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## The Litigator Graduated Fee Scheme Guidance

Issued:	14 January 2008
Re-Issued:	01 February 2008
	15 February 2008
	14 March 2008
	23 July 2008
	17 September 2009
	30 September 2009
	1 April 2010
	7 September 2010
	3 February 2011

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## Introduction to the Litigator Graduated Fee Scheme

### 1. What is the Litigator Graduated Fee Scheme (LGFS)?

- 1.1 The LGFS is a remuneration scheme for litigators undertaking Crown Court work. The LGFS was implemented on 14 January 2008 and it replaced the existing standard fee and ex post facto payment system<sup>1</sup>.
- 1.2 Under the LGFS, litigators are paid a graduated fee for Crown Court cases that are not contracted as Very High Cost Cases (VHCC)<sup>2</sup>. The fee is determined by pieces of case information or what are referred to as 'proxies'. These are case type, offence type, trial length and the number of pages of prosecution evidence (PPE).
- 1.3 An 'uplift' or increased payment is made to litigators who represent more than one defendant in a case<sup>3</sup>.

#### Defendant Uplifts

Total number of defendants represented by litigator	Percentage uplift to total fee
2 – 4	20%
5+	30%

- 1.4 The Advocates Graduated Fee Scheme (AGFS) is the remuneration scheme for advocates undertaking Crown Court work. From 7 February 2011 to 18 April 2011, responsibility for the administration of this scheme will be transferred from HMCS to the Legal Services Commission. For more information on the transfer and AGFS, please go to [http://www.legalservices.gov.uk/criminal/advocates\\_graduated\\_fee.asp](http://www.legalservices.gov.uk/criminal/advocates_graduated_fee.asp).
- 1.5 The LGFS and AGFS are regulated by the Criminal Defence Service (Funding) Order 2007 (Funding Order), as amended.
- 1.6 The LGFS has fixed fees for certain hearings arising out of non-indictment cases. These are payment for contempt proceedings (where contempt is alleged to have been committed by a person other than the defendant)<sup>4</sup>, alleged breach of a Crown Court order<sup>5</sup>, committals for sentence and appeal against sentence and conviction from the Magistrates' Court<sup>6</sup> and for cases with a representation order dated on or after 3 August 2009, some hearings post sentence<sup>7</sup>. The rates for these fixed fees are set out in the regulations governing the LGFS<sup>8</sup> and in the table following paragraph 2.21 of this guidance.

<sup>1</sup> Details of these payment regimes can be found in the original Schedule 2 of the Criminal Defence Service (Funding) Order 2007 (Funding Order)

<sup>2</sup> Please refer to article 4 of the Funding Order

<sup>3</sup> Please refer to Schedule 2, Part 2, paragraph 9 of the Funding Order

<sup>4</sup> Please refer to Schedule 2, Part 3, paragraph 13 of the Funding Order

<sup>5</sup> Please refer to Schedule 2, Part 3, paragraph 14 of the Funding Order

<sup>6</sup> Please refer to Schedule 2, Part 3, paragraph 12 of the Funding Order

<sup>7</sup> Please refer to Schedule 2, Part 3, paragraph 12A of the Funding Order

<sup>8</sup> Please refer to Schedule 2, Part 3 of the Funding Order

- 1.7 The LGFS was modeled on historical data and most areas of work are included in the final graduated fee and therefore do not attract separate remuneration. Some of these areas of work include but are not limited to:
- attendance on the client
  - attendance at court
  - travel and waiting time (actual travel disbursements are remunerated separately)
  - viewing or listening to CCTV/audio/video evidence
  - unused material
  - sentence hearing if separate from the trial
  - interlocutory appeals
  - special measures hearings
- 1.8 For more details of the LGFS (i.e. consultation, response to consultation, final impact assessment and guidance), please refer to the LSC website ([http://www.legalservices.gov.uk/criminal/litigator\\_fee.asp](http://www.legalservices.gov.uk/criminal/litigator_fee.asp)).
- 1.9 The LGFS guidance is a live document and will continue to be updated as and when necessary to reflect any procedural and regulatory changes to the LGFS. To the extent that the principles relating to the AGFS and LGFS schemes are the same, for any issue that is not addressed in this guidance, please refer to the AGFS guidance (and vice versa).
- 1.10 The guidance contained in this document is only the recommended line to take and does not take away the responsibility of the appropriate authority (i.e. LSC) to determine claims as they see fit and in accordance with the regulations.

### **Post Implementation review**

- 1.11 A review of the LGFS was published in August 2010 and involved representatives from the LSC, Ministry of Justice, The Law Society and Her Majesty's Court Service (HMCS). Some of the recommendations have been implemented and full details of the review can be found at [http://www.legalservices.gov.uk/criminal/litigator\\_graduated\\_fee\\_scheme.asp](http://www.legalservices.gov.uk/criminal/litigator_graduated_fee_scheme.asp).

## **2 Submitting bills under the LGFS**

- 2.1 Cases with representation orders dated on or after 14 January 2008 must be remunerated under the LGFS.
- 2.2 Cases with representation orders dated before 14 January 2008 must be remunerated under the old standard fee/ex post facto regime.
- 2.3 LGFS claims must be sent to the Litigator Fee Team (LFT) in Nottingham or Liverpool. Please see Appendix A for the address and relevant contact details.
- 2.4 Payment can only be made to the litigator named on the representation order.
- 2.5 Where there has been a transfer between the original litigator and the new litigator on a case, the date of the original representation order applies for the purposes of making a claim under the old system or LGFS. Only in exceptional cases, where the original representation order has been "revoked" and a new representation order is granted to a (new) litigator will the date of the "new" representation order apply.

- 2.6 The LF1<sup>9</sup> is the claim form for litigators and is required to be completed and sent to the LFT.
- 2.7 The LSC is committed to minimising the amount of additional evidence that needs to be submitted to support a claim for payment. It is important however that the LSC has sufficient evidence to validate payments in order to avoid:
- risk to the legal aid fund by limiting the ability to validate the claim
  - risk of not being able to match up disbursements with the claim
  - affecting turnaround times as there are still a number of cases on the court's CREST system that are incorrectly flagged as private cases<sup>10</sup>
  - hindering the LFT in tracing claims with ease as the LF1 contains information not on the Crown Court Litigator Fee (CCLF) online system.
- 2.8 The LSC therefore requests that litigators continue to complete an LF1 and submit the following:
- a copy of the representation order
  - any original invoices/prior authority forms/explanatory material for disbursements being claimed
  - a copy of the indictment
  - evidence of the final PPE figure supplied by the prosecuting authority (e.g. committal bundle/NAE cover sheet) or where the case has been transferred, evidence of the PPE figure at the time of the transfer (e.g. most recent NAE or original committal bundle cover sheet)
- 2.9 The LSC will keep litigators updated with developments on moving towards a paper free process.
- 2.10 Litigators have three months from the end of the case or the date of the transfer to submit their bills under the LGFS<sup>11</sup>.
- 2.11 Litigators are encouraged to submit their claim via the CCLF online system along with an LF1 form<sup>12</sup>.
- 2.12 If litigators submit anything to the LFT in hard copy form (such as invoices for disbursements), then this must be accompanied by the LF1.
- 2.13 Where the claim has not been entered onto CCLF, the LF1 must be signed before being submitted to the LFT.
- 2.14 For a case that includes a trial and a retrial, the trial and retrial should be billed separately. For example, if there is no change of litigator, the litigator should submit two separate claims i.e. a trial claim and a retrial claim.
- 2.15 If a solicitor-advocate has undertaken both the preparatory litigation work and advocacy work on the same case, they should submit separate claims under LGFS and AGFS.

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<sup>9</sup> Please go to <http://www.legalservices.gov.uk/criminal/forms/7574.asp> for a copy of the form.

<sup>10</sup> This is largely because many cases are committed to the Crown Court before the legal aid position in the magistrates has been settled. Clarifying the details on CREST with the court can lead to further delays.

<sup>11</sup> Please refer to paragraph 6 (3) of the Funding Order

<sup>12</sup> Please refer to [http://www.legalservices.gov.uk/lsconline/user\\_guides.asp](http://www.legalservices.gov.uk/lsconline/user_guides.asp) and <http://www.legalservices.gov.uk/criminal/forms/7574.asp>

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- 2.16 No advocacy in the Crown Court can be paid for as part of a litigator's bill, but can instead be claimed under the AGFS. However, any advocate can have their fee paid to a solicitor's firm when submitting a claim (*the advocate must be set up as a solicitor advocate on the court's CREST system*) provided the advocate is the Instructed Advocate.
- 2.17 The LSC publishes a number of online calculators, amended with each change to VAT rates or the scheme itself, to assist litigators in completing the LF1 and establishing the correct fee. The guidance on which calculator should be used can be found at Appendix E.

## VAT

- 2.18 In accordance with the LSC guidance on VAT, all cases reported as concluded before 1 December 2008 will attract a VAT rate of 17.5%, and all cases reported as concluding on or after 1 December 2008 will attract a VAT rate of 15%. All cases reported as concluding on or after 1 January 2010 will attract a VAT rate of 17.5%. All cases reported as concluded on or after 4 January 2011 will attract a VAT rate of 20%.
- 2.19 However, as the concluded date is not recorded for LGFS claims, the relevant date is the payment request date. If a payment is claimed on CCLF, then the relevant date is the date the claim was entered and saved. For paper based claims this will be the date that the LF1 was received and date stamped by the LSC. If the case details are entered online, then the relevant date is when the corresponding paper copy is received and date stamped by the LSC.<sup>13</sup>

## Fixed Fees

- 2.20 The LGFS has fixed fees for certain hearings. The following table reflects these fixed fees along with the rate change for representation orders issued on or after 3 August 2009.

