



Legal Aid
Agency

**VHCC – Care Case Fee Scheme
Information Pack - 1 Advocate
(External or In-House)
(South Tyneside)
For Cases Registered from 01
October 2015**

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Version History

Version:	Date	Reason
1	01/04/2013	First release - Legal Aid Reform and transition to Legal Aid Agency
2	16/04/2013	Clarifications in response to frequently encountered issues/questions. Amendments in counsel's fees following consultation with the BAR.
3	01/04/2014	Changes to LAA team structure and scheme rebranding
4	01/10/2015	Scheme Improvements. Amalgamation of the original Barrister and newer In-House Solicitor Advocate schemes and packs.

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1. Overview

This Information Pack applies to all VHCC Section 31 cases registered as high cost from 01 October 2015.

The VHCC Family Care Case Fee Scheme (CCFS) is a pricing scheme developed by the Legal Aid Agency based on analysis of bills subject to assessment by the South Tyneside Very High Cost Case (Family) Team. It is a simplified method of agreeing advocate's fees and solicitor's profit costs. We have prepared detailed guidance as to how the scheme works and developed a new CCFS Form that is used for both case planning and billing purposes, therefore avoiding the current complex detailed case plans and bills.

2. When is the scheme used?

This scheme only applies to Section 31 care and supervision applications. However, it is possible that the scheme could apply to other family cases, on request and at the discretion of the VHCC team, if those family cases follow a similar fact finding and disposal procedure, similar to Section 31 proceedings. It is used where the actual or projected future costs at prescribed rates exceed a total value of £25,000 (excluding VAT) and a single advocate only has been instructed. These cases are managed by the VHCC Family Team based in the South Tyneside office. This model differs from that employed by the London based High Cost Civil Teams, who manage cases where authority has been given to instruct both Queen's and junior advocate or two junior advocates.

When notifying the LAA that a case has or is likely to become high cost the provider must confirm that the case falls within the VHCC Care Case Fee Scheme or whether the case is exceptional in its nature, or arises from private law or other public law family proceedings.

The scheme can be used with external barristers or in-house solicitor advocates. The scheme will pay fees for advocacy carried out within a solicitor's firm in addition to the litigation tasks.

3. How does this work in practice?

When the provider notifies the LAA that the case will meet the Very High Cost Criteria, you will normally be paid under the CCFS scheme.

The provider has the option to complete the CCFS Form, and following agreement of costs, sign the contract. The LAA will ask the advocate via the provider to confirm that they have opted for payment under the FAS or CCFS scheme, if there is a choice. The LAA will then increase the cost limit on the certificate.

The provider can wait until the end of the case before submitting the CCFS Form. However, the financial limit will not be increased until a contract is in place.

At the end of the case the provider will submit the updated and fully completed CCFS Form with the actual hearings/events. The LAA will pay the provider and the advocate in accordance with the scheme based on the CCFS Form. Counsel fees under the Family Advocacy Scheme are claimed through their submission of Claim5A forms.

4. How much do I get paid?

Put at its simplest, a fixed amount is applied to all relevant trigger 'events' that occur throughout the lifetime of the case, to achieve a cumulative price for all work undertaken.

There are a number of rates that apply. In order to determine the rate you need to identify the following.

- 1, The Court the case is being heard in and the judge who will hear it:
2. The number of main hearing days: 10 days or less, or 11 days or more.
3. The Actual versus each Planned Hearing Length – and whether it over-runs or under-runs.
4. The type of advocate instructed: External Advocate (barrister or solicitor advocate) or In-House Advocate (barrister or solicitor advocate).

The event prices for solicitors and barristers are based on historic payments for typical cases paid under the hourly rates and Family Graduated Fee schemes. These figures were calculated taking into account the average hours spent in preparation, attendance, client correspondence, conferences and all other chargeable activities, as well as the rates and enhancements allowed on assessment. These cases were all complex high cost care cases involving instructed junior counsel. All figures exclude VAT.

The prices as calculated reflect the fact that in cases which proceeded past a 10-day 'main hearing', a distinct split in workload is evident, with instructed advocate undertaking additional work where the solicitor's work load decreases.

