



Legal Aid
Agency

Reforming the Advocates' Graduated Fee Scheme

Frequently Asked Questions (FAQs)

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Introduction

This document provides a non-exhaustive list of questions and answers, which we hope will assist advocates, chambers and solicitors' firms following the implementation of the revised Advocates' Graduated Fee Scheme (AGFS).

Any queries in relation to Scheme 10 should be directed to servicedevelopment@justice.gov.uk to assist us to update this document and the Crown Court Fee Guidance. This is a living document and will be updated periodically when questions are received.

The Ministry of Justice (MoJ) consulted upon a reformed Advocates' Graduated Fee Scheme between 5 January and 2 March 2017.

The MoJ published its response to the consultation 23 February 2018, signaling its intention to pursue a reformed scheme. The consultation response can be located here: <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>

The reformed fee scheme will be referred to operationally by the LAA as Scheme 10. Scheme 10 will come into force 1 April 2018 and it will apply to all cases with a representation order dated on or after that date. Cases with a representation order dated before 1 April 2018 will be subject to the provisions of earlier fee schemes.

The reformed fee scheme is enacted by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018, which can be located here: <http://www.legislation.gov.uk/ukxi/2018/220/contents/made>

Following the implementation of the scheme, the LAA will also publish a revised version of the Crown Court Fee Guidance here: <https://www.gov.uk/government/publications/crown-court-fee-guidance>. The Crown Court Fee Guidance may provide a more comprehensive answer to some of the answers provided in this document below.

A revised and condensed AGFS calculator will also be published here: <https://www.gov.uk/government/publications/graduated-fee-calculators>. The fee calculations for Scheme 10 will also be built into the LAA's Claim for Crown Court Defence (CCD) system in due course.

Frequently Asked Questions (FAQs)

1. What changes have been made to the classification of offences under the AGFS?

Answer – The AGFS has changed the former A-K classification of offences. From 1st April, offences will be banded in accordance with the following Ministry of Justice policy document *Banding of offences in the Advocates' Graduated Fee Scheme*: <https://www.gov.uk/government/publications/banding-of-offences-in-the-advocates-graduated-fee-scheme>. Offences were classified under scheme 9 (cases with a representation order dated between 1 April 2013 and 31 March 2018) under 11 classes of offence between A-K. For cases with a representation order dated on or after 1 April 2018, there will be 48 bandings of offence, organised into 17 high level category descriptions.

2. What are the evidential requirements for bandings under the AGFS from 1 April?

Answer – Offences are banded but some of the bandings are dependent upon case specific facts outlined in Table A of the banding document. Appendix M of the Crown Court Fee Guidance should be referred to. The best evidence for the value of fraud or property damage, the weight of drugs and the seriousness of the offence will be the indictment. The next best source will usually be the prosecution case summary or witness statements. Advocates must submit supporting evidence to support the band of offence being claimed.

3. Are standard appearances and the PTPH still remunerated as part of the basic fee?

Answer – No. Under scheme 9, the first 4 standard appearances in a case and the PTPH (formerly the PCMH) were included or 'bundled' into the basic fee component of the graduated fee. Standard appearances and the PTPH will be remunerated separately as fixed fees for cases with a representation order dated on or after 1 April 2018. The applicable fixed fee rate for standard appearances and PTPHs can be located in the table at paragraph 24 of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018. These fees are dependent upon the type of advocate.

4. Are the first two days of trial still remunerated as part of the basic fee?

Answer – The first day of trial will still be included in the basic fee for a Trial graduated fee. The second and subsequent days of trial will be remunerated separately as daily attendance fees.

5. Do daily attendance fees reduce where a trial lasts over 40 days?

Answer – No. For cases with a representation order dated on or after 1 April 2018, the daily attendance fee will be remunerated at the same rate after 40 days at trial as days 2-39.

6. Are PPE and the number of witnesses still used as part of the calculation of the graduated fee?

Answer – PPE and witness uplifts will no longer form part of the calculation for the graduated fee for trials with a representation order dated on or after 1 April 2018. The calculation for graduated fees under scheme 10 will be simplified to Graduated Fee = Basic Fee + (Number of days at trial x Daily Attendance Fee).

