



Hardship and interim payment scenarios

Litigators' Graduated Fee Scheme (LGFS)

Stage of current proceedings	Scenario used to calculate fee for interim/hardship billing	Hardship, interim or final fee
Plea and trial preparation hearing (PTPH) is yet to take place, or has been adjourned for a further PTPH/case management hearing	Up to and including PTPH transfer (original solicitor)	Hardship
PTPH has taken place and matter listed for trial	Before trial transfer (org)	Interim – effective PTPH
Guilty plea entered and accepted at PTPH but case adjourned for sentencing	Guilty plea	Final fee as the sentence hearing does not attract separate or supplemental remuneration
Case has cracked but has been adjourned for sentencing	Cracked trial	Final fee as the sentence hearing does not attract separate or supplemental remuneration
Trial has begun and is estimated to last for 10 days or more	Trial – 2 days	Interim trial fee
Trial began and was listed for less than 10 days; however, the trial has been adjourned	Trial	Final fee based on the trial days that have occurred. Once the matter resumes a decision will be made whether to treat

and relisted due to COVID-19		the additional days as a retrial or a continuation of the original trial based on the factors laid out in 'Appendix P' Crown Court Fee Guidance
Trial has concluded but matters have been adjourned for sentence	Trial	Litigator final fee
Trial has concluded. However, a retrial has been listed	Trial	Litigator final fee for the trial that has taken place
Client elected for Crown Court trial. However, proceedings are ongoing and could result in a cracked trial	None	Elected case fixed fee would be appropriate at this stage. However due to the value of the fixed fee the hardship criteria would not be met.

Advocates' Graduated Fee Scheme (AGFS)

Stage of current proceedings	Scenario used to calculate fee for interim/hardship billing	Hardship, interim or final fee
Plea and trial preparation hearing (PTPH) (evidence served)	Guilty plea	Hardship
Pre-PTPH (no evidence served)	Discontinuance	Hardship
After PTPH before trial	Cracked trial (the "third" depends upon point of claim; see note below) Staged payment	Hardship or staged payment
Trial started but not concluded due to COVID-19	Trial	Final fee based on the trial days that have occurred. Once the matter resumes a decision will be made whether to treat the additional days as a retrial or a continuation of the original trial based on the factors laid

		out in 'Appendix P' Crown Court Fee Guidance
GP not yet sentenced	Guilty plea	Final fee (submit supplemental fee claim when sentenced)
Trial ended not yet sentenced	Trial	Final fee (submit supplemental fee claim when sentenced)
Retrial listed but not started	Elected case not proceeded (ENP) or cracked trial Staged payment	Hardship or staged payment
Retrial started but not concluded due to COVID-19	Re-trial	Final fee based on the trial days that have occurred. Once the matter resumes a decision will be made whether to treat the additional days as a retrial or a continuation of the original trial based on the factors laid out in 'Appendix P' Crown Court Fee Guidance
Retrial concluded but not sentenced	Re-trial	Final fee (submit supplemental fee claim when sentenced)
Client elected Crown Court trial. However, proceedings are ongoing and could result in a cracked trial/crack before re-trial	None	Elected case fixed fee would be appropriate at this stage. However, due to the value of the fixed fee the hardship criteria would not be met.

Submission of advocate hardship claims

Where a hardship claim is submitted before the start of the main hearing, payment may only be claimed by the instructed advocate. This is defined in paragraph 25 of schedule 1 of the:

<http://www.legislation.gov.uk/ukxi/2013/435/schedule/1/paragraph/25>

For claims submitted in advance of the first hearing at which the defendant enters a plea, a copy of the advocate's notification to the court must be submitted. This accompanies the claim to confirm their appointment as instructed advocate.

Once the main hearing has started, only the trial advocate may submit a claim. This is defined as the advocate who attended the main hearing/the first day of any trial.

Cases where trials start and are disrupted

If a replacement advocate takes over the case but the original trial continues rather than there being a re-trial, the original trial advocate must claim for the entire case. The fees should then be divided appropriately

Cracked trial fee

Cracked trials are cases which do not reach trial following an effective first hearing at which a not guilty plea is entered.

Advocate fees for cracked trials are divided into thirds for remuneration purposes. This is calculated using the period between the date a case is first listed for trial, or placed on a warned list, and the actual date listed for trial. Where a case cracks in the first two thirds a basic fee equivalent to that of a guilty plea fee is payable. Cases which crack in the final third attract a higher fee.

Clarification is needed where cases crack following effective first hearings where a not guilty plea is entered, but no trial date has been listed due to COVID-19. Where this happens, the LAA will pay the basic fee that applies where the trial cracks in the final third. This applies in cases with a representation order dated on or before 16 September 2020.

Cracked trials in cases with a representation order dated on or after 17 September 2020 are automatically entitled to the fee for a cracked trial. This is the equivalent of a basic trial fee for advocates, regardless of whether a date has been listed for trial.