Type of proceedings	Fee payable (representation order before 3 August 2009)	Fee payable (representation order on or after 3 August 2009)
Appeal against sentence from a Magistrates Court	£127.66	£170.21
Appeal against conviction from a Magistrates Court	£340.43	£382.98
Committal for Sentence	£212.77	£255.32
Contempt Proceedings (where contempt is alleged to have been committed by a person other than the defendant)	£127.66	£127.66

<sup>13</sup> Please refer to [http://www.legalservices.gov.uk/criminal/guidance\\_vat\\_change.asp](http://www.legalservices.gov.uk/criminal/guidance_vat_change.asp) for further information.

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Alleged breach of a Crown Court order	£85.11	£85.11
Hearing subsequent to sentence		£170.21
Evidence Provision Fee		£45 (lower tier) £90 (higher tier)  Whether or not a fee is payable will depend upon the date at which means testing was initiated at the individual Crown Court

### Appeal against sentence or conviction from a magistrates' court

2.21 Appeal against conviction or sentence can be claimed provided a notice of appeal has been lodged and an application for legal aid has been granted.

### Alleged breach of a Crown Court order

2.22 Please refer to Appendix C for a table of how specific alleged breaches of Crown Court orders are remunerated.

2.23 The use of the word single in paragraph 14(1) of Schedule 2 of the Funding Order is following paragraph 1 of the Funding Order where the LGFS applies to proceedings against one person arising out of a *single* alleged breach of an order. It therefore refers to each and every breach so if a person committed two breaches of an order at the same time, paragraph 14 applies separately to each breach.

2.24 Breach proceedings attract a fee in their own right, subject to any provision to the contrary, such as paragraph 14(2) which applies to proceedings dated before 3 August 2009 that are undertaken by the original litigator.

### Hearings subsequent to sentence

2.25 A litigator may claim a fixed fee for the following proceedings with a representation order dated on or after 3 August 2009:

- Section 1CA of the Crime and Disorder Act 1998 (variation and discharge of orders under 1C)
- Section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 (alteration of Crown Court sentence)
- Section 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendant: review of sentence)

### Evidence Provision Fee

2.26 Litigators may claim an evidence provision fee (EPF) in any case where, as a result of the introduction of means testing in the Crown Court, it has been necessary to provide additional evidence of the client's means.

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- 2.27 This fee may only be claimed where it has been necessary for the defendant to provide evidence of his/her means and this requirement is over and above the evidence needed to support the legal aid application in the magistrates' court.
- 2.28 The fee is only payable when **ALL** of the additional evidence required has been provided.
- 2.29 The Evidence Provision Fee cannot be claimed for:
- Summary only proceedings
  - An either way offence that concludes in the magistrates' court.
  - Applicants who are under 18 and/or in receipt of a passporting benefit
  - Applicants who do not have capital assets and there is no additional evidence to be provided.
  - Equity evidence as this is not required
  - Hardship applications sent to NCT
  - Evidence provided post conviction
  - Applications where there is evidence required but this has not been provided. This includes cases referred to the NCT.
- 2.30 The EPF is a two tier fee, the lower tier fee being payable for the majority of standard applications that do not involve applicants on passporting benefits. The higher tier fee is payable for complex cases, ie those where the applicant is self employed or must provide five or more pieces of evidence to establish an accurate picture of their financial position.

### **Claiming Disbursements and interim Payments**

- 2.31 Litigators may claim disbursements<sup>14</sup> for experts'<sup>15</sup> fees and reasonable travel incurred by them. Travel time for litigators is included in the graduated and fixed fees.
- 2.32 Where a litigator is claiming an unusual disbursement (e.g. a high value disbursement or a disbursement not usually associated with a type of case), then documentary evidence supporting the need for incurring the cost should be submitted. This documentary evidence may take the form of experts' breakdown of costs for proposed work, advice from the instructed advocate etc. and will be similar to the type of supporting evidence usually required under ex post facto.
- 2.33 Litigators may claim 'interim payments'<sup>16</sup> for disbursements where prior authority to incur expenditure of £100 or more has been obtained and the liability has been incurred.
- 2.34 "In house" photocopying charges for routine copying are not recoverable since these constitute general office overheads. Litigators may claim as a disbursement an outside agency's charges for bulk photocopying, i.e. in excess of 500 pages (which is a cumulative figure per case), provided the assessor considers such a course of

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<sup>14</sup> Please refer to articles 6 and 16 of the Funding Order

<sup>15</sup> This covers medical experts, translators/interpreters, financial experts or any other 'expert'

<sup>16</sup> Please refer to articles 14 and 15 of the Funding Order respectively

action reasonable, i.e. where the copies are so exceptionally bulky that it would not be reasonable to expect the litigator's normal office facilities to cope.<sup>17</sup>

2.35 Where substantial photocopying is undertaken "in-house", the litigator may claim the expense as a disbursement under the order provided that he or she can demonstrate that the costs incurred were a legitimate item of additional expenditure which amounts to an out of pocket expense, rather than part of the ordinary costs of running a litigator's office. Where prior authority is sought to cover photocopying expenses, the litigator should supply details of the rates charged by outside agencies at the time the photocopying was done.

### **Expert disbursements**

2.36 Where a litigator has claimed an interim payment for a disbursement for work incurred by an expert, reasonable travel expenses for the expert shall also be claimed. Travel disbursements and VAT can be claimed in addition to the sum granted for prior authority, provided they are accompanied by valid receipts or tickets. As attendance at court is wrapped up in the graduated fee, litigators shall not claim agency fees as a disbursement. Litigators have the option of apportioning their fee to pay for the agent if they wish.

2.37 When looking at the reasonableness or otherwise of experts' disbursements, we will apply the guidance set out in CBAM.

2.38 Article 14 of the Criminal Defence Service (Funding) Order 2007 refers to the claiming and authorisation of interim payments for disbursements. The intention behind article 14(7) is to allow experts access to information regarding the amount payable for a disbursement.<sup>18</sup>

2.39 Routinely informing experts of when both full and interim payments are made would place a significant administrative burden on the LSC and the National Taxing Team and the time taken to process claims may suffer as a result. Therefore, while the LFT is unable to routinely inform experts, they welcome queries at any time and will inform an expert as to whether a particular disbursement has been paid to a litigator.

2.40 If an expert is having difficulties receiving payment from a litigator, they should inform the LSC and The Law Society and take the appropriate course to recover their money under the terms of their contract.

2.41 When looking at the reasonableness or otherwise of travel disbursements, the LSC will apply the guidance set out in CBAM and in the Unified Contract (Crime).

2.42 Travel disbursements and VAT over £20 should be justified and, so far as possible, be accompanied by valid receipts or tickets. Litigators should keep copies of all receipts with their paper files as they may need to be called upon.

2.43 Where travel has been authorised, the LSC will use the following guide rates (excluding VAT) when assessing travel and accommodation expense claims:

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<sup>17</sup> Please refer to paragraph 4.12 of the Criminal Bills Assessment Manual (CBAM) for further guidance [http://www.legalservices.gov.uk/docs/criminal\\_contracting/Integrated\\_Criminal\\_Bills\\_Assessment\\_Manual\\_January\\_2008.pdf](http://www.legalservices.gov.uk/docs/criminal_contracting/Integrated_Criminal_Bills_Assessment_Manual_January_2008.pdf)

<sup>18</sup> Please note this article was amended on 3 August 2009 to incorporate the wording 'may notify'.

<b>Expense</b>	<b>Rate</b>
Standard Mileage Rate	45p per mile
Public Transport Mileage Rate	25p per mile
Overnight Hotel – London, Birmingham, Manchester, Leeds, Liverpool or Newcastle-Upon-Tyne city centres	£85.25
Overnight Hotel - elsewhere	£55.25
Night Subsistence Allowance	£21
Personal Incidental Allowance	£5
Overnight (other than at a hotel)	£25

The standard rate of mileage may only be paid where travel has been authorised and the use of a private motor vehicle was necessary (for example, because no public transport was available), or where a considerable saving of time is made (for example, where the witness would have been required to stay overnight, or leave and return at unreasonable hours, if public transport was used), or the use of a private motor vehicle was otherwise reasonable (for example, in the case of elderly or disabled witnesses, or witnesses carrying exhibits).

In all other cases, public transport rates apply. The public transport rate is a rate per mile calculated to be equivalent to the average cost of public transport. Thus, where the court at which a witness is required to attend is reasonably accessible by public transport, though the witness may choose to use a private motor vehicle, reimbursement is limited to the public transport cost (please refer to the case of R v Slessor in the Criminal Bills Assessment Manual for more information [http://www.legalservices.gov.uk/Criminal Bills Assessment Manual revision march 30 April 2005.pdf](http://www.legalservices.gov.uk/Criminal_Bills_Assessment_Manual_revision_march_30_April_2005.pdf)).