A 'main hearing' is defined as a hearing listed for and proceeding as a substantive fact finding and/or disposal hearing (sometimes also referred to as threshold/welfare hearings/final hearings) and any separate judgement day following on from those hearings, but excludes any IRH or pre-hearing review.

The planned main hearing length will be that reported when the case was notified as a very high cost case, or subsequently revised by judicial direction over 1 week before it takes place. This revision could take place before the fact finding or disposal hearing. The planned length of hearings will be evidenced by court order or judicial directions.

In general in this scheme, if there is difficulty in obtaining a sealed order from the court, then it will be acceptable for the solicitor to rely on the order either agreed at court or subsequently emailed to the court at conclusion of the hearing. That record will be provided to the LAA where required.

Regardless of who attended, or whether the main hearing was shared between the in-house solicitor advocate or external advocate, it is the total number of planned main hearing days throughout a case that determines whether there were more than 10 days main hearing. If a planned main hearing exceeds ten main hearing days then the '*> 10 days main hearing*' price is applied to all events throughout the case.

Advocates should always obtain the relevant documents needed to claim under the Family Advocacy Scheme as a case may not proceed as expected. If the main hearing is planned for below 10 days but over-runs, this is dealt with as set out in Section 8.

The prices were originally calculated for cases undertaken in the County Court/Family Proceeding Court or the High Court. Under the new procedures these rates have been used to set the fee for either (a) a case in the Family Court with a Family Court Judge other than a High Court Judge or (b) a case in the High Court or in the Family Court with a High Court Judge presiding over the main hearing.

The prices were originally developed for use with external advocates, traditionally by independent counsel. These have been extended for use with in-house advocates, typically solicitor advocates.

The prices calculated showed that historically costs varied on whether the hearing over-ran or under-ran its planned length. The prices were therefore designed to reflect this.

5. What events trigger a fee?

The following events trigger a payment under the scheme: -

For solicitors as litigator – An event is any hearing day (be it a five minute directions hearing or day 14 of a fact-finding hearing) and court ordered advocates meetings, but excluding substantive client conferences

For Advocates – An event is any hearing day (including written submissions days), advocates meetings ordered by the court, and a limited number of substantive conferences. No more than two conferences will be paid for without specific authorisation from LAA. See details set out below.

Substantive client conferences for advocates – This covers substantive conferences with the client, usually half a day with solicitor and counsel. It is envisaged that these would normally occur in the run up to substantive hearings. It does not cover conferences in the absence of the client, telephone conferences or conferences between solicitors. Again, it is likely that there would normally be no more than two of such conferences.

If an in-house advocate attends a client conference to be instructed on the case in addition to the case litigator, they will be paid a FAS or CCFS Advocate fee. Attendance should be evidenced by attendance notes showing that the litigator and advocate attended.

Experts meetings – These do not attract an event fee but are covered by the cumulative price arising from other agreed events. The LAA will not pay a separate event for a solicitor chairing an experts meeting, because this was not included in the analysis.

Why do conferences not attract an event fee for solicitor litigators? – When the scheme was devised it was considered that hearings alone represented the most consistent measure for solicitor's costs. The 'average' costs were therefore divided by the 'average' number of hearings. The event fee itself covers the average levels of preparation involved in a case including conferences and experts meetings. If we had decided to include conferences as events for solicitors as well then the same average costs would have been divided by a greater number of events, resulting in a lower 'per event' cost but giving rise to the same level of costs per average case.

Preparation – All solicitor and counsel preparation is included in the cumulative price arising from agreed events. No single item of preparation attracts an event fee.

Written Submissions – These occur in the minority of 1 advocate cases. If, in line with the FAS scheme the judge sets aside one of those days for written submissions to be prepared, that day will continue to attract an event fee for advocates providing written submission. Written submission days should be evidenced with a court order.

Judge's reading days – Any day listed as a judge's reading day, where no advocate is required to attend court, will not attract an event fee. It will also not count towards the number of 'main hearing' days unless it is within a group of days when counsel is ordered to attend court, rather than say being for a Monday at the start of a hearing week. If the advocate and/or litigator has been put on notice to stand by and is then

called to attend court that day, the event will attract a full event fee and count as a 'main hearing' day. This is consistent with the FAS scheme. Judicial reading days should be evidenced with a court order.

