's participation necessary and of the occasions, duration and circumstances of the participation must be provided.
9. Area offices should seek further guidance from Head Office where necessary.

See CBAM 2.16

**CRIMLA 56    MAGISTRATES' COURT STANDARD FEES -    CLAIM FOR  
ENHANCED RATES (PRE-1 OCTOBER 1994)**

<b>DECISION NUMBER:</b>	<b>CRIMLA 56</b>
<b>DATE:</b>	<b>25 January 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>6/4/1377 - Crime</b>

**POINTS OF PRINCIPLE**

When a claim for enhancement is made under paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989, the determining officer should first consider whether the case is "exceptional" and justifies enhancement. If the claim for enhancement is refused, the solicitor should be notified that the case is not exceptional and given reasons. If the determining office considers the claim for enhancement to be justified, the costs should be assessed on the broad average direct cost of the work, with an appropriate percentage uplift.

See CBAM 7.2

**CRIMLA 57    MAGISTRATES' COURTS STANDARD FEES: DEFINITION OF A CASE**

<b>DECISION NUMBER:</b>	<b>CRIMLA 57</b>
<b>DATE:</b>	<b>27 February 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1013/93/4945 - Crime</b>

**POINTS OF PRINCIPLE**

Having regard to Part III Schedule 1 of the Legal Aid Criminal & Care Proceedings (Costs) Regulations 1989, a charge of escape from lawful custody can be a separate case.

See CBAM 6.3



**CRIMLA 58    MAGISTRATES' COURT STANDARD FEES -    CHANGE OF SOLICITOR**

<b>DECISION NUMBER:</b>	<b>CRIMLA 58</b>
<b>DATE:</b>	<b>20 May 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2814/95/000005 - Crime, CA5/VAR/109238</b>

**POINT OF PRINCIPLE**

Where a defendant is charged with an indictable only offence and the legal aid order is transferred to another solicitor before the committal takes place the work undertaken by the solicitor falls within a category 3 fee.

See CBAM 6.6

**CRIMLA 59    ENHANCEMENT RATES FOR LEGAL AID ORDERS GRANTED ON  
OR AFTER 1 OCTOBER 1994 \***

<b>DECISION NUMBER:</b>	<b>CRIMLA 59 (Amended)</b>
<b>DATE:</b>	<b>23 September 1996 &amp; 23 February 1998</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>TAY/109460, CA5/OBR/112905</b>

**POINT OF PRINCIPLE**

In determining the percentage due under paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989, regard should be had to the Lord Chancellor's Directions for Determining Officers. Area offices and area committees must undertake the calculation set out in the attached guidance which must include a full "Backhouse" calculation for comparative purposes.

**Guidance**

1. When determining a claim for enhancement under paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 the assessing officer must first consider whether or not the case is "exceptional" and justifies enhancement. The Regulations provide that it may be appropriate to allow an enhancement for any item or class of work where, taking into account all the circumstances of the case, it can be established that :
  - (a) the work was done with exceptional competence, skill or expertise;
  - (b) the work was done with exceptional dispatch; or
  - (c) the case involved exceptional circumstances or complexity.
2. The proper test of "exceptional" within the phrase "exceptional circumstances" is the ordinary and actual meaning of the word "exceptional", i.e. "out of the ordinary" [R v. Legal Aid Board ex.p R M Broudie & Co [1994] 138 SJ 94].
3. If an assessing officer decides that enhancement should be applied to a case he may apply the percentage to particular items of work. If an enhancement is allowed for one item of work it does not have to be allowed for other items. It will depend on the circumstances of the case. Enhancement may be applied to any item of work including travel and waiting.
4. If an assessing officer receives a claim for enhancement but decides not to allow an enhancement the solicitor should be notified of the reasons why the case was not considered to fall within the criteria set out in the Regulations.