## **Hardship payments**

- 2.44 Hardship payments can be claimed and paid to litigators where the value of the case at the time of the claim is more than £5000 (excluding VAT) and where the litigator has been running the case for 6 months or longer<sup>19</sup>. The litigator also needs to provide evidence of hardship.
- 2.45 Predicted future costs of the case will not be considered.
- 2.46 As CCLF calculates payments inclusive of VAT, litigators will need to manually check that their claim meets the requirement of £5000 or more exclusive of VAT before they submit an on-line claim. Litigators may use the calculator on the LSC website for this purpose.
- 2.47 To make a hardship claim, litigators must submit the latest LF1 version, a copy of the representation order, the case details (offence type, PPE and number of defendants) and evidence of financial hardship.
- 2.48 The 6-month rule applies to the litigator and not to the Representation Order. Therefore, if a litigator has begun representing a client following a transfer of legal aid from a previous litigator, the period of time for the new litigator (for the purposes of calculating 6 months) commences on the date of transfer of legal aid, not from the original date of grant.

<sup>19</sup> Please refer to article 21 of Funding Order

- 2.49 Litigators cannot make hardship claims where it is likely that the case will end within three months.
- 2.50 Evidence needs to be provided to prove hardship. The hardship must pertain to the litigator firm and not to an individual. Evidence should take the form of bank statements and letters from the bank.
- 2.51 Because of the way CCLF is configured, hardship payments can only be paid under certain scenarios. However, the LFT will reconcile the difference when the final fee is claimed.
- 2.52 The litigator must use the same court reference number to claim the final fee. If there has been a change in court venue and a different court reference number has been assigned, the litigator must inform the LFT. The LFT will regularly review hardship payments to ensure duplicate payments have not been made.

### **3 Claiming the ‘Final Litigator Fee’**

#### **Case Type**

- 3.1 There are thirty types of case that a litigator can claim for under the LGFS and these are outlined and explained in full at Appendix B. These include claims for discontinuances, fixed fees, transfers and re-trials.
- 3.2 The main case types providers can claim and be paid for are “Trial”, “Crack”, and “Guilty”.
- 3.3 Any case that has a paper Plea and Case Management Hearing (PCMH) is deemed to have had a PCMH for determining the type of case.
- 3.4 “Trial” is defined as including all hearings that pertain to the main case i.e. from when the jury is sworn and evidence is called or from the date of a preparatory hearing, to the day of the acquittal or sentencing verdict hearing.
- 3.5 Whenever a judge has directed that there be a preparatory hearing under Section 29 of the Criminal Procedure and Investigations Act 1996, the first preparatory hearing shall be deemed as the start of the trial. This, and any subsequent preparatory hearing, will therefore be included in the length of trial calculation irrespective of whether the preparatory hearing(s) is/are held immediately before the rest of the trial or at an interval of some months before. No other fee should be paid for the attendance at the preparatory hearing(s).
- 3.6 Where there is a preparatory hearing but no jury is sworn thereafter because the client pleads guilty, or the case comes to an end for any reason, the case is either a cracked trial where a PCMH has taken place, or a guilty plea where a guilty plea has been entered at or before a PCMH.
- 3.7 If the Court considered other matters for days or parts of days before a jury is sworn such as disclosure, admissibility, abuse of process or Public Interest Immunity (PII) hearings, then these whole days are not treated as part of the trial.
- 3.8 Whenever an abuse, disclosure, admissibility, PII or other pre-trial hearing takes place, the result of which leads to a guilty plea or the prosecution offering no evidence (or otherwise disposed of), the hearing type will be a cracked trial or guilty plea, depending on when the guilty plea was entered.

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- 3.9 Where a Newton Hearing takes place, the case is treated as a trial with the hearing that the guilty plea was taken being the main hearing and the Newton Hearing being the second (and subsequent) day(s) of the trial. (See Costs Judge decision in *Regina v Gemeskel – X2* in the AGFS guidance)
- 3.10 A case cannot be treated as a trial where a Newton hearing is listed but does not take place.
- 3.11 A “cracked trial” is a case that is terminated between the PCMH and the first day of trial<sup>20</sup>. A case where no PCMH took place, but the case was listed for trial and did not get to trial or Newton Hearing, is also deemed to be a cracked trial.
- 3.12 Adjourning a PCMH to allow the prosecution time to decide whether or not to proceed would not qualify for a cracked trial fee.
- 3.13 A “guilty plea” is the guilty plea, which is entered at or before the PCMH<sup>21</sup> or a case that is not proceeded with at or before the PCMH, unless it falls within the discontinuance provisions in Schedule 2, Part 3, paragraph 16, page 38 of the Funding Order (as amended).
- 3.14 At a PCMH, where a not guilty plea is entered, and is followed by a subsequent change of plea to guilty on the same day only a guilty plea fee can be paid.
- 3.15 If a trial is aborted and another jury is sworn in either on the same day or the following working day, then the case is considered to be one trial. If there is a gap of more than one working day then it is normally considered to be a “Retrial” (See *Costs Judge decision in Regina v Gussman*). However, these parameters may be extended in certain circumstances (see *Costs Judge decisions in Regina v Khan (Zulfil Ali) 2003, Regina v Seivwright, Regina v Forsyth and Regina v Ali – all 2010*).

### **Offence Class**

- 3.16 Litigators must only claim one offence class under the LGFS. A full list of offences and their respective offence class can be found in the Funding Order 2007 at Schedule 1, Part 6, page 39.
- 3.17 Litigators can claim under the class of any offence with which their client(s) is/are charged on an indictment. Where a case has more than one count on the indictment in differing classes, then the litigator must select one offence and the fee is based on that offence.
- 3.18 The fee can only be based on an offence with which the defendant represented by the litigator is charged on the indictment. The litigator cannot claim for an offence that only co-defendants are charged with.
- 3.19 The LFT will review any piece of evidence that relates to the counts on the indictment to determine the value of the fraud. Litigators can submit indictments, case summaries or witness statements to assist the determining officer with their assessment.

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<sup>20</sup> Please refer to Schedule 2, Part 1, Paragraph 1 (1) of the Funding Order

<sup>21</sup> Please refer to Schedule 2, Part 1, Paragraph 1 (1) of the Funding Order

- 3.20 The majority of commonly prosecuted indictable offences are classified as shown in the Table of Offences in the Funding Order. Any indictable offence which is not classified, is automatically classified as Class H.
- 3.21 New offences or unusual offences fall under Category H.
- 3.22 Where a litigator in proceedings in the Crown Court is dissatisfied with the classification within Class H of an indictable offence not listed in the Table of Offences, s/he may apply to the LFT, when lodging his/her claim for fees, to reclassify the offence. The appropriate officer must either confirm the classification of the offence within Class H or reclassify the offence and must notify the litigator of his/her decision<sup>22</sup>.
- 3.23 Conspiracy to commit an indictable offence, contrary to section 1 of the Criminal Law Act, falls within the same class as the substantive offence. For example, Conspiracy to commit arson would be treated as arson.
- 3.24 For a robbery to be treated as an armed robbery (offence group B), one of the following two examples must apply (see Costs Judge decision in Regina v Stables).
- A robbery where a defendant or co-defendant to the offence was armed with a firearm or imitation firearm, or the victim thought that they were so armed, e.g. the Defendant purported to be armed with a gun and the victim believed him to be so armed – although it subsequently turned out that he was not – should be classified as an armed robbery.
  - A robbery where the defendant or co-defendant to the offence was in possession of an offensive weapon, namely a weapon that had been made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use, should also be classified as an armed robbery. However, where the defendant, or co-defendant, only intimate that they are so armed, they (sic) should not be classified as an armed robbery
- 3.25 When claiming that an offence falls within classes G or K, it is for the litigator to provide evidence to support any valuation over £30,000 (or £100,000) that takes an offence into the higher class if the value is not specified on the indictment.
- 3.26 Where two or more counts relate to the same property, then the value of the property should only be counted once.
- 3.27 A charge of Burglary falls within class E, notwithstanding the fact that an allegation of inflicting GBH may have been made (see Costs Judge decision in Regina v Crabb)
- 3.28 There are some offences where the offence class might change because of an additional factor such as where a restriction order is made, under s41 of the Mental Health Act 1983. For more information on the limited instances where the offence classes may alter, please refer to Schedule 1, Part 1, Paragraph 3 of the Funding Order.

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<sup>22</sup> Please refer to Schedule 2, Part 1, Paragraph 3 (1), Funding Order for more details relating to this and other ancillary matters pertaining to classification of offences

## **Length of Trial**

- 3.29 The 'length of trial' is the number of days of the trial, starting with the day the jury were sworn or where a preparatory hearing is ordered under section 29 of the Criminal Procedure and Investigations Act 1996 or section 7 of the Criminal Justice Act 1987.
- 3.30 The fee is based on the total number of trial days, regardless of whether the court sat for ten minutes or four hours on any given particular day at trial. This includes the sentence hearing, if it is part of the last day of the trial (e.g. the same day as the verdict) but not if the sentence hearing is postponed for reports and occurs on another day. In the latter scenario, the sentence hearing is not added to the trial length as it is wrapped up in the fee.
- 3.31 Where a Newton hearing takes place, this is treated as going to trial and therefore the length of trial will be the length of the main hearing and Newton hearing.<sup>23</sup>
- 3.32 Where there is a transfer during trial, the original litigator must only claim the trial length at the time of the transfer. The new litigator may claim for the full length of the trial (the fee payable being 50% of the full trial fee)

## **Number of Defendants**

- 3.33 Where a litigator represents two or more legally aided defendants on the same case, they must submit one claim and the defendant uplift<sup>24</sup>.
- 3.34 Where defendants are joined to or severed from a case, providers should claim for the number of defendants they are representing, or represented, for each particular case.