Advocates meetings – Any day that the judge orders for an advocates meeting will be treated as an event. Payment will be made for an in-house advocate attending under FAS or CCFS as an event. All advocates meetings must be evidenced with a court order. This evidence requirement is in addition to the FAS scheme and is required given the higher value of the fees.

Only one event per day – Where two events occur on the same day, such as a conference on the same day as a hearing, we will only allow a claim for one event per day.

6. High Court and Family Court rates

The distinction between event rates is based on the level of court in which a matter concludes. If a matter is heard in the Family Court and the case concludes in the High Court, or a hearing before a High Court Judge within the Family Court, both the solicitor and counsel should revisit their previous fees and claim the High Court event rate for every event. Conversely, fees should be revised if the case has progressed in the High Court or in the Family Court before a High Court Judge but concludes in the Family Court and is not before a High Court Judge.

The exception to this is where a matter is temporarily escalated (i.e. for an appeal hearing). In these instances the hearing in question will be considered outside of the VHCC Care Case Fee Scheme pricing model and remunerated through the appropriate hourly rates. The costs of the Appeal should be set out in Section F of the new combined CCFS Form for agreement with the LAA.

Under the new Family Court Procedures the appropriate rate to apply depends upon whether the case heard is either (a) a case in the Family Court with a Family Court Judge other than a High Court Judge or (b) a case in the High Court, or in the Family Court with a High Court Judge presiding over the main hearing.

Example 1 – *The solicitor through the lifetime of a certificate undertakes nine interim hearings, two advocates meetings, one PHR, a 10 day fact-finding/threshold hearing and a five day disposal/welfare hearing. The matter is heard in the Family Court throughout and the main hearing is in excess of 10 days. Their total is 27 events at £531 per event making £14,337 for all work done under the certificate.*

Junior counsel in the same case undertakes six interim hearings, one advocates meeting, one PHR, the ten day fact-finding/threshold hearing, the five day disposal/welfare hearing and two substantive client conferences. Their total is 25 events at £981 per event making £26,487 for all work done under the certificate.

Example 2 – As above, the solicitor through the lifetime of a certificate undertakes nine interim hearings, two advocates meetings, one PHR, a 10 day fact-finding/threshold hearing and a five day disposal/welfare hearing. The matter is heard in the Family Court to start but the disposal/welfare hearing is heard in the High Court. As the case concluded in the High Court it is the higher event payment rate that is used. The main hearing is in excess of 10 days. Their total is therefore 27 events at £801 per event making £21,627 for all work done under the certificate.

Junior counsel in the same case undertakes six interim hearings, one advocates meeting, one PHR, the ten day fact-finding/threshold hearing, the five day disposal/welfare hearing and two substantive client conferences. Their total is 25 events at £1,026 per event making £25,650 for all work done under the certificate.

7. What happens if the agreed number of events changes?

A CCFS Form is agreed on the basis of the actual previous and future planned hearings (based on the court listings at the time of notification). If this changes, the case plan and the agreed costs are simply adjusted up or down accordingly. In respect of the main hearings it needs to be recognised that preparation is front loaded and therefore if a main hearing under or overruns the agreed price is adjusted by a notional refresher rate. These refresher rates are set to reflect the costs of attending based on historic proportions: 60% of the barrister's fee and 40% of solicitor's profit costs.

Example 3 – The event fees for a fact-finding/threshold hearing listed for 5 days in the Family Court where the total 'main hearing' is not listed over 10 days would be £3,870 (£774x5) for solicitors and counsel would be paid through the FAS model.

If the hearing were to overrun by 2 days solicitors would instead receive a total of £4,491 (£774x5 plus £310.50x2) and counsel would receive the usual FAS payment for the additional two days.

Example 4 – The event fees for a fact-finding/threshold hearing listed for 5 days in the Family Court where the total 'main hearing' is not listed over 10 days would be £3,870 (£774x5) for solicitors and counsel would be paid through the FAS model.

If the hearing were to under-run for 2 days solicitors would instead receive a total of £3,249 (£774x3 plus £463.50x2) and counsel would receive the usual FAS payment for the days attended.

Once a case has been accepted by the LAA as a Very High Cost Case, then it can remain so and be claimed as such, even if the costs end up being less than £25,000.

However, if the costs do end up being less than £25,000 at the end of the case, it is open to the solicitor to ask for the case to be treated as a non-VHCC and to submit a bill for taxation.