5. If the assessing officer considers that an enhancement should be applied to any item of work he must apply what he considers to be the appropriate percentage uplift to the prescribed legal aid rate applicable to that item of work. In determining the percentage regard should be had to:
  - (a) the degree of responsibility accepted by the solicitor and his staff;
  - (b) the care, speed and economy with which the case was prepared;
  - (c) the novelty, weight and complexity of the case.
6. However, the assessing office must in each case then go on to consider what hourly rate and percentage uplift would have been applied if the legal aid order had been granted before 1 October 1994 when the “Backhouse” principle applied. This principle is set out in CRIMLA 13. A “Backhouse” calculation must be carried out. Once that composite figure is known (the hourly broad average direct cost rate plus appropriate uplift) the assessing officer should then ensure that the relevant percentage applied in the assessment of that item of work provides a figure not lower than that composite rate, subject always to the maxima provided by the regulations.
7. The percentage by which the prescribed rate may be enhanced shall not exceed 100% except for where the proceedings relate to serious or complex fraud where the percentage may not exceed 200%. Such cases are, for example, those conducted by the Serious Fraud Office or those transferred under section 4 of the Criminal Justice Act 1987.

### Examples

If a solicitor (based in London), on a case that was not a complex or serious fraud, would have obtained under the “Backhouse” principle of broad average direct cost an hourly rate of £65.00 for preparation and an uplift of 40% then the composite rate would be £91.00 per hour. The prescribed rate for preparation of £47.25 would need to be uplifted by 92.60% in order to give an uplift of £43.75 (making a total of £91.00 per hour) to reach the figure which would have been achieved under the “Backhouse” calculation.

If a solicitor (based outside London) in an identical case would have obtained under a “Backhouse” calculation an hourly preparation rate of £65.00 and an uplift of 40% then the same exercise would need to be undertaken. The prescribed preparation rate for a solicitor practising outside London is £44.75. To achieve a figure close to the composite rate of £91.00 per hour a percentage in excess of 100% would need to be applied. As the regulations prescribe a maximum of 100% that would need to be applied and thus a figure of £89.50 would be the maximum allowable.

If the solicitor conducts a serious or complex fraud case to which para 3(2) would apply the same calculation would be undertaken but applying a maximum percentage of 200%.

See CBAM 7.3

**CRIMLA 60      MAGISTRATES' COURT STANDARD FEES - ENHANCED RATES  
- SERIOUS OR COMPLEX FRAUD**

<b>DECISION NUMBER:</b>	<b>CRIMLA 60</b>
<b>DATE:</b>	<b>23 September 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/AND/109836</b>

**POINT OF PRINCIPLE**

When a claim for enhancement is made under paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 the fact that the case was transferred to the Crown Court under section 4 of the Criminal Justice Act 1987 is a relevant factor in the determining officer's decision on whether the case involved exceptional circumstances.

See CBAM 3.6

**CRIMLA 61 BREACH PROCEEDINGS - SEPARATE CASE**

<b>DECISION NUMBER:</b>	<b>CRIMLA 61</b>
<b>DATE:</b>	<b>23 September 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2349/94/1703</b>

**POINT OF PRINCIPLE**

Having regard to Part III of Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations, a legal aid order granted for breach proceedings which are uncontested can be a separate case.

See CBAM 3.8

**CRIMLA 62 WORK UNDERTAKEN IN A FOREIGN COUNTRY UNDER A CRIMINAL LEGAL AID ORDER**

<b>DECISION NUMBER:</b>	<b>CRIMLA 62</b>
<b>DATE:</b>	<b>9 December 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2663/95/1499</b>

**POINT OF PRINCIPLE**

When a solicitor undertakes work in a foreign country he may be remunerated for what is reasonable waiting time depending on the facts and circumstances of the case, including whether, prior to leaving the United Kingdom, the solicitor made all reasonable efforts to contact witnesses and, where possible, make convenient appointments.

In respect of enhancement on travelling and waiting times, the solicitor may be allowed an enhancement in accordance with point of principle CRIMLA 51.

Where an authority has been granted for reasonable travel and accommodation costs, the authority may include the directly consequential costs of the journey, e.g. entry visa charges and inoculation costs.