## **Joined/Severed cases**

- 3.35 A case is defined as proceedings against a single person on a single indictment regardless of the number of counts. If counts have been severed so that two or more counts are to be dealt with separately, or two defendants are to be dealt with separately, or if two indictments were committed together but dealt with separately, then there are two cases and the litigator may claim two fees.
- 3.36 Conversely where defendants are joined onto one indictment, or a single defendant has been committed separately for matters which are subsequently joined onto one indictment, this would be considered to be one case and the litigator may claim one fee.
- 3.37 When assessing claims and auditing payments, the LSC may consider matters to be one claim where two or more defendants or two or more matters for a single defendant have some or all of the following identical characteristics on the court records:

- PPE
- offence type
- PCMH date
- other hearing dates

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<sup>23</sup> Please refer to Schedule 2, Part 1, Paragraph 2 (4), Funding Order

<sup>24</sup> Please refer to Schedule 2, Part 2, Paragraph 9 of the Funding Order

- trial dates
- sentence hearing date

3.38 Where a case is transferred between Courts and obtains a different court reference number but other than that is unchanged as a case, only one fee should be claimed.

3.39 Where there is a re-trial with the same court reference number as the original trial, litigators will obtain an additional payment for the re-trial element of the case.

## **U Numbers**

3.40 Individuals, other than the defendant, shall be granted funding if they meet the necessary funding criteria in relation to a matter which may be treated by judges as criminal contempt by virtue of paragraph 13 (2), part 3, of Schedule 2 of the CDS Funding Order 2007. This regulation is wide-reaching and would cover/include contempt by jurors (such as a juror's failure to attend jury service when summoned, which is an offence punishable as if it were a criminal contempt in the face of the court).

## **Transfer provisions**

3.41 The Funding Order was amended on 3 August 2009 to provide greater clarity regarding transfers<sup>25</sup>. Even though the following was introduced for proceedings on or after 3 August 2009, the LFT will use the guidance in this section for all proceedings that fall within the LGFS as the Funding order was previously silent.

3.42 The term transfer has been extended to include the grant of a representation order to an individual who immediately before the grant of the order

- had represented him/herself
- had been represented privately by the litigator named on the representation order.

3.43 In both scenarios in paragraph 3.41, the litigator shall be treated as a new litigator. If a different litigator represented the defendant privately, the litigator named on the representation order shall be treated as a new litigator.

3.44 If the defendant chooses to represent him/herself privately after being represented by a litigator named on a representation order, the litigator shall be treated as an original litigator.

3.45 A case will not be considered to be a transfer to a new litigator in the following situations:

- Where a firm of solicitors is named as litigator on the Representation Order and the solicitor or other appropriately qualified person with responsibility for the case moves to another firm and maintains conduct of the case
- Where a firm of solicitors is named as litigator on the Representation Order and the firm changes whether it be by merger, acquisition or in some other way, but the new firm remains closely related to the original firm

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<sup>25</sup> Paragraph 10, Schedule 2 of the Funding Order.

## **Litigator Graduated Fee Scheme Guidance**

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- A solicitor or other appropriately qualified person is named as litigator on the Representation Order and the responsibility for the case is transferred to another solicitor or appropriately qualified person in the same firm or a closely related firm.

3.46 Where a case has been transferred to a new litigator (Litigator B), and is transferred again (to Litigator C), then Litigator B:

- a) Shall be treated as an original litigator where the transfer takes place at any time before the trial or any retrial
- b) Shall be treated as a new litigator where the transfer takes place during the trial or any retrial
- c) Shall not receive any fee where the transfer from B to C takes place after the trial or any retrial but before sentencing hearing.

3.47 Point c) in paragraph 3.45, applies where both transfers occur after trial but before sentence. In this scenario, firm B will not receive payment. Where a transfer occurs before trial or during trial (from firm A to B), and there is another transfer after trial but before sentence (from firm B to C), firm B will be treated as a new litigator.

3.48 Paragraph 3.46 replaces the former guidance found in Appendix B of the LGFS Guidance updated 23 July 2008 and shall be applied to all cases with multiple transfers.

3.49 In cases where representation is transferred after the client pleads guilty but before sentence, there is no scenario that directly applies to these circumstances. Therefore, the LSC considers the most applicable scenario to be 'transfer after trial but before sentence (new)' due to the circumstances and timing of the transfer. .

3.50 A litigator may not be treated as an original litigator and as a new litigator in a case.

## **4 Pages of Prosecution Evidence**

4.1 Following feedback from Representative Bodies and HMCS, the LSC agreed to provide further guidance on PPE. This document aimed to provide PPE guidance in relation to the operation of LGFS and AGFS that can be used by the LSC, legal aid providers, Representative Bodies and HMCS and can be found on the LSC website<sup>26</sup>.

4.2 The PPE Guidance has been amalgamated into this document and has been approved by the Crown Prosecution Service (CPS) and HMCS and has been consulted upon with Representative Bodies.

4.3 Paragraph (1)(2) of Schedule 2 of the Criminal Defence Service (Funding) Order 2007 (as amended) ("Funding Order") states that:

*For the purposes of this Schedule, the number of pages of prosecution evidence served on the court includes all*

- a) *witness statements;*
- b) *documentary and pictorial exhibits;*

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<sup>26</sup> [http://www.legalservices.gov.uk/criminal/crown\\_court.asp](http://www.legalservices.gov.uk/criminal/crown_court.asp)

c) records of interviews with the assisted person; and

d) records of interviews with other defendants

*which form part of the committal or served prosecution documents or which are included in any notice of additional evidence, but does not include any document provided on CD-ROM or by other means of electronic communication.*

4.4 In table 1 following this paragraph, we explain each of the criteria that must be satisfied for the evidence to be counted as PPE. Please note all of these criteria must be met before it can be claimed as PPE.

**Table 1 – PPE criteria**

<b>Elements of the PPE definition</b>	<b>Explanation</b>
Pages	<ul style="list-style-type: none"> <li>• Evidence must be in the form of ‘pages’</li> <li>• Any page that is classified as PPE is to be counted as one page regardless of the number of lines or images on the page or the size of small or large typefaces</li> </ul>
Prosecution Evidence	<ul style="list-style-type: none"> <li>• Prosecution evidence is material that the prosecution serve and rely on<sup>27</sup></li> <li>• This does not include, for example, all the data generated when interrogating the contents of a database if the prosecution intends to rely on only part of that data or provides the data for continuity purposes.</li> </ul>
Served on the court	<ul style="list-style-type: none"> <li>• Evidence must be served on the court</li> </ul>
Type of evidence	<ul style="list-style-type: none"> <li>• Evidence must be witness statements, documentary exhibits, pictorial exhibits or interviews of the defendant or co-defendants</li> </ul>
Included in the prosecution bundle or NAE	<ul style="list-style-type: none"> <li>• Evidence must be served as part of committal bundle for either way cases, or form part of the prosecution bundle for indictable only cases (served prosecution documents) or be included in any notice of additional evidence (NAE)</li> </ul>
Excludes electronic evidence	<ul style="list-style-type: none"> <li>• Electronic evidence cannot be claimed as PPE</li> <li>• Please note that where the defence team are served prosecution evidence on CD-Rom or DVD, and a paper copy of that evidence has been served on the court, the pages that have been served on the court will be counted as PPE for the purpose of the graduated fee</li> <li>• Where the defence team and the court are served prosecution evidence on CD-Rom, and all of the above criteria are met, a claim can be made by way of special preparation (see Special</li> </ul>

<sup>27</sup> See Costs Judge decision in Regina v Riclesford

**Evidence not counted as PPE**

4.5 Consideration of evidence that does not meet the PPE criteria is wrapped up in the graduated fee. For the avoidance of doubt, the following is a list of evidence that is excluded from the PPE proxy (note this list is not exhaustive):

- a) Evidence that is not served on the court
- b) Evidence that does not form part of the prosecution bundle or that is not supported by a NAE
- c) Evidence that is served in electronic format<sup>28</sup>
- d) Title pages, index pages, exhibit labels and separator pages
- e) Evidence served after the litigator or advocate is no longer representing the client
- f) Defence generated evidence (including the product of any defence analysis of forensic computer images or copies of electronic storage media (e.g. hard drives))
- g) Transcripts edited for the purpose of being put before the jury<sup>29</sup>
- h) Pre-sentence and psychiatric reports
- i) Physical exhibits
- j) Software or databases
- k) Unused material
- l) Audio and video evidence<sup>30</sup>
- m) Advance disclosure<sup>31</sup>
- n) Applications for Special Measures
- o) Prosecution Opening
- p) Case Summary
- q) Indictment
- r) Application to adduce bad character or hearsay evidence

<sup>28</sup> Please note evidence that meets the criteria (e.g. witness statements in the committal bundle that is served on the court) that is served in electronic format can be claimed as Special Preparation where the work is assessed and paid by way of hourly rates.