Vacated Hearings – These will be remunerated as follows:

- If the hearing is vacated within 1 week of the listing and is not subsequently relisted LAA will accept an under run.
- If the hearing is vacated within 1 week and then relisted provider will get a full event at relisted date.
- If the hearing is vacated more than 1 week in advance and is relisted provider will get the full event at the time it actually takes place
- If the hearing is vacated more than 1 week in advance and is not relisted there is no payment.

8. What happens if the main hearing under-runs or overruns and passes the 10 day threshold?

It is recognised that the level of preparation undertaken by solicitors and advocates is proportionate to the projected number of hearing days. For this reason we will not automatically apply a change in the pricing model for a case where the ‘main hearing’ exceeds 10 days, or falls below 10 days, solely due to an under-run or overrun at the final hearing stage.

If a main hearing (fact finding or disposal hearing) in a case under-runs or overruns from the planned duration, causing the total number of ‘main hearing’ dates to exceed or fall under the 10 day threshold unexpectedly, we will remunerate both solicitor and counsel at rates based on the planned length (with the appropriate under- and overruns).

Please note, as per Section 4 and 7, the planned main hearing length will be that reported when the case was notified as a very high cost case, or subsequently revised by judicial direction over 1 week before it takes place. This revision could take place 1 week before the fact finding or disposal hearing. The planned length of hearings will be evidenced by court order or judicial directions. This will be treated as the planned hearing length for the purpose of calculating the 10 day threshold.

9. How are Advocates treated?

The LAA offers the following methods of payments to Advocates. Solicitors can use either the advocacy model or the standard model. Refer to Annex B for details on all rates payable.

	External Advocate (Barrister or Solicitor Advocate)	Internal Advocate (Solicitor Advocate)
10 main hearing days and under	FAS	£1157.00 or £707 plus FAS
11 main hearing days and over	FAS or CCFS	£1157.00 or £707.00 plus FAS

The LAA offers a single method of payment for an External Advocate in addition to FAS.

The LAA offers two methods of payment where an In-House Advocate undertakes an element of the advocacy in addition to CCFS.

Providers can only use the in-house solicitor advocate model if the in-house solicitor advocate has covered at least one of the events themselves. Assuming this model is used the following rates are applied:

- a. For the events that are covered by counsel or external solicitor, the litigating solicitor rate is £707 and counsel/external solicitor advocate will claim under FAS; subject to the table at the end of this document, which sets out what can be claimed as over runs, under runs should the main hearing in the case exceed 10 days or conclude before a High Court Judge.
- b. For the events that are covered by the in-house solicitor advocate the rate is either £707 + FAS or £1,157. However, the solicitor advocate has to choose which rate to claim at the start of the case and stick with it. It is not possible to claim one event at £1,157 and another at £707 +FAS.

If additional interim hearings are listed then the agreed costs are simply increased by the relevant number multiplied by the event fee. In respect of the main hearings it needs to be recognised that preparation is front loaded and therefore if a main hearing under or overruns the amended events attract the under-run or overrun fees.

10. What about pre-contract costs for solicitors?

Adopting the VHCC Care Case Fee Scheme will have a retrospective effect on a solicitor's costs-to-date and pre-contract work will be re-calculated and remunerated with reference to this scheme rather than hourly rates.

11. What about pre-contract costs for previous solicitors instructed before case was a VHCC?

Any costs incurred by a previously instructed firm should be reported based on the actual costs incurred in the appropriate section of the case plan (the new CCFS

Form). If the previous solicitor agrees to payment under the CCFS scheme, these can be included in the Form in accordance with the CCFS scheme. If the previous solicitor has not agreed to payment under the CCFS scheme costs should be based on the fees scheme under which work was undertaken – whether fixed fee or hourly rate - and submitted in a separate CLAIM1/1A.

