

Very High Cost (Criminal) Cases (VHCCs): Interim Fixed Fee Offer (IFFO) Scheme

1. Introduction

- 1.1 Advocates instructed in VHCCs may choose to be remunerated under the Interim Fixed Fee Offer (“IFFO”) scheme. This scheme was devised following discussions between the Ministry of Justice, the LAA and the Bar Council in 2014.
- 1.2 As part of the interim scheme, and after discussions with the Legal Aid Agency (LAA), the MoJ developed a fee calculation method to assist VHCC Case Managers, based mainly on the volume of case material, both evidence and disclosure, case category and trial length.
- 1.3 The aim of the scheme was to provide reasonable payment according to the individual circumstances of each case (within agreed parameters) and to give advocates greater certainty regarding the overall payment that would be made in a case from the outset.

2. Negotiation of fees

- 2.1 The LAA agrees with the advocate(s), at as early a stage of the proceedings as possible, a fixed fee, payable in three instalments, to cover all the work to be carried out in the case by the advocate(s).
- 2.2 Case Managers within the LAA’s Criminal Cases Unit collate the initial information gathered about the type and nature of the case, including;
 - Whether it should be allocated as a “fraud” or “murder” case
 - Likely VHCC categorisation
 - The volume of served and unused evidence, including the presence of raw digital data
 - The estimated trial length.

This information is obtained from the defence teams and if appropriate the prosecution.
- 2.3 The information is then input into the IFFO model/ calculator¹.
- 2.4 The calculator is in the form of a multi tab Excel document and its tabs can be summarised as follows:-
 - “Controls & AQA Log” is the version control tab and includes some basic instructions for Case Managers.
 - The “Inputs” tab sets out those pieces of information which are taken into account for each case in order to make the calculation. The Senior Case Manager will use this tab to input the data gathered to date. The Category of the case is in the first instance the VHCC category which has been allocated to the case for litigators under the “old style” VHCC contract.
 - The “Summary” tab provides a summary of the calculation alongside a comparison of what the case might cost under an enhanced version of the Advocates’ Graduated Fee Scheme (AGFS). The last section of this tab provides the figures which are placed in the contract, or

¹<https://www.gov.uk/guidance/high-cost-cases-crime>

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/313340/legal-aid-2013-contract-guidance.pdf

form the starting point for negotiations. The “enhanced AGFS” calculation is for cross reference purpose only and no longer practically used.

- The “Model” tab details the calculations using information from the “Inputs”, “Data & Assumptions” and “Regs” tabs. The AGFS rates and Adjusted AGFS formula are for reference only and no longer practically used.
- The “Data & Assumptions” tab sets out a narrative of how the assumptions were made when the scheme was devised and the source of that information, and includes for each case the weighting given to each quantity of material according to the type of material it is.
- The “Regs” tab contains the December 2013 Regulations which contain the VHCC hourly rates.

2.5 In certain instances, the Senior Case Manager may make an assessment that the calculation does not produce a fee which properly represents the nature or value of the case. Additional criteria may be taken into account when determining the final payment, including:

- Adjusting the weighting of the material, for example where unused material may seem to be of particular significance and therefore equate to evidence.
- Uplifting the case category.
- Enhancing the fee to take account of and include material not strictly within the remit of the calculator, such as third party or defence material, or evidence in related proceedings.
- Adjusting figures provided for raw digital material after making an assessment as to its overall likely significance and relevance.
- Taking account of material that is about to be served, but not yet produced.
- Taking into account the number of witnesses, both expert and non- expert, if this plays a particular role in the case (this has been done for murder cases only).

2.6 If the revised offer is accepted an IFFO contract is offered and signed.

2.7 If the offer is not accepted the Senior Case Manager will negotiate with the Instructed Advocate(s) to revise the offer(s), based both on submissions from the Instructed Advocate(s) and further information provided about the case and material, and using their experience of assessing the reasonableness of work proposals and making adjustments accordingly.

2.8 Each new case is considered in context alongside previous VHCCs, and Case Managers are supported by VHCC documentation and guidance published on GOV.UK¹ including the 2013 VHCC Contract Guide².

2.9 When the price is agreed and the contract signed, funding for the case is administered in accordance with the contract.

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²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/313340/legal-aid-2013-contract-guidance.pdf