<sup>29</sup> Please note that when a transcript has been expanded, because the original was deemed insufficient for the jury, the fullest transcript produced will be included in the PPE count. The version that is in the committal bundle should also be counted.

<sup>30</sup> Please see paragraph 4.21 of the guidance

<sup>31</sup> Please see paragraphs 4.12 & 4.13 of this guidance.

- s) Evidence served for confiscation proceedings
- t) Admissions

### **Notice of Additional Evidence**

- 4.6 A notice of additional evidence is not defined in the regulations. The CPS routinely serves additional evidence under a standard NAE but not all prosecuting authorities follow the same format. Therefore, in limited circumstances, a formal document from the prosecuting authority, identifying the new evidence as being used evidence and formally served as part of the prosecution case may be sufficient. (See Costs Judge decisions in *Regina v Sturdy* and *Regina v Sales*)
- 4.7 If evidence is served on providers and it is unclear whether the evidence should form part of the prosecution bundle, providers should seek written clarification from the prosecuting authority at the time.
- 4.8 Please note that an application to adduce bad character or hearsay evidence cannot be classed as a NAE.

### **PPE limitation**

- 4.9 Where a litigator stops representing their client for any valid reason, the volume of PPE that can be claimed is limited to what has been served on the court up to the date the litigator stops representing that client.
- 4.10 The PPE proxy reflects the work done by the provider, therefore it would not be appropriate to include pages served after they have no further involvement in the case.

### **Multiple defendants**

- 4.11 Where a litigator represents more than one defendant on a case, and an identical (or nearly identical) bundle of PPE is served for each defendant, only the PPE from one bundle may be included for the purposes of claiming a graduated fee under the LGFS. The remuneration for extra work likely to have been undertaken for additional defendants is catered for in the defendant uplift.

### **Advance disclosure**

- 4.12 Advance disclosure does not count towards PPE. This is because such evidence is often duplicated in the committal or first prosecution bundle.
- 4.13 However, in circumstances where the case concludes before the prosecution documents are served, and it does not fall within paragraph 16 of Schedule 2 of the Funding Order, and the PPE count is relevant, the correct number of pages of PPE is the material served on the court for the purposes of enabling the Judge to deal with the case, which is usually similar to the advance disclosure bundle.<sup>32</sup>

### **Bad character and hearsay**

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<sup>32</sup> Para 1(3) of schedules 1 and 2 of the Funding Order

4.14 Where bad character or hearsay evidence is not served under a NAE, it cannot be claimed as PPE.<sup>33</sup> See Costs Judge decision in Regina v McCall 2010 (SCCO/124/10).

### **Evidence served at trial**

4.15 CPS practice is to have blank NAEs available at court and to serve evidence during the trial under a NAE. Where this does not happen, the defence teams can raise it with the prosecution casework manager at court who will serve a NAE if appropriate.

4.16 When a witness produces a new piece of evidence whilst in the witness box and it's agreed to exhibit that evidence, a NAE cannot be served as the evidence has already been adduced. Such evidence cannot be objectively validated and it does not fall within the definition in the Funding Order. It therefore cannot be claimed as PPE.

### **Special preparation for litigators**

4.17 Litigators can claim special preparation where:

- a) any or all of the prosecution evidence, as defined in paragraph 1(2) of the Funding Order, is served in electronic form only, or
- b) the representation order is dated on or after 3 August 2009 and the number of PPE exceeds 10,000

and the determining officer considers it reasonable to make a payment in excess of the graduated fee, within the circumstances of the case.

4.18 The appropriate officer must consider:

- the reasonable number of hours to view the evidence where paragraph 4.17(a) above applies;
- the reasonable number of hours to read the evidence where paragraph 4.17(b) above applies.

4.19 There is a 100,000 page cap on PPE for representation orders granted on or after 14 January 2008 but before 3 August 2009. There is no provision for special preparation for pages in cases with representation orders granted before 3 August 2009.

### **Assessment of Special Preparation**

4.20 Where evidence has been served in electronic format on the court and the defence teams, the following will apply when making a determination for special preparation:

- a) Where pages of statements, exhibits or interviews are scanned into a computer and served electronically for convenient presentation, and it meets the PPE definition, the determining officer may adjust the special preparation fee so that the provider receives an amount as if this evidence had been served in paper format

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<sup>33</sup> Please see [http://www.cps.gov.uk/publications/finance/gfs\\_faq.html#\\_22](http://www.cps.gov.uk/publications/finance/gfs_faq.html#_22) for further information.

- b) Where electronic media material is served (e.g. a sample of individual documents or images extracted from a computer hard drive that are not scanned statements or exhibits but which the prosecution are relying on), and it meets the PPE definition, the determining officer may consider the reasonable hours of time spent viewing the material.

4.21 Video or audio footage cannot be claimed under special preparation as moving footage does not fall within the context of “any document”. See the decision of the Honourable Mr Justice Penry-Davey in the matter of *The Lord Chancellor v Michael J Reed Ltd* [2009] EWHC 2981 (QB).

### History of validation of PPE

4.22 Both the LSC and HMCS validate claims against official court records by reference to information contained on the court’s CREST system.

4.23 In August 2008, a high volume of PPE disputes led to the establishment of a PPE Stakeholder Group (consisting of LSC, HMCS, CPS, Ministry of Justice and Representative Bodies) who developed an improved process of validating PPE. The process was for CPS to endorse the PPE on the committal bundle front sheet and endorse an updated running total of PPE on any subsequent NAE. At the conclusion of the case the defence advocate would complete a PPE form.

4.24 However, in August 2009, the LSC discovered there were still large-scale PPE disparities, which posed an unacceptable risk to the legal aid fund. The LSC took immediate remedial action and requested that advocates provide objective evidence supporting the submitted PPE with the PPE Form and that litigators provide objective evidence supporting the claimed PPE for LGFS claims.

4.25 Following the AGFS transfer, advocates will not be required to complete the PPE form. Advocates should provide objective evidence supporting the claimed PPE to the LSC instead.

### Current process for validating PPE

4.26 The process for validating PPE is as follows:

- a) CPS will provide paginated evidence bundles supported by an endorsement of the PPE on the committal bundle and updated running totals of PPE on any NAE or for non-CPS cases, a paginated bundle and index.<sup>34</sup>
- b) Litigators and advocates submit claims to the LSC<sup>35</sup> supported by evidence of the claimed PPE (along with the documents specified in the LF1 and AF1)
- c) The LSC validate claims against the supporting evidence. Where this is inconsistent with the claim, the LSC will liaise with the prosecuting authority to determine the correct PPE figure.

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<sup>34</sup> A requirement for PPE in the Crown Court to be numbered, indexed and for the prosecution to provide a running total of PPE was handed down by the Lord Chief Justice on 30 July 2010 following a recommendation by the LGFS review group. Supporting PPE evidence should now be available on all Crown Court cases.

<sup>35</sup> As of 7 February 2011, all cases with 2011 representation orders and all cases in Wales and the South West should be submitted to the LSC. All other claims should be submitted to HMCS until such time as those regions transfer to LSC administration in accordance with the agreed timetable.

4.27 Please note the following in relation to this process:

- a) Evidence of PPE must be sourced from material generated by the **prosecution** and provided to the defence teams in the course of the client's case. Such evidence of PPE includes:
  - Committal bundle or NAE front sheets endorsed with the CPS / prosecuting authority page count
  - Index of evidence
  - Paginated pages
  - Any other objective evidence that has been generated by the prosecution.
- b) Evidence of PPE must be generated by the prosecution office and cannot be a document prepared by the defence and/or prosecution advocate.
- c) The PPE form is no longer mandatory and, if submitted without any additional objective evidence, is not an acceptable form of evidence.
- d) Where the prosecution has provided a committal bundle or NAE cover sheet or have paginated the evidence, it is the responsibility of providers to ensure they maintain this evidence for the purposes of claiming payment.
- e) HMCS is not required to provide copies of any documents.
- f) Prosecuting authorities are not required to provide duplicate copies of supporting evidence for PPE purposes.
- g) The LSC and CPS have agreed that where the bundles of evidence have not been paginated or indexed, or where a running total of the PPE has not been endorsed on committal bundles or NAE then litigators should inform the LSC and the LSC will raise this as an issue with CPS direct.
- h) The CPS will not routinely deal with queries raised directly with them by defence litigators in relation to PPE after cases are concluded.
- i) For non-CPS cases, litigators should inform the LSC where evidence has not been paginated or indexed and they can therefore not provide PPE evidence to support their claim.

## **5 Discontinuance or Dismissal of Sent or Transferred Proceedings<sup>36</sup>**

- 5.1 The term discontinuance is used very specifically in the LGFS. Under the scheme, the term discontinuance relates to a type of fee applied to certain types of cases that conclude up to and including the PCMH (or pre-PCMH as we refer to it later in Appendix B).

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<sup>36</sup> Please refer to Schedule 2, Part 3, paragraph 16 of the Funding Order

5.2 The term discontinuance is used more widely in the Courts to refer to certain proceedings, such as where ‘proceedings’<sup>37</sup> are discontinued by notice or an application has been made to dismiss the case and certain conditions are met. This definition of discontinuance is not relevant within the LGFS for the purposes of claiming under the scheme. The reason for this is as follows:

5.2.1 Where a case concludes up to and including PCMH but the prosecution has served some of its case, a pre PCMH (guilty plea) fee will be paid.