There can be difficulties in respect of agreeing case plans and paying bills where there has been a change of instructed solicitor. The following circumstances typically occur and the LAA will act as set out:

- a. If the case was already a VHCC at the time of transfer to a new firm, then the newly instructed solicitor will provide a CCFS Form or Full Case Plan for their work. The previous solicitor will be responsible for agreeing their CCFS Form or Full Case Plan. Payments can be paid independently of each other. The newly instructed solicitor is not required to provide any costs information from the previous solicitor, however they must confirm all hearings to date
- b. If the case became a VHCC after the transfer and the newly instructed solicitor uses CCFS, they can obtain and include the costs from the previous solicitor within the CCFS Form. However, the newly instructed solicitor does not have to obtain the costs information from the previous solicitor or include any of their costs in the CCFS Form, although they must confirm the number of hearings to date. If the newly instructed solicitor is not including the previous solicitor's costs then this must be communicated to the previous solicitor. The previous solicitor can either use CCFS or claim under the usual non-VHCC provisions (fixed fee/hourly rate) for their work undertaken.
- c. If the case becomes a VHCC after transfer and the newly instructed solicitor seeks to use the Full Case Plan method, then they must use their best endeavours to obtain relevant costs information from the previous solicitor up to the date of transfer. If that information is not reasonably provided to the newly instructed solicitor then that previous solicitor's costs will be limited to the costs limitation on the certificate at the time of transfer. If the newly instructed solicitor does not seek to use any of the costs within the costs limitation at the time of transfer for the pre-contract costs, then the newly instructed solicitor can proceed to have their case plan approved in the absence of a response from the previous solicitor and the LAA will deal with each solicitor's costs separately.
- d. If the circumstances set out in (c) above apply but the newly instructed solicitor seeks to use some of the costs within the costs limitation of the certificate at the time of transfer then it will be necessary for both solicitor's claims to be prepared before a final case plan can be approved and assessment and payment can be made.

12. Are the fees for all Advocates involved in the case converted?

If the projected length of the 'main hearing' exceeds 10 days, each Advocate may choose to either adopt the VHCC Care Case Fee Scheme or continue to claim through the usual FAS procedures and regulations. This choice must be made at the outset prior to submission of the case plan or when accepting instructing on the case if later. It should be noted that an in house Solicitor Advocate can still use CCFS if there are less than 11 main hearings.

Where Counsel's fees were within the FAS model and the Advocate has elected to use the VHCC Care Case Fee Scheme on the basis of a 'main hearing' listed to exceed 10 days, the Advocate can choose to leave their claimed costs to date as FAS fees or transfer them to CCFS. For an in house Solicitor Advocate, any costs paid on hourly rates will be converted to CCFS for all costs if that scheme is adopted. This includes costs before the case was registered as high cost.

Quite often Counsel is instructed early on for one or two hearings and is then no longer involved or a replacement counsel is instructed for one hearing the main counsel cannot do. Often they would already have claimed and received payment through the FAS model. In those circumstances it will not be appropriate to simply convert their one or two payments to event fees and they would stay as already paid.

Advocate's claims under the FAS model should be reported separately from counsel's event-based claims in the appropriate section of the CCFS Form. Counsel Fees under FAS should be included in Section G of the CCFS Form.

Counsel should be aware that as set out in Section 8, if the planned main hearing reduces in length by judicial direction more than 1 week in advance of the hearing below the 10 day threshold, their fees will revert to the FAS scheme.

13. How is case planning simpler under CCFS?

The costs section is reduced to a single table with a chronological list of all trigger events and who attended or is anticipated to attend. The costs summary is then simply the number of events times the event fee.

Under the CCFS scheme you only need to report the planned and actual events that attract payment. The simple CCFS Form is submitted when the case becomes high cost or at the end of the case. However you should note that we will not increase the cost limit on the certificate until a contract is agreed. Therefore, if you wish to claim POAs you will need to submit the CCFS Form in order for the cost limit to be increased. There is no need for amendment as hearings take place. The costs of the actual events are paid at the end.

Detailed case plans and Claim1 forms are not required. Amendments can be agreed retrospectively due to the fixed event prices reducing the risk to the fund.

Estimates of disbursements and experts fees are included in the case plan. These are assessed at the end of the case.

14. Disbursements and Experts Fees

The VHCC team will deal with the CCFS Form.

Disbursements and experts fees should be included on the relevant pages in the case plan with the actual costs if known. You should include estimates of Experts Fees where they are not known or finalised.