7. What are the rules around conferences and views?

Answer – The rules under paragraph 19, Schedule 1 of The Criminal Legal Aid (Remuneration) Regulations 2013 have not been amended, nor have the fees under paragraph 24.

8. Under scheme 9, a barrister would qualify for an uplift in relation to any additional case or for representing an additional defendant. Is this still the case?

Answer – Yes. The uplift of 20% would still apply to each additional defendant or case in the same manner as Scheme 9. Paragraph 27 of the Remuneration Regulations has been amended accordingly.

9. Do discontinuances still attract 50% of the Guilty Plea basic fee?

Answer – Yes. Discontinuances, as per scheme 9, will still attract a payment of 50% of the guilty plea fee where the proceedings are discontinued at any time before the prosecution serves its evidence.

10. Have any rules changed in relation to retrials?

Answer – No. The rules in relation to retrials or ‘new trials’ have not changed when compared to scheme 9. The same % reductions apply to the new trial, or the first trial if the advocate so elects.

11. Can a substitute advocate submit a separate claim for payment?

Answer – No. As per scheme 9, it is the ‘Trial Advocate’ who submits the claim for payment to the LAA.

12. How do I submit a claim under scheme 10?

Answer – Since 31 October 2017, use of Claim for Crown Court Defence (CCD) has been mandatory for advocates and litigators claiming for work under the AGFS and LGFS respectively. This will remain the case under scheme 10. The CCD FAQs and User Guide can be located here:

<https://www.gov.uk/government/publications/simplifying-criminal-legal-aid-processing>

13. Will a paper AF1 form still be available?

Answer – CCD will be mandatory for all AGFS claims. Paper claim forms will be revised and published for contingency purposes only.

14. What are the revised rules for Special Preparation?

Answer – The PPE threshold for advocates claiming Special Preparation will remain 10,000 PPE for most cases. The revised threshold under Scheme 10 for dishonesty offences banded between 6.1-6.5 will be 30,000 PPE. The revised threshold under Scheme 10 for drugs cases banded between 9.1-9.7 will be 15,000 PPE. Special preparation claims can still also be made for cases involving a novel point of law.

15. What new fixed fees have been introduced?

Answer – Fixed fees have been introduced for Plea and Trial Preparation Hearings (PTPH), Further Case Management Hearings (FCMH), Ground Rules Hearings (GRH) and a Sentencing Hearing fixed fee has been re-introduced. The applicable rates can be located at paragraph 24 of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018.

16. Have the definitions of Guilty Plea, Cracked Trial and Trial changed?

Answer – The definitions of guilty plea and cracked trial remain the same as Scheme 9. Under scheme 10, where a case ‘cracks’ in the first and second third (of the period between the PTPH and the date the trial is listed for trial) the case will attract a basic fee which is 50% of the trial basic fee for that banding of offence. Where a case ‘cracks’ in the final third, the applicable fee will be 85% of the trial basic fee for that banding of offence.

17. How do I claim for an offence which does not appear on the ‘Banding of offences in the Advocates’ Graduated Fee Scheme’?

Answer – Under Scheme 10, where an indictable offence is not specifically listed on the banding document, the case will be deemed to fall within band 17.1. The advocate can, however, apply to the LAA to have the case re-banded in much the same way as a reclassification of offence under Scheme 9. This can be submitted alongside the original claim.

18. Are there any changes being made to how I can claim for travel disbursements?

Answer – No changes are being made in the way in which advocates claim for travel disbursements.

19. Does the Elected Not Proceeded Fixed (ENP) Fee still apply?

Answer – The ENP will still apply. However, in circumstances where the prosecution make a substantive change to the indictment post-election, a graduated fee may be applicable. Please refer to paragraph 14 of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 for further details.

20. Has there been any change to ineffective trial payments?

Answer – No change has been made to the circumstances in which this fee is applicable but the fixed fee rates have been changed and can be located in the table at Paragraph 24 of the amended regulations.