5.2.2 Where a case concludes up to and including a PCMH and the prosecution has not served any of its case, a discontinuance fee will be paid.

## **6 Warrants for Arrest**

6.1 This payment type is an interim payment (or ‘fee advance’), which is claimable in situations where the defendant absconds and a warrant is issued for his or her arrest.

6.2 Where a warrant is issued for a defendant who fails to attend, (and the case does not proceed in his/her absence) and the defendant is rearrested (e.g. the warrant is executed) within 3 months, the case will be treated as if there was no break for the purposes of payment. This means the litigator will claim a litigator fee at the conclusion of the case as normal. Therefore only one fee is payable.

6.3 Where the warrant is executed after 3 months has passed since issue of the warrant, or where the client is not rearrested, the litigator can claim an interim payment for the portion of the case that occurred before the client absconded. Provision for such payments is made within CCLF under Bill Type ‘Fee Advance’, sub bill type ‘warrant’. Provision is also available to claim on the LF1 form.

6.4 At the conclusion of a case, where a client has been subsequently rearrested (the warrant is executed), the interim warrant payment may be offset against the final fee for the case. This depends on the timing of the execution of the warrant.

6.5 Where the warrant is executed more than three months after the issue of the warrant, but within 15 months of the issue of the warrant, the interim warrant payment will be offset against the final fee at the end of the case.

6.6 Where the warrant is executed more than 15 months after the issue of the warrant and the same litigator represents the client in the case, the litigator can claim both the interim warrant payment and a whole new LGFS payment for the rest of the case. Therefore, two fees are claimable.

6.7 Full details of the rules of the warrants for arrest can be found in Schedule 2, Part 3, paragraph 18 of the Funding Order.

## **7 Assisted Person Unfit to Plead or Stand Trial**

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<sup>37</sup> Proceedings which are sent for trial to the Crown Court under section 51 of the Crime and Disorder Act 1998 (no committal proceedings for indictable-only offences); or transferred to the Crown Court under—(i) section 4 of the Criminal Justice Act 1987 (transfer of serious fraud cases); or (ii) section 53 of the Criminal Justice Act 1991 (transfer of certain cases involving children).

- 7.1 In a case, where a ‘fitness hearing’ has taken place and the trial continues this will have been treated as a day at trial for the purposes of payment and therefore the length of trial will be taken to include the combined length of the main hearing and the ‘fitness hearing’.
- 7.2 In a case where a ‘fitness hearing’ takes place and a trial is not held, the litigator may claim a cracked trial fee.
- 7.3 In a case where a ‘fitness hearing’ takes place and a guilty plea is entered subsequently, the litigator may claim a guilty plea fee.
- 7.4 However, there are possible alternative claims and litigators should familiarise themselves with Schedule 2, Part 4, paragraph 20 of the Funding Order 2007 for details.
- 7.5 Where such a ‘fitness hearing’ takes place, litigators will be expected to submit documentary evidence to the LFT to support their additional trial length claim or other payment requirements under this provision.

## **8 Payment of LGFS Fees to Litigators**

- 8.1 LGFS payments are made by the LGFS system and will show up on a separate line on the litigators’ monthly statement. You should receive a payment for all LGFS claims in the next available LSC BACS payment run after your claim has been authorised. It is likely that payments will take anywhere between 2 weeks and 8 weeks. Under LSC targets, we are required to process LGFS final bills within 8 weeks and interim payments within 4 weeks. Appeals and reviews have different timescales (see section 9 below).
- 8.2 The rules governing LGFS payments are set out in article 24 of the Funding Order.

### **Wasted costs**

- 8.3 The court may make a wasted costs order based on an estimated cost of the case. As the scheme is based on case information and not time, a calculation of actual costs is not possible.

## **9 Redetermination and Appeals Process**

### **Redetermination**

- 9.1 Where a litigator is dissatisfied with the calculation of the fees, the litigator may seek a redetermination.
- 9.2 The litigator has 21 days, from the date of the LSC decision, to ask the LSC to review the decision<sup>38</sup>. The litigator should complete the “LF2” form<sup>39</sup> and submit this together with a copy of the LF1.
- 9.3 A redetermination involves the LSC checking the information, including any additional information, supplied by the litigator against actual court case file information or prosecution information.

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<sup>38</sup> Please refer to article 29 of the Funding Order

<sup>39</sup> <http://www.legalservices.gov.uk/criminal/forms/7574.asp>

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- 9.4 The LSC will then determine whether any amendments need to be made to the payment and amend the payment accordingly.
- 9.5 The LSC will subsequently notify the litigator of the redetermination decision by email or by post. In practice, the LSC will provide written reasons for the decision.
- 9.6 If no written reasons have been provided, or the litigator seeks more information, the litigator may request written reasons from the LSC<sup>40</sup> within 21 days of the review decision<sup>41</sup>.
- 9.7 If the litigator is still unhappy with the written reasons given by the LSC, then the litigator has a right to appeal to the Costs Judge.

### **Appeal to Costs Judge**

- 9.8 Litigators can only appeal to a Costs Judge after they have sought a redetermination and received the written reasons from the LSC.
- 9.9 Litigators must appeal within 21 days of the receipt of the redetermination written reasons, by giving notice in writing to the Senior Costs Judge<sup>42</sup>.
- 9.10 Litigators must inform the LSC of their decision to appeal so the LSC can also provide appropriate information to the Costs Judge. The LSC will send all necessary information to the Costs Judge (for example, information supplied to the LSC by the Courts, the redetermination decision including court case files and written reasons) to help them judge the costs in the case.
- 9.11 At the close of the appeal process, the LSC will amend the payment as appropriate and inform the litigator.

### **Limited Right of Appeal to the High Court**

- 9.12 A further limited right of appeal to the High Court also exists for providers and is detailed in the Funding Order at article 31.

### **Recovery of overpayments**

- 9.13 Article 26 of the Funding Order gives the LSC the authority to recover any overpayment that may have been made for whatever reason.

## **10 Very High Cost Case (VHCC) Panel Scheme**

- 10.1 Litigators are under a contractual and regulatory obligation to notify the Complex Crime Unit (CCU)<sup>43</sup> of the LSC if they are representing a defendant on a case that is likely to last 25 days or more at trial.
- 10.2 Where a non-panel litigator transfers a case to a VHCC panel member, and the Representation Order is dated before 3 August 2009, the non-panel member must submit their claim for work done up until the date of the transfer request, to the LFT.

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<sup>40</sup> Please refer to article 29 (8) of the Funding Order

<sup>41</sup> Please refer to article 29 (9) of the Funding Order

<sup>42</sup> Please refer to article 30 of the Funding Order

<sup>43</sup> Please refer to [http://www.legalservices.gov.uk/docs/forms/Notification\\_request\\_form\\_141108..pdf](http://www.legalservices.gov.uk/docs/forms/Notification_request_form_141108..pdf)

- 10.3 Where a non-panel litigator transfers a case to a VHCC panel member, and the Representation Order is dated on or after 3 August 2009, the non-panel member must submit their claim for work done up until the date of the transfer request, to the CCU.
- 10.4 Where paragraph 10.3 applies, the CCU will assess and pay the claim in accordance with the VHCC contract. The non-panel litigator is not permitted to make a claim under the LGFS.
- 10.5 Where paragraph 10.3 applies, if the litigator wishes to appeal the assessment of the claim, they can appeal within the VHCC appeal provisions. They are unable to appeal to a cost judge.
- 10.6 Where the CCU declassifies a VHCC, the LSC will recoup any payments made.
- 10.7 Where paragraph 10.6 applies, the litigator can claim payment under LGFS at the end of the case.
- 10.8 If the LFT receive a claim for a case that meets the VHCC criteria, they will confirm with CCU that the case was notified.

## **11 Provisional Representation Order (PRO)**

- 11.1 For more information on PROs, please see the Criminal Defence Service (Provisional Representation Orders) Regulations 2009 (S.I.2009 No.1995).
- 11.2 Where plea negotiations are successful, CCU will inform the LFT. The PRO contract specifies that the litigator can claim a guilty plea fee under LGFS, but must exclude the PPE proxy.
- 11.3 Where plea negotiations are unsuccessful, the prosecution are likely to continue with their investigation. If charges are made, the defence team will still be under an obligation to notify the case if it meets the VHCC criteria. If the case does not get classified as a VHCC, the litigator can claim under the LGFS in the usual way.

## **12 Confiscation Hearings' Preparation Fees**

- 12.1 Confiscation proceedings continue to be remunerated by ex post facto determination<sup>44</sup>.
- 12.2 However, at a future point the LSC expects to extend the LGFS to cover this work. We intend to work with the profession to devise an appropriate method of payment for these hearings under the LGFS.

## **13 Committals for Trial/s51 Hearings**

- 13.1 For cases that are sent to the Crown Court for trial under section 51 of the Crime and Disorder Act 1998, payment is included in the litigator graduated fee.
- 13.2 For cases with a representation order dated before 6 April 2010, or where the case is discharged prior to any Crown Court appearance (irrespective of the date of the representation order), committals for trial will be remunerated under the magistrates' court standard fee arrangements.