See CBAM 2.17

**CRIMLA 63    MAGISTRATES' COURT STANDARD FEES - DRIVING WHILST  
DISQUALIFIED - SERIES OF OFFENCES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 63</b>
<b>DATE:</b>	<b>23 September 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>2987/95/1763</b>

**POINT OF PRINCIPLE**

Whether two or more offences of driving whilst disqualified constitute a series of offences will depend on the circumstances of each case and whether there is sufficient evidential or factual nexus between them. The fact that the offences are tried or listed for trial separately may be a relevant factor in the determining officer's decision whether there is one or more cases.

See CBAM 6.3

**CRIMLA 64    MAGISTRATES' COURT STANDARD FEES - BAIL ACT  
OFFENCES - SERIES OF OFFENCES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 64</b>
<b>DATE:</b>	<b>9 December 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/BRA/110512</b>

**POINT OF PRINCIPLE**

Two or more offences under either section 6(1) or section 6(2) of the Bail Act 1976 may constitute a series of offences, depending on the circumstances of each case and whether there is an evidential or factual nexus between them.

See CBAM 6.5



**CRIMLA 65    MAGISTRATES' COURT STANDARD FEES:    SERIOUS OR  
COMPLEX FRAUD**

<b>DECISION NUMBER:</b>	<b>CRIMLA 65</b>
<b>DATE:</b>	<b>9 December 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/GIZ/110050</b>

**POINT OF PRINCIPLE**

A criminal case may be serious or complex under paragraph 3(5) of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 even if not conducted by the Serious Fraud Office.

See CBAM 7.4

**CRIMLA 66      ENHANCED RATES - ASSIGNMENT OF LEADING COUNSEL**

<b>DECISION NUMBER:</b>	<b>CRIMLA 66</b>
<b>DATE:</b>	<b>21 April 1997</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/ZAM/111387</b>

**POINT OF PRINCIPLE**

Where a legal aid order provides for the services of a Queen's Counsel in the Crown court, this may be a relevant factor in considering whether the criteria set out in paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 have been met.

See CBAM 9.7

**CRIMLA 67 ALLOWANCE FOR COMPLETING APPLICATION FOR PRIOR AUTHORITY UNDER REGULATION 54 OF THE LEGAL AID IN CRIMINAL AND CARE PROCEEDINGS (GENERAL) REGULATIONS 1989**

<b>DECISION NUMBER:</b>	<b>CRIMLA 67</b>
<b>DATE:</b>	<b>21 April 1997</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/ROW/111388</b>

**POINT OF PRINCIPLE**

Work reasonably undertaken in making an application for the grant of prior authority should be remunerated as part of the solicitor's claim for preparation.

See CBAM 4.2

**CRIMLA 68 USE OF UNASSIGNED COUNSEL IN NON-STANDARD FEE CASES**

<b>DECISION NUMBER:</b>	<b>CRIMLA 68</b>
<b>DATE:</b>	<b>21 July 1997</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/GRA/111848</b>

**POINT OF PRINCIPLE**

Regulation 7A of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 (as amended) does not provide for payment from the legal aid fund of unassigned counsels' travelling and waiting time and/or travelling expenses in cases which attract a non-standard fee by virtue of the fact that they are excluded from the table in paragraph 2 of Part III Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

See CBAM 6.2

**CRIMLA 69    MAGISTRATES' COURTS STANDARD FEES:    BAIL ACT  
OFFENCES: FEE CATEGORY**

<b>DECISION NUMBER:</b>	<b>CRIMLA 69 (Amended)</b>
<b>DATE:</b>	<b>22 September 1997, 28 February 2000</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/WAD/111743, CA5/FLY/116861</b>

**POINT OF PRINCIPLE**

Offences under section 6 of the Bail Act 1976 are treated as ancillary to the substantive proceedings if legal aid was granted in respect of the specified proceedings on or after 1 December 1998. The plea to a Bail Act offence may determine the standard fee category claimed, but cannot give rise to a separate fee.

Where a defendant is charged with offences under both sections 6(1) and 6(2) of the Bail Act, and has legal aid for both matters, and pleads guilty to one, and pleads not guilty to the other, the whole matter, including the specified proceedings, should be treated as a category 2 mixed plea for standard fee purposes.