Case Examples

AGFS Examples

Below is a non-exhaustive list of comparative examples between the current AGFS (Scheme 9) and the revised AGFS (Scheme 10) due to come into force 1 April 2018. These examples are for illustrative purposes only and are based upon the examples originally provided in the MoJ's consultation document, "Reforming the Advocates' Graduated Fee Scheme".

| Case example | Current AGFS Fee (Scheme 9) (excl. VAT) | Proposed AGFS Fee (Consultation Response – Scheme 10) (excl. VAT) |
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| <p>Example 1</p> <p>Offence: Murder (child victim).</p> <p>Case Type: Trial</p> <p>Advocate: QC</p> <p>PPE: 1,000</p> <p>Days: 18</p> <p>Witnesses: 20</p> <p>Standard Appearances: 4</p> <p>PTPH: 1</p> | <p>Class of Offence: Class A</p> <p>Fee: £20,133.80</p> | <p>New offence banding: 1.1</p> <p>Fee: £37,520.00</p> <p>(£17,000 basic fee, £1,150 daily fee x 17 days, x1 PTPH at £250, x4 Standard Appearance fee at £180).</p> |
| <p>Example 2</p> <p>Offence: Terrorist murder</p> <p>Case Type: Trial</p> <p>Advocate: QC</p> <p>PPE: 1,400</p> <p>Days: 23</p> <p>Witnesses: 18</p> <p>Standard Appearances: 4</p> <p>PTPH: 1</p> <p>Sentencing hearing: 1</p> | <p>Class of Offence: Class A</p> <p>Fee: £25,840.74</p> | <p>New offence banding: 2.1</p> <p>Fee: £43,520.00</p> <p>(£17,000 basic fee, £1,150 daily fee x 22 days, x1 PTPH at £250, x4 Standard Appearance fee at £180, x1 sentencing hearing at £250).</p> |
| <p>Example 3</p> <p>Offence: Preparation for</p> | <p>Class of Offence: Class B</p> | <p>New offence banding 2.1</p> |

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| <p>terrorism.</p> <p>Case Type: Cracked Trial</p> <p>Advocate: Junior Alone</p> <p>PPE: 800</p> <p>Standard Appearance: 2</p> <p>PTPH: 1</p> | <p>Fee: £2,483.00</p> | <p>Fee: £7,530.00</p> <p>(£7,225 basic fee, x1 PTPH at £125, x2 Standard Appearances at £90).</p> |
| <p>Example 4</p> <p>Offence: Wounding with intent to do grievous bodily harm.</p> <p>Case Type: Cracked Trial</p> <p>Advocate: Junior Alone</p> <p>PPE: 350</p> <p>Standard Appearances: 2</p> <p>PTPH: 1</p> | <p>Class of Offence: Class B</p> <p>Fee: £1,830.50</p> | <p>New offence banding 3.3</p> <p>Fee: £1,155.00</p> <p>(£850 basic fee, x1 PTPH at £125, x2 Standard Appearances at £90).</p> |
| <p>Example 5</p> <p>Offence: Attempted Murder (adult victim, no firearm)</p> <p>Case Type: Trial</p> <p>Advocate: Leading Junior</p> <p>PPE: 1,200</p> <p>Days: 20</p> <p>Witnesses: 30</p> <p>Standard Appearances: 4</p> <p>PTPH: 1</p> <p>Sentencing Hearing: 1</p> | <p>Class of Offence: Class A</p> <p>Fee: £17,126.50</p> | <p>New offence banding: 3.2</p> <p>Fee: £18,170.00</p> <p>(£3,000 basic fee, £750 daily attendance fee x 19, x1 PTPH at £190, x4 Standard Appearance fees at £135, x1 Sentencing Hearing at £190).</p> |
| <p>Example 6</p> <p>Offence: Rape (child victim)</p> <p>Case Type: Guilty Plea</p> <p>Advocate: Junior Alone</p> <p>PPE: 300</p> <p>Sentencing hearing: 1</p> | <p>Class of Offence: Class J</p> <p>Fee: £1,336.00</p> | <p>New offence banding: 4.1</p> <p>Fee: £1,125.00</p> <p>(£1,000 basic fee, x1 sentencing hearing at £125).</p> |