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<sup>44</sup> Please refer to Schedule 2, Part 4, Paragraph 21 of the Funding Order

- 13.3 For cases with a representation order dated on or after 6 April 2010, committals for trial will be remunerated under the LGFS. Under these new arrangements, a fixed fee of £318 (exc. VAT) will be payable for committal proceedings.
- 13.4 Litigators must claim payment for committal for trial proceedings at the conclusion of the Crown Court case as part of the final litigator fee.
- 13.5 Litigators may claim one fixed fee irrespective of the number of defendants they are representing or the number of hearings. In order to claim more than one fee, a litigator must have represented a defendant involved in separate committal proceedings during the course of the case. It should be noted that there are no exceptional case arrangements and that only the fixed fee may be claimed.
- 13.6 The committal for trial fee covers all work from the date of the representation order to the date that the case is committed to the Crown Court. However, where a defendant is refused funding in the magistrates' court, the representation order will be dated the day after the case is committed to the Crown Court. The Ministry of Justice have agreed that we can still pay the fee (subject to validation) and this fee includes all work done in the lead up to the date of committal.
- 13.7 To claim the committal for trial fixed fee, the revised LF1 (April 2010 or subsequent version) claim form must be used. Section three of the form has been amended to require litigators to specify the date the case is committed to the Crown Court and the relevant offence description. Litigators should include the offence type and a description of the offence/relevant statute. These sections must be completed if seeking payment for a committal for trial fee. The fee (£318 exc. VAT) should then be added into the total costs in section seven.
- 13.8 If claiming more than one fee, information in relation to the separate committal proceedings should be recorded on the same LF1 form and the additional fees should be added to the total in section seven.
- 13.9 From 25 August 2010, where a litigator is submitting a claim on CCLF, after entering the case information, the litigator must select create bill and then select 'committal for trial' bill type and enter all required information, removing all of the defendants for whom the fee is not claimed (i.e. if the litigator represents two defendants in the same committal for trial proceedings, one of the two must be "removed" from that element of the claim so that the correct fee is claimed). Once the bill has been created the claim will be submitted on CCLF for authorisation and payment.
- 13.10 For claims made before 25 August 2010, a litigator must claim the fee on the LF1 and the LFT will manually process the payment.

## **14 Support for litigators**

- 14.1 The LSC have produced this guidance, which details the LGFS scheme and how and when to claim fees under the new scheme. This guidance has been published on the LSC website for providers' information.

- 14.2 Moreover, we have published an online user guide for providers to inform them how to claim LGFS fees using the CCLF online system.<sup>45</sup>
- 14.3 Technical I.T (CCLF) support will be available to providers. For details of who to contact, please refer to the CCLF user guide for providers, which can be found on our website.

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<sup>45</sup> [http://www.legalservices.gov.uk/docs/cds\\_main/CCLF\\_External\\_User\\_Guide\\_part1.pdf](http://www.legalservices.gov.uk/docs/cds_main/CCLF_External_User_Guide_part1.pdf),  
[http://www.legalservices.gov.uk/docs/cds\\_main/CCLF\\_External\\_User\\_Guide\\_part2.pdf](http://www.legalservices.gov.uk/docs/cds_main/CCLF_External_User_Guide_part2.pdf) &  
[http://www.legalservices.gov.uk/docs/cds\\_main/CCLF\\_External\\_User\\_Guide\\_part3.pdf](http://www.legalservices.gov.uk/docs/cds_main/CCLF_External_User_Guide_part3.pdf)

## Appendix A – Key Contacts List

### GENERAL LGFS QUERIES (LFT)

Litigator Fee Team (Liverpool), LSC  
Tel: 0151 242 5239  
Email: [Liverpool@legalservices.gov.uk](mailto:Liverpool@legalservices.gov.uk)

Litigator Fee Team (Nottingham), LSC  
Tel: 0115 908 4383  
Email: [Litigators-fee@legalservices.gov.uk](mailto:Litigators-fee@legalservices.gov.uk)

LSC Region	Counties, Unitary Authorities or Metropolitan Borough Councils covered	LGFS Claim Forms sent to:
London	All London Boroughs	Liverpool
South East	Kent Surrey Sussex (East & West)	Nottingham
Southern	Berkshire Buckinghamshire Hampshire Isle of Wight Oxfordshire	Nottingham
South West	Cornwall Devon Dorset Gloucestershire Somerset Wiltshire	Liverpool Nottingham from 7 February 2011
Wales	All Welsh Counties	Liverpool Nottingham from 7 Feb 2011
West Midlands	Herefordshire Shropshire Staffordshire Warwickshire West Midlands Worcestershire	Nottingham
North West	Cheshire Cumbria Lancashire	Liverpool
North East	Durham Newcastle Upon Tyne Northumberland	Liverpool Nottingham from 7 February 2011
Yorkshire and Humberside	Yorkshire (East Ridings, North, South & West)	Liverpool Nottingham from 7 February 2011
East Midlands	Derbyshire Leicestershire Lincolnshire Northamptonshire Nottinghamshire Rutland	Nottingham
Eastern	Bedfordshire Cambridgeshire Essex Hertfordshire Norfolk Suffolk	Nottingham
Merseyside	Merseyside	Liverpool

## Appendix B – Case Type Scenarios Clarified

Please refer to the table below for a list of the case types you can claim for under the LGFS.

The *original* solicitor is the solicitor instructed by the defendant before the transfer occurs.

The *new* solicitor is the solicitor instructed by the defendant after the transfer has occurred.

The *original* solicitor hands over the case to the new solicitor.

The *new* solicitor takes over the case from the *original* solicitor.

Scenario	Definition/Clarification
Discontinuances (Pre PCMH)	Please refer to Section 4 of this document
Guilty Plea	Please refer to Section 3 of this document
Cracked Trial	Please refer to Section 3 of this document
Trial	Please refer to Section 3 of this document
Appeal against Conviction from the Magistrates' Court	Please refer to Section 2 of this document
Appeal against Sentence from the Magistrates' Court	Please refer to Section 2 of this document
Committal for Sentence	Please refer to Section 2 of this document
Hearing Subsequent to Sentence	Please refer to Section 2 of this document
Contempt	Please refer to Section 2 of this document
Alleged Breach of Crown Court Order	Please refer to Section 2 of this document
Cracked before retrial	Preparation for a re-trial has started but re-trial does not commence
Retrial	Preparation for a re-trial has been completed and a re-trial has taken place
Up to and including PCMH transfer (org)	What the <i>original</i> solicitor is paid where the defendant transfers to a <i>new</i> solicitor up to and including the PCMH
Up to and including PCMH transfer (new) - Guilty Plea	What the <i>new</i> solicitor is paid where the defendant transfers to them from a <i>original</i> solicitor and a case is a "guilty plea"
Up to and including PCMH transfer (new) - Cracked	What the <i>new</i> solicitor is paid where the defendant transfers to them from a <i>original</i> solicitor and a case is a "cracked trial"
Up to and including PCMH transfer (new) - Trial	What the <i>new</i> solicitor is paid where the defendant transfers to them from a <i>original</i> solicitor and a case is a "trial"
Before trial transfer (org)	What the <i>original</i> solicitor is paid where the defendant transfers to a <i>new</i> solicitor after the PCMH and before a trial has commenced
Before trial transfer (new) - Cracked	What the <i>new</i> solicitor is paid where the defendant transfers to them from the <i>original</i> solicitor and the case is a "cracked trial"

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Before trial transfer (new) - Trial	What the <i>new</i> solicitor is paid where the defendant transfers to them from the <i>original</i> solicitor and the case is a “trial”
During trial transfer (org) - Trial	What the <i>original</i> solicitor is paid up to the day of the transfer of the defendant to the <i>new</i> solicitor, during “trial”
During trial transfer (new) - Trial	What the <i>new</i> solicitor is paid after s/he has taken over the case from the <i>original</i> solicitor and has claimed for the full “trial”
Transfer after trial and before sentencing hearing (original)	What the original litigator is paid where the transfer takes place after the trial but before the sentence hearing
Transfer after trial and before sentencing hearing (new)	What the new litigator is paid where the transfer takes place after the trial but before the sentence hearing
Transfer before retrial (org) - Retrial	What the <i>original</i> solicitor is paid where the re-trial turns out to be a “cracked re-trial”
Transfer before retrial (new) - Cracked Retrial	What the <i>new</i> solicitor is paid where there is a “cracked re-trial”
Transfer before retrial (new) - Retrial	Where the <i>new</i> solicitor has taken over the case from the <i>original</i> solicitor between the “trial” and “re-trial” and there subsequently is a “re-trial”
Transfer during retrial (org) - Retrial	What the <i>original</i> solicitor is paid where the transfer takes place during the “re-trial”
Transfer during retrial (new) – Retrial	Where the <i>new</i> solicitor has taken over the case from the <i>original</i> solicitor during the “re-trial”
Transfer after retrial and before sentence hearing (original)	What the original litigator is paid where the transfer takes place after the retrial but before the sentence hearing
Transfer after retrial and before sentence hearing (new)	What the new litigator is paid where the transfer takes place after the retrial but before the sentence hearing