See CBAM 6.5

**CRIMLA 70    MAGISTRATES' COURT STANDARD FEES - DEFERRED SENTENCE**

<b>DECISION NUMBER:</b>	<b>CRIMLA 70</b>
<b>DATE:</b>	<b>17 November 1997</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/STI/112418</b>

**POINT OF PRINCIPLE**

Where sentence is deferred, two separate standard fee claims may be submitted. The first claim should be made on deferment of sentence. A subsequent claim may be made in category 1 once the final deferred sentence hearing has taken place.

If there are multiple cases where the sentence is deferred and the original claim(s) for costs were assessed as consisting of more than one case for standard fee purposes, the later claims for the work relating to the deferred sentence hearing should be assessed at the same number of cases.

See CBAM 6.4

**CRIMLA 71      ENHANCED RATES - SEPARATE REPRESENTATION**

<b>DECISION NUMBER:</b>	<b>CRIMLA 71</b>
<b>DATE:</b>	<b>27 April 1998</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/SMI/113318</b>

**POINT OF PRINCIPLE**

If co-defendants are separately represented in the same proceedings and enhanced rates are allowed on assessment in relation to work undertaken on behalf of one or more co-defendants, that may be a relevant factor in considering whether the criteria set out in paragraph 3 of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 have been met.

It will be for the solicitor seeking the enhanced rates to identify for the determining officer the issues which are common to the work undertaken by them and by other solicitors on behalf of any co-defendant.

See CBAM 6.7

**CRIMLA 72    MAGISTRATES' COURT STANDARD FEES - BREACH OF BAIL  
CONDITIONS**

<b>DECISION NUMBER:</b>	<b>CRIMLA 72</b>
<b>DATE:</b>	<b>27 April 1998</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/TEN/113255</b>

**POINT OF PRINCIPLE**

A breach of bail conditions leading to an arrest under section 7 of the Bail Act 1976 does not constitute a separate case for standard fee purposes when no section 6 offence is charged. Section 7 does not create an offence. Work undertaken in relation to a breach of bail is therefore incidental to the main proceedings.

See CBAM 6.5



## CRIMLA 74    SERIOUS OR COMPLEX FRAUD

<b>DECISION NUMBER:</b>	<b>CRIMLA 74</b>
<b>DATE:</b>	<b>19 January 1999 and 22 May and 17 July 2000</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/HAN/114406</b>

### POINT OF PRINCIPLE

It is a question of fact whether a case is a serious or complex fraud under paragraph 3(5) of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989. Each case must be considered according to its particular merits. Factors which may be relevant to the decision include where:

1. a large amount of money is involved, although this does not necessarily make a fraud serious or complex in itself;
2. the fraud has significant consequences for the victim e.g. fraud on individual private investors resulting in loss of life savings or personal bankruptcy;
3. the case raises complex issues of law, fact or procedure, examples of which could include access to bank accounts, foreign law jurisdictional issues, multiple offences/defendants, conspiracy charges and/or substantial forensic accountancy work;
4. detailed consideration of extensive documentary evidence/unused material is necessary;
5. the proceedings are transferred to the Crown Court under section 4 of the Criminal Justice Act 1987;
6. a preparatory hearing is ordered in the Crown Court under section 7 of the Criminal Justice Act 1987;
7. the case is investigated or prosecuted by the SFO, DTI, CPS Special Casework, Inland Revenue or Customs and Excise;
8. whether a QC has been authorised under Regulation 48(3) Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 because:
  - (a) in the opinion of the competent authority the case for the legally assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen's Counsel, and;
  - (b) either - (i) a Queen's Counsel or Senior Treasury Counsel has been instructed on behalf of the prosecution, or (ii) the case for the legally assisted person is exceptional compared with the generality of cases involving similar offences.

None of these factors should be taken alone as a conclusive indication that a case is a serious or complex fraud. Nor should this list of factors be regarded as exhaustive.

Where a solicitor presents a bill on the basis that the case amounted to a serious or complex fraud within paragraph 3(5), and the regional office or Costs Committee finds otherwise, it shall refer to that finding and explain the basis of the finding in its written reasons for its decision.