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| <p>Example 7</p> <p>Offence: Engaging in sexual activity in the presence of a person with mental disorder impeding choice</p> <p>Case Type: Trial</p> <p>Advocate: Junior Alone</p> <p>PPE: 500</p> <p>Witnesses: 8</p> <p>Days: 8</p> <p>Standard Appearance: 2</p> <p>Sentencing hearing: 1</p> | <p>Class of Offence: Class D</p> <p>Fee: £4,014.00</p> | <p>New offence banding: 4.3</p> <p>Fee: £4,630.00</p> <p>(£1,000 basic fee, £475 daily attendance fee x7, x2 Standard Appearances at £90, x1 sentencing hearing at £125).</p> |
| <p>Example 8</p> <p>Offence: Concealing criminal property. (£35K)</p> <p>Case Type: Trial</p> <p>Advocate: Junior Alone</p> <p>PPE: 900</p> <p>Days: 7</p> <p>Witnesses: 10</p> <p>Standard Appearances: 2</p> <p>PTPH: 1</p> | <p>Class of Offence: Class B</p> <p>Fee: £4,483.00</p> | <p>New offence banding: 6.4</p> <p>Fee: £3,155.00</p> <p>(£750 basic fee, £350 daily attendance fee x6, x1 PTPH at £125, x2 Standard Appearances at £90 each).</p> |
| <p>Example 9</p> <p>Offence: Fraud by false representation</p> <p>Case Type: Cracked Trial</p> <p>Advocate: Junior Alone</p> <p>PPE: 15,000</p> | <p>Class of Offence: Class G</p> <p>Graduated fee - £4,628.00, plus Special Preparation for 5,000 pages.</p> | <p>New offence banding: 6.2</p> <p>Fee: £4,250.00</p> <p>(£4,250.00 basic fee).</p> |
| <p>Example 10</p> <p>Offence: Arson with intent to endanger life</p> | <p>Class of Offence: Class B</p> <p>Fee: £5,752.80</p> | <p>New offence banding: 7.1</p> <p>Fee: £6,330.00</p> <p>(£1,400 basic fee, £500 daily attendance fee x9, x1 PTPH at</p> |

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| <p>Case Type: Trial</p> <p>Advocate: Junior Alone.</p> <p>PPE: 700</p> <p>Days: 10</p> <p>Witnesses: 22</p> <p>Standard Appearances: 2</p> <p>PTPH: 1</p> <p>Sentencing hearing: 1</p> | | <p>£125, x2 Standard Appearances at £90, x1 Sentencing Hearing at £125).</p> |
| <p>Example 11</p> <p>Offence: Perjury – judicial proceedings.</p> <p>Case Type: Trial</p> <p>Advocate: Junior Alone</p> <p>PPE: 100</p> <p>Days: 3</p> <p>Witnesses: 7</p> <p>Standard Appearances: 1</p> <p>PTPH: 1</p> | <p>Class of Offence: Class I</p> <p>Fee: £1,436.00</p> | <p>New offence banding: 8.1</p> <p>Fee: £2,415.00</p> <p>(£1,200 basic fee, £500 daily attendance fee x2, x1 PTPH at £125, x1 Standard Appearance at £90).</p> |
| <p>Example 12</p> <p>Offence: Unlawful importation of a drug controlled under the Misuse of Drugs Act 1971 – Class A.</p> <p>Case Type: Trial</p> <p>Advocate: Junior Alone</p> <p>PPE: 500</p> <p>Days: 10</p> <p>Witnesses: 15</p> <p>Standard Appearances: 4</p> <p>PTPH: 1</p> <p>Sentencing hearing: 1</p> | <p>Class of Offence: Class B</p> <p>Fee: £5,609.50</p> | <p>New offence banding: 9.1</p> <p>Fee: £10,210.00</p> <p>(£5,000 basic fee, £525 daily attendance fee x9, x4 Standard Appearances at £90, x1 Sentencing Hearing at £125).</p> |