## Appendix C – Breach of Crown Court orders

Type of work	Work carried out	Funding available	Fixed Fee amount
Crown Court Order	Hearing for a Breach of a Crown Court Order (Community Sentence Order) with a representation order dated on or after 3 August 2009	Fixed Fee under LGFS for original and new litigators	£97.88
Crown Court Order	Hearing for a Breach of a Crown Court Order (Community Sentence Order) with a Representation order dated before 3 August 2009	<p>Where the substantive proceedings have a representation order dated before 14 January, the original and new litigator should apply for a fresh representation order and claim for payment under LGFS (if they have not claimed under the ex post fact scheme).</p> <p>Where the substantive proceedings have a representation order dated on or after 14 January 2008, and the original litigator represents the client named on the representation order, a fee cannot be claimed.</p> <p>Where the substantive proceedings have a representation order dated on or after 14 January 2008, and a new litigator represents the client named on the representation order, a fee may be claimed.</p>	<p>£97.88</p> <p>N/A</p> <p>£97.88</p>
Crown Court Order	Vary/discharge an order made under S155 of the Powers of Criminal Courts (Sentencing) Act 2000 (alteration of Crown Court sentence)	Fixed Fee 'hearing subsequent to sentence' under LGFS where an application is made within 28 days of the date of the original order	£170.21
Review of Sentence	Review of sentence made under S74 of the Serious Organised Crime and Police Act 2005 (assistance by defendant: review of sentence)	Fixed Fee 'hearing subsequent to sentence' under LGFS where the defendant assists the prosecution and has his/her sentence reduced	£170.21
Crown Court Order	Vary/discharge of a Crown Court Order (Community Sentence Order)  Excluding those under S.155 or S.74 which are dealt with above	No funding under LGFS This is covered within the original representation order and there is no separate fee available. If a new firm under take this work on or after 14 July 2010, free standing Advocacy Assistance in the Crown Court under the Crime Contract is available. If a new firm undertook this work prior to 14 July 2010, no funding available under any scheme.	N/A

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Crown Court Order	Appeal against a Crown Court Order (sentence imposed by Crown court)	Appeal to the Court of Appeal (Criminal Division) and if permission granted, a representation order can be granted by the Court of Appeal	N/A
Restraining Order	Vary/discharge/appeal/revoke a restraining order made under s 5 of the Harassment Act 1997	No funding available under the LGFS, but would fall within the scope of CDS so fundable as Advocacy Assistance under the Crime Contract.  For work commenced prior to 14 July 2010, only the appeal could be dealt with under advocacy assistance, no funding available for the applications to vary/discharge/revoke the order	N/A
Restraining Order on acquittal	Vary/discharge/appeal/revoke Restraining orders on acquittal only under 5A of the Protection from Harassment Act 1997	No funding under LGFS, but these orders are prescribed as criminal proceedings and so are fundable under Advocacy Assistance under the Crime Contract.  For work commenced prior to 14 July 2010, only the appeal could be dealt with under advocacy assistance, no funding available for the applications to vary/discharge/revoke the order	N/A
ASBO	Breach of <ul style="list-style-type: none"> <li>- Anti-Social Behaviour orders</li> <li>- Closure Orders</li> <li>- Football Banning orders</li> <li>- Parenting Orders</li> <li>- Sex Offender Prevention Orders.</li> <li>- Any other order made in proceedings listed under reg 3(2) of the CDS General 2 Regs 2001</li> </ul>	Breach of an ASBO, whether made by the Magistrates or Crown Court is a criminal offence and gives rise to new proceedings in which a representation order may be granted.  Litigators claim for the work carried out as normal e.g. guilty plea, committal for sentence etc.	N/A
ASBO	Appeal against an ASBO	No funding under LGFS but is fundable under Advocacy Assistance limit £1500	N/A
ASBO	Vary/discharge an ASBO made on conviction under section 1C of the Crime and Disorder Act 1998	Fixed Fee 'hearing subsequent to sentence' under LGFS	£170.21
VOO (Violent Offender Order)	Appeal against a VOO made under the Criminal Justice and Immigration Act 2009	No funding under LGFS but funding under Advocacy Assistance limit £1500	N/A

## Appendix D – Termination of Proceedings

The table below outlines the fees for proceedings that have been terminated for reasons other than a guilty plea or acquittal.

The scenarios below all assume the case has been committed or sent to the Crown Court.

Termination of proceedings scenario	When	Fee	Funding Order reference – Schedule 2
Discontinuance under s23A of the Prosecution Offences Act 1985	Before prosecution serves evidence	50% of basic fee for guilty plea only	Paragraph 16(2)
Discontinuance under s23A of the Prosecution Offences Act 1985	After prosecution serves evidence	Guilty plea	Paragraph 16(3)
Case dismissed on application	Anytime	Guilty plea	Paragraph 16(4)(a)
Case remitted to the magistrates' court following indictable only charges being dismissed	Anytime	Guilty plea	Paragraph 16(4)(b)
Prosecution offers no evidence	At the PCMH, or a hearing before the PCMH, and after prosecution evidence has been served	Guilty plea	Paragraphs 16(5) & 16(6)(a) (sent or transferred case), paragraph 2(5) (committed case)
Prosecution offers no evidence	After an effective PCMH	Cracked	Definition of cracked trial in paragraph 1(1)
Case remitted to the magistrates' court following prosecution offering no evidence for indictable only charges	At the PCMH, or a hearing before the PCMH, and after prosecution evidence has been served	Guilty plea	Paragraphs 16(5) & 16(6)(b)
Nolle prosequi (e.g. defendant unfit to be produced at court and incapacity is likely to be permanent)	Before or at PCMH	Guilty plea	Paragraph 2(5)
Nolle prosequi (e.g. defendant unfit to be produced at court and incapacity is likely to be permanent)	After an effective PCMH	Cracked	Definition of a cracked trial in paragraph 1(1)

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Leaving indictment on the file	Before or at the PCMH	Guilty plea	Paragraph 2(5)
Leaving indictment on the file	After an effective PCMH	Cracked	Definition of a cracked trial in paragraph 1(1)
Defendant dies	Before or at the PCMH	Guilty plea	Paragraph 2(5)
Defendant dies	After an effective PCMH	Cracked	Definition of a cracked trial in paragraph 1(1)
Case ends for any other reason	Before or at the PCMH	Guilty plea	Paragraph 2(5)
Case ends for any other reason	After an effective PCMH	Cracked	Definition of a cracked trial in paragraph 1(1)

Where a count is quashed, or it is to lie on file, no additional fee will be paid, as it will be wrapped up in the final fee.

Where an indictment is quashed for the purposes of joining to or severing from another indictment, or the indictment is replaced with another indictment containing the same or similar charges, the case has not come to an end so a fee cannot be claimed for the original indictment.

## Appendix E – Litigator Fee Calculators

Representation Order	Submission Date	Calculator
On or after 14 January 2008	14 Jan 2008 – 1 Dec 2008	v1 – January 2008
	1 Dec 2008 – 31 Dec 2009	v2 – December 2008
Between 14 January 2008 and 2 <sup>nd</sup> August 2009	On or after 1 Jan 2010	v1 – January 2008
On or after 3 August 2009	Before 1 Jan 2010	v3 – August 2009
	On or after 1 Jan 2010	v4 – January 2010
On or after 6 April 2010	6 Apr 2010 – 3 Jan 2011	v5.2 – April 2010
	On or after 4 Jan 2011	v6 – January 2011

The calculators can be accessed from the following page on the LSC website - [http://www.legalservices.gov.uk/criminal/litigator\\_graduated\\_fee\\_scheme.asp](http://www.legalservices.gov.uk/criminal/litigator_graduated_fee_scheme.asp)

### Litigator Fee Calculator – Version List

#### Litigator Graduated Fee Calculator – January 2011

**Version Number:** 6

**Should be used for:** Cases submitted on or after 4 January 2011

**VAT:** 20%

**Key Change:** Increase in VAT to 20%

#### Litigator Graduated Fee Calculator – April 2010

**Version Number:** 5.2

**Should be used for:** Cases where the Representation Order was granted on or after 6 April 2010.

**VAT:** 17.5%

**Key Change:** Incorporating the 'Committal for Trial' fee for Representation Orders granted on or after 6 April 2010.

#### Litigator Graduated Fee Calculator – January 2010

**Version Number:** 4

**Should be used for:** Cases where the Representation Order was granted on or after 3 August 2009 and submitted on or after 1 January 2010.

**VAT:** 17.5%

**Key Change:** Incorporating Funding Order changes implemented on 3 August 2009 and the increase of VAT for claims received by the LSC on or after 1 January 2010.

#### Litigator Graduated Fee Calculator – August 2009

**Version Number:** 3

**Should be used for:** Cases where the Representation Order was granted on or after 3 August 2009 and submitted before 1 January 2010.

**VAT:** 15%

**Key Change:** Incorporating Funding Order changes implemented on 3 August 2009.

#### Litigator Graduated Fee Calculator – December 2008

**Version Number:** 2

**Should be used for:** Cases submitted between 1 December 2008 and 31 December 2009, where the Representation Order was granted before 3 August 2009.

**VAT:** 15%

**Key Change:** Decrease of VAT for claims received by the LSC between 1 December 2008 and 31 December 2009.

#### Litigator Graduated Fee Calculator – January 2008

**Version Number:** 1

**Should be used for:**

1. Cases where the Representation Order was granted on or after 14 January 2008 and submitted before 1 December 2008.
2. Cases submitted after 1 January 2010 with a Representation Order dated before 3 August 2009.

**VAT:** 17.5%

**Key Change:** N/A