### Guidance

1. This guidance is issued by the Costs Appeals Committee in the light of the judgment of Mr Justice Buckley dated 14 December 1999 (QBD - unreported) in the taxation appeal relating to the case of R v Crossley (Messrs Murria v Lord Chancellor).
2. This appeal concerned the proper construction of paragraph 3(5) of Part 1 of Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 which reads:  
  
*“Where the proceedings relate to serious or complex fraud, the percentage above the relevant prescribed rate by which fees for work may be enhanced shall not exceed 200%.”*
3. The point certified was whether this paragraph should be construed to mean that the defendant must be “charged with” an offence of serious or complex fraud before a 200% uplift can be claimed **or** whether the test is satisfied if the proceedings “relate to serious or complex fraud”.
4. The High Court concluded that the wording of the paragraph meant that the proceedings must be “about” serious or complex fraud, irrespective of the actual charges in the indictment. He suggested that proceedings are “about” serious or complex fraud if it has been necessary for the solicitor to investigate and prepare the case as if the proceedings did involve serious or complex fraud in the sense used in Schedule 1 of the Criminal Justice Act 1989, i.e. did the solicitors have to prepare the fraud issue in as much detail and with as much expertise as if it were a serious or complex fraud trial?
5. If the above test is satisfied, the solicitor may be entitled to claim an enhancement of up to 200%, irrespective of the actual offences charged, provided that the other criteria set out in paragraph 3 of Schedule 1 are also satisfied. The onus is on the solicitor to supply sufficient information to the assessing officer to justify any claim that the usual maximum percentage rate of 100% should be exceeded.
2. If the assessing officer is not satisfied that it was necessary for the solicitor to prepare the fraud issue in as much detail and with as much expertise as if it were a serious or complex fraud trial, then the hourly prescribed rates cannot be enhanced by more than 100%.

See CBAM 7.4

**CRIMLA 75 TIME LIMITS FOR SUBMITTING A CLAIM WHERE THE ORDER IS TRANSFERRED**

<b>DECISION NUMBER:</b>	<b>CRIMLA 75</b>
<b>DATE:</b>	<b>26 July 1999</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/MAR/115501</b>

**POINT OF PRINCIPLE**

When a legal aid order is transferred to new solicitors, for the purposes of Regulation 5(1) Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 and subject to the exceptions provided for, the date of the transfer is deemed to be the “conclusion of the proceedings” for the former solicitor’s claim.

**Guidance**

The former solicitors should submit their original legal aid order with their claim within three months of the transfer. The new solicitors should submit the original order transferring legal aid to them (with a photocopy of the order setting out the offences covered) within three months of the actual conclusion of the proceedings.

See CBAM 10.4

**CRIMLA 76    ADVOCACY   ASSISTANCE   WHERE   REPRESENTATION   ORDER  
SUBSEQUENTLY GRANTED**

<b>DECISION NUMBER:</b>	<b>CRIMLA 76</b>
<b>DATE:</b>	<b>22 March 2004</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA5/JAM/126217</b>

**POINT OF PRINCIPLE**

Provided the work is undertaken before an Early Hearing, it may be relevant to that hearing rather than to any later hearing for which a Representation Order would be appropriate; and may therefore be covered by either Advocacy Assistance or Legal Help.

**CRIMLA 77**

**CLAIMING FOR POST-CHARGE WORK CARRIED OUT IN THE POLICE STATION**

<b>DECISION NUMBER:</b>	<b>CRIMLA 77</b>
<b>DATE:</b>	<b>4 May 2007</b>

**POINT OF PRINCIPLE**

Firms have a choice as to how to claim for work carried out, after charge, in the police station, either on the representation order or as part of the police station claim. The wording in the guidance in the Criminal Bills Assessment Manual was permissive, rather than prescriptive (“may” rather than “must”) because, in cases where there was a change of solicitor, it will only be possible to claim under the work type which that firm has carried out. In different cases, this may be either the investigations class or proceedings.

<b>DECISION NUMBER:</b>	<b>CRIMLA78</b>
<b>DATE:</b>	<b>4 OCTOBER 2010</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>MK/132607</b>

**POINT OF PRINCIPLE**

The act of transcription itself is administrative. The consideration of that which is transcribed may be considered to be fee-earner work.