For experts, if you are seeking hourly rates in excess of the codified rates you must apply for a Prior Authority. If you are seeking expert hours in excess of those published in the LAA's "Guidance on the Remuneration of Experts Witnesses", you may apply for a Prior Authority. The guidance is set out at link:

<https://www.gov.uk/expert-witnesses-in-legal-aid-cases>.

15. How is billing simpler?

The simpler combined VHCC CCFS Form should be completed.

The key points for you are:

- You should submit this with counsel's fee notes and disbursement vouchers.
- The combined form should be completed with the actual hearings in Section B. The advocacy fees claimed under FAS should be itemised in Section E and G.
- The actual disbursements and experts fees incurred should be itemised in Section D.
- If there was funding for an Appeal this should be itemised in Section F.

16. Interim Payments

Interim payments can be made on request for all costs and counsel's fees to date on agreement of the CCFS Form and High Cost Case Contract. Further payments can be claimed either when six months have elapsed or six events have occurred since the last payment was made, whichever is earlier. Payments will be made by way of

100% payment on account of the number of events to date. Claims should be made on form CIV POA1.

On billing all disbursements and experts fees will be subject to assessment and any pre-existing grant of prior authority will be taken into account.

17. What about exceptional cases?

It must be remembered that the cases that produced this model were all high cost cases, which by their very nature are exceptional to some degree. Whilst every case has its own unique set of facts and circumstances they all amount to exceptional and we would not expect to deviate from this model in the majority of such cases.

18. Are all cases managed this way?

The VHCC Care Case Fee Scheme is based on costings in complex high cost care proceedings. It is not appropriate to manage cases that follow a distinctly different timetable and process using the fees in this model, for example ancillary relief or most private family law proceedings. For those cases where it is not appropriate to apply this model then a full case plan and detailed billing process is required. See the relevant pack on the website.

19. Can the scheme be used for non-Care cases?

The scheme may be applied, on request and at the discretion of the VHCC team, to private law family cases which follow the fact finding and disposal hearing procedure similar to care proceedings (sometimes also referred to as threshold/welfare hearings).

Annexes

- Annex A – Contact Information
- Annex B – Payment Schedule

ANNEX A: CONTACT INFORMATION

VHCC Family Unit (CCFS)

LAA South Tyneside
North Regional Office & Business Delivery Centre
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NE31 1SF

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CCFS@legalaid.gsi.gov.uk

Suppliers are encouraged to contact the team by email wherever possible.

ANNEX B: FEES PAYABLE UNDER THE CCFS SCHEME

The Solicitor must claim their fees using either: (i) Standard Model or (iii) Advocacy Model (in red) and apply this throughout the case. Counsel must claim their fees using (ii) Counsel Fees (in blue). These fees apply to both solicitors Standard Model and Advocate Model.

(i) Standard		Solicitor		
JUDGE	Under 11 main hearings or over 10?	EVENT	UNDERRUN	OVERRUN
DJ/CJ	Under	£774	£463.50	£310.50
DJ/CJ	Over	£531	£319.50	£211.50
High Court Judge FC/High Court	Under	£1053	£630	£423
High Court Judge FC/High Court	Over	£801	£481.50	£319.50

(ii) Counsel Fees		
EVENT	UNDERRUN	OVERRUN
FAS	NA	FAS
£981	£391.50	£589.50
FAS	NA	FAS
£1026	£409.50	£616.50

When using the advocacy model (see table below), the solicitor must use either the set amount or FAS alternative option and apply this throughout the case. Solicitor is paid either the litigator or the advocacy event fee depending on whether they were the advocate for that particular hearing.

(iii) Advocacy		Solicitor Litigator			Solicitor Advocate		
JUDGE	Under 11 main hearings or over 10?	EVENT	UNDERRUN	OVERRUN	EVENT	UNDERRUN	OVERRUN
DJ/CJ	Under	£707	£425	£285	£1157 or; £707 + FAS	£695 or; £285 + FAS	£465 or; FAS
DJ/CJ	Over	£504	£305	£200	£1157 or; £707 + FAS	£695 or; £285 + FAS	£465 or; FAS
High Court Judge FC/High Court	Under	£961	£575	£385	£1157 or; £707 + FAS	£795 or; £385 + FAS	£530 or; FAS
High Court Judge FC/High Court	Over	£760	£455	£305	£1157 or; £707 + FAS	£795 or; £385 + FAS	£530 or; FAS

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