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| <p>Example 13</p> <p>Offence: Possession of a controlled drug with intent to supply – Cannabis (300 kilograms)</p> <p>Case Type: Guilty Plea</p> <p>Advocate: Junior Alone</p> <p>PPE: 600</p> | <p>Class of Offence: Class B</p> <p>Fee: £1,180.00</p> | <p>New offence banding: 9.2</p> <p>£2,000.00</p> <p>(£2,000 basic fee).</p> |
| <p>Example 14</p> <p>Offence: Causing death by careless driving when under the influence of drink or drugs.</p> <p>Case Type: Guilty Plea</p> <p>Advocate: Leading Junior</p> <p>PPE: 120</p> | <p>Class of Offence: Class B</p> <p>Fee: £1,141.00</p> | <p>New offence banding: 10.1</p> <p>Fee: £1,650.00</p> <p>(£1,650 basic fee)</p> |
| <p>Example 15</p> <p>Offence: Robbery (other than Armed Robbery).</p> <p>Case Type: Cracked Trial</p> <p>Advocate: Junior Alone</p> <p>PPE: 60</p> <p>Standard Appearance: 2</p> <p>PTPH: 1</p> | <p>Class of Offence: Class C</p> <p>Fee: £719.60</p> | <p>New offence banding: 11.2</p> <p>Fee: £880.00</p> <p>(£575 basic fee, x1 PTPH at £125, x2 Standard Appearances at £90).</p> |
| <p>Example 16</p> <p>Offence: Trading in firearms without being registered as a firearms dealer</p> <p>Case Type: Trial</p> <p>Advocate: Junior Alone</p> <p>PPE: 600</p> <p>Days: 6</p> <p>Witnesses: 15</p> <p>Standard Appearances: 3</p> | <p>Class of Offence: Class C</p> <p>Fee: £3,093.50</p> | <p>New offence banding: 12.1</p> <p>Fee: £5,020.00</p> <p>(£2,000 basic fee, £500 daily attendance fees x5, x1 PTPH at £125, x3 Standard Appearances at £90, x1 Sentencing Hearing at £125).</p> |

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| PTPH: 1 Sentencing hearing: 1 | | |
| Example 17 Offence: Kidnapping. Case Type: Trial Advocate: Led Junior PPE: 3,000 Days: 10 Witnesses: 20 Standard Appearances: 4 PTPH: 1 Sentencing hearing: 1 | Class of Offence: Class B Fee: £7,198.10 | New offence banding: 13.1 Fee: £6,410.00 (£1,300 basic fee, £500 daily attendance fee x 9, x1 PTPH at £125, x4 Standard Appearances at £90, x1 Sentencing Hearing at £125). |
| Example 18 Offence: Trafficking into the UK for sexual exploitation. Case Type: Trial Advocate: Leading Junior PPE: 1,300 Days: 15 Witnesses: 25 Standard Appearances: 4 PTPH: 1 | Class of Offence: Class J. Fee: £13,295.00 | New offence banding: 14.1 Fee: £14,530.00 (£2,250 basic fee, £825 daily attendance fees x 14, x1 PTPH at £190, x4 Standard Appearances at £135). |
| Example 19 Offence: Violent disorder. Case Type: Trial Advocate: Junior Alone PPE: 80 Days: 2 Witnesses: 5 Standard Appearances: 2 | Class of Offence: Class B Fee: £1,334.40 | New offence banding: 15.2 Fee: £1,455.00 (£750 basic fee, £400 daily attendance fee, x1 PTPH at £125, x2 Standard Appearances at £90). |

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| PTPH: 1 | | |
| <p>Example 20</p> <p>Offence: Absconding from lawful custody.</p> <p>Case Type: Guilty Plea</p> <p>Advocate: Junior Alone</p> <p>PPE: 60</p> | <p>Class of Offence: Class C</p> <p>Fee: £485.00</p> | <p>New offence banding: 17.1</p> <p>Fee: £275.00</p> <p>(£275 basic fee).</p> |
| <p>Example 21</p> <p>Offence: Affray</p> <p>Case Type: Trial</p> <p>Advocate: Junior Alone</p> <p>PPE: 80</p> <p>Days: 3</p> <p>Witnesses: 7</p> <p>Standard Appearance: 1</p> <p>PTPH: 1</p> | <p>Class of Offence: Class H</p> <p>Fee: £1,253.40</p> | <p>New offence banding: 15.3</p> <p>Fee: £1,465.00</p> <p>(£600 basic fee, £325 daily attendance fee x 2, x1 PTPH at £125, x1 Standard Appearance at £90).</p> |