# DUTY SOLICITOR

## DS1 WHEN THE DUTY SOLICITOR RATE IS PAYABLE FOR ATTENDANCES

<b>DECISION NUMBER:</b>	<b>DS 1 (amended)</b>
<b>DATE:</b>	<b>1 October 1990 &amp; 22 February 1999</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1/24/901523/A - Advice at Police Stations &amp; CA8/HOL/114689</b>

### POINT OF PRINCIPLE

Duty solicitor rates rather than own solicitor rates are only payable when a solicitor is advising as a duty solicitor within the Duty Solicitor Arrangements. Duty solicitor rates will be paid for the initial attendance at the police station and any subsequent attendance where paragraphs 53(2) and (3), 54(1), 55 or 56 of the Arrangements apply, provided that it is reasonable to attend and each subsequent attendance concerns the original offence(s) being investigated. Duty solicitor rates will not be paid for subsequent attendances in other circumstances, e.g. where the suspect is being investigated for a separate offence.

See PACE 4.14

**DS2**

**SOLICITOR TO JUSTIFY USE OF INTERPRETER**

<b>DECISION NUMBER:</b>	<b>DS 2</b>
<b>DATE:</b>	<b>19 November 1991</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>1/24/90/54477 &amp; 1/24/90/31630 - Legal Advice &amp; Assistance at Police Stations</b>

**POINT OF PRINCIPLE**

Where a solicitor employs an interpreter to assist in his advising a client at the police station it will be for the solicitor to justify the interpreter's fees taking into account all the circumstances of the case, including the need to preserve confidentiality of advice given to a suspect and information received from a suspect and/or the particular characteristics of the language spoken and the need for accurate interpretation.

See PACE 7.11



<b>DECISION NUMBER:</b>	<b>DS 3</b>
<b>DATE:</b>	<b>30 JULY 1992</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>15/24/91/11583 - Duty Solicitor</b>

**POINT OF PRINCIPLE**

The definition of "volunteer" set out in Regulation 2 of the Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1989 does not exclude a person assisting police with enquiries at a police station or at any other place where a constable is present who is not at that time under suspicion themselves.

A legal representative may be remunerated for attending such persons providing that the conditions set out in Regulation 5(2) of the Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1989 are satisfied.

See PACE 3.2

**DS4**

**ABORTIVE VISIT TO POLICE STATION**

<b>DECISION NUMBER:</b>	<b>DS 4</b>
<b>DATE:</b>	<b>22 March 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>7/24/93/20662, 7/24/93/20667 &amp; 7/24/93/20668</b>

**POINT OF PRINCIPLE**

A legal representative who attends by prior appointment at a police station for the purpose of giving advice and assistance is entitled to be paid for work actually and reasonably done even though the purpose of the attendance is thwarted, for example because the client does not attend or the appointment has been cancelled without notice.

See PACE 9.5

**DS6**

**INTERVIEWS DURING AN INVESTIGATION BY A NON-POLICE AGENCY**

<b>DECISION NUMBER:</b>	<b>DS 6</b>
<b>DATE:</b>	<b>20 May 1996</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>09/24/95/48034 - CA8/MCD/109391</b>

**POINT OF PRINCIPLE**

A solicitor attending a client making a voluntary attendance at a place other than a police station in connection with an investigation by an agency other than the police force is not covered by the advice and assistance at the police station scheme unless a constable is present and taking part in the proceedings.

See PACE 3.2

<b>DECISION NUMBER:</b>	<b>DS 7 (Amended)</b>
<b>DATE:</b>	<b>27 April 1998 &amp; 28 September 1998</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA8/PRI/113375 &amp; CA8/MAR/113971</b>

### **POINT OF PRINCIPLE**

The expression “advising and assisting over the telephone” in Regulation 5(1)(d) of the Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1989 covers any attendance over the telephone actually and reasonably made which is not a routine call and which materially progresses the case.

It is possible for a single telephone call to comprise of more than one act of advice and assistance provided each claim relates to a separate and particular circumstance in which material progress was made.

The onus is on the solicitor to satisfy the assessing officer that any such work did progress the case and was actually and reasonably done. The solicitor must be able to supply an attendance note to justify any claim for advising and assisting over the telephone, if required to do so by the assessing officer.

**DS8**

**AVAILABILITY DURING DUTY PERIOD**

<b>DECISION NUMBER:</b>	<b>DS 8 (Amended)</b>
<b>DATE:</b>	<b>1 December 2000</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA8/KNI/118170</b>

**POINT OF PRINCIPLE**

Under paragraph 3(a) to the Schedule to the Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1989, a standby payment is allowed for availability during a duty period. In this context, “available” means “available to accept the initial call from the police station”. It does not mean that the solicitor must respond immediately.

See PACE 7.5

# GENERIC POPS

## CLA 13 PREPARATION OF ATTENDANCE NOTES

<b>DECISION NUMBER:</b>	<b>CLA 13</b>
<b>DATE:</b>	<b>17 May 1994</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>08/01/92/22546</b>

### POINT OF PRINCIPLE

In principle, the time taken in recording and preserving information necessary to be recorded and preserved for the proper conduct of a client's affairs is allowable on assessment.

<b>DECISION NUMBER:</b>	<b>CLA 34</b>
<b>DATE:</b>	<b>18 August 2003</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/KRI/121775</b>

**POINT OF PRINCIPLE**

The principle that a solicitor may only be paid for undertaking fee-earning work is unaffected by the fact that the work is done in a language other than English. A solicitor who speaks the same foreign language as the client may only claim as a fee-earner for fee-earning time: no payment may be made where a fee-earner merely translated papers or acted as an interpreter.

**CLA 35 EVIDENCE OF MEANS WHERE THE CLIENT IS STAYING WITH A BENEFACTOR**

<b>DECISION NUMBER:</b>	<b>CLA 35</b>
<b>DATE:</b>	<b>18 August 2003</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/KRI/121775</b>

**POINT OF PRINCIPLE**

Where a client is staying with, and dependent on, a benefactor, it is not necessarily impracticable for the client or solicitor to seek evidence from the benefactor of the extent of support being provided. A failure by the benefactor to respond should be recorded on the file.



## CLA 37 BURDEN AND STANDARD OF PROOF ON ASSESSMENT

<b>DECISION NUMBER:</b>	<b>CLA 37</b>
<b>DATE:</b>	<b>6 November 2003</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/HOW/123448</b>

### POINT OF PRINCIPLE

The burden of proof to justify a claim for costs remains throughout on the solicitors. The assessment is performed on the standard basis defined in Rule 44.4(2) CPR 1998. The standard of proof to be applied on consideration of evidence by those involved in assessment under paragraphs 2.14 to 2.18 of the GCC specification, when neither the contract, nor the guidance invoked by it, specifies the standard required, is the normal civil standard.

#### **Guidance**

1. The civil standard of proof is flexible, but the courts have always refused to be more specific about how it should be adapted according to different facts and circumstances. In the assessment of costs payable from public funds, the courts recognise that a balancing exercise is to be undertaken between the proper use of public funds and the need for appropriate remuneration for the solicitor.
2. The standard required cannot vary from firm to firm, nor depend on the wider implications of the assessment. However, the decisions made at all levels in audit cases have very significant consequences for all parties. Those undertaking assessments which are applied generally must therefore carry out their responsibilities with care, understanding the seriousness of the task and ensuring that when deciding whether an item is allowed or disallowed the decision is properly justified.
3. Whilst the contract requires that adequate attendance notes be kept, regard may also be had to all the circumstances (including the particular client's needs, the nature of the proceedings, and the requirements arising at the stage they have reached) as well as other contents of the file, in making judgments as to whether work was done and its reasonableness. The test to be applied is that laid down in *Francis v Francis and Dickerson* [1955] All ER 836, without applying hindsight, and having appropriate regard to guidance both on the reasonable expenditure of time and on good practice.

## CLA 38 TREATMENT OF UNDERCLAIMS IN AUDIT SAMPLE

<b>DECISION NUMBER:</b>	<b>CLA 38</b>
<b>DATE:</b>	<b>8 December 2003</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>CA4/MAR/125892</b>

### **POINT OF PRINCIPLE**

When taking an audit sample the Commission must assess the correct value of each file. Where the solicitor has claimed less than the value of an individual item, the full value should be allowed. If the total amount due on a file has been under-claimed by the solicitors, that undervalue must be set against any over-claim or over-claims elsewhere in the sample.

#### **Guidance**

The purpose of the costs compliance audit is to assure the Commission that suppliers are not claiming more than they are entitled to from the Community Legal Service or Criminal Defence Service Fund. The sample taken must be random, so that there may be a fair extrapolation of the audit finding across the entire relevant caseload. If undervalues are ignored the sample will cease to be random, because part of it is omitted.

## CRIMLA 12 DETERMINATION OF COSTS

<b>DECISION NUMBER:</b>	<b>CRIMLA 12</b>
<b>DATE:</b>	<b>4 September 1990 amended on 22 September 2003</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>7/9/40377; CA5/1222926/ASH</b>

### POINT OF PRINCIPLE

The process of costs assessment is similar whether a case is conducted in the Crown Court under the CDS Funding Order 2001 or in the magistrates' court under the General Criminal Contract Specification Part C, Rule 1.13 and the approach to both is defined by the same words. Assessment under the General Criminal Contract is assisted by the guidance contained in the Criminal Bills Assessment Manual. For that reason, in magistrates' court assessments, the application of the decision in *ex parte John Singh* will be wholly exceptional. The procedure will be as follows:

- i. first, to conduct a line-by-line assessment;
- ii. secondly, to stand back from that exercise and look at the size of the claim as a whole;
- iii. thirdly, when considering the claim as a whole, to apply a judgment of what was reasonably required for the preparation of a proper defence for the client.

Where the Commission disallows a specific item for a specific reason, the item should be identified and the reason given, but the Commission is not precluded from reducing claims for classes of work without specifically identifying particular items of work. If there is a reduction in the claim, whether on a line-by-line, or overall, basis, reasons must always be given sufficient to enable the solicitor to identify the relevant issues. Reasons should be given for any judgment under (iii) above which are separate from, and additional to, reasons for decisions under (i) above. A mere statement that the overall bill was unduly high is not enough. Where, in determining costs, the Commission has taken into account some specific factor or factors other than the nature, importance, complexity, or difficulty of the work and time involved, it should indicate that factor or factors.

A Costs Committee may determine a review of an assessment without considering the solicitor's file of papers if the solicitor has either declined or failed to send the file in response to a written invitation to do so.

## **Guidance**

Cases in the magistrates' courts will be determined by line-by-line assessment. An overall review may be used wholly exceptionally. Relevant factors in deciding the overall reasonableness of a bill include (relative to the nature of the case):

- (a) the total number of hearings;
- (b) the length of time the case took;
- (c) the extent to which the solicitor took reasonable steps to ensure continuity of representation at Court.

The fact that a claim is unduly high relative to other cases where the charge is the same or similar does not necessarily justify a round sum assessment, whereas a round sum reduction of a claim that is significantly higher, without apparent reason, than those incurred on behalf of other defendants to the same proceedings may be justified.

A period of 14 days after receiving the request is sufficient opportunity for a solicitor to respond to a request to send a file so that a Costs Committee can review the assessment of a claim.

See CBAM 10.8

**CRIMLA 28 REVIEW OF ASSESSMENT OF CLAIMS FOR COSTS BY AREA COMMITTEE**

<b>DECISION NUMBER:</b>	<b>CRIMLA 28</b>
<b>DATE:</b>	<b>16 March 1992, 24 September 2001</b>
<b>OFFICE REFERENCE NUMBER:</b>	<b>3/1/11011 – Criminal CA5/HAR/119637, CA5/FOS/119599</b>

**POINT OF PRINCIPLE**

An area committee dealing with a review of an assessment deals with it de novo.

When the Committee proposes reaching a decision adverse to the solicitor or counsel either on grounds different from those of the Regional Director, or on an aspect of the assessment that the appellant did not object to, it will allow the appellant the opportunity to make representations upon those grounds or that aspect and if necessary will adjourn the review for that purpose.