Legal Aid Agency

Crown Court Fee Guidance

Version	Issue date	Last review date	Owned by
1.15	October 2022	October 2022	Service Development, Legal Aid Agency.

Version History

Version	Date	Reason
1.0	April 2013	First edition of the combined LGFS and AGFS guidance.
1.1	May 2014	Updated version.
1.2	June 2014	Hyperlinks added to appendix headings.
1.3	August 2014	New LAA telephone number added to contact details.
1.4	August 2015	Updated version.
1.5	May 2016	Updated version, including Better Case Management changes.
1.6	March 2017	Updated version.
1.7	January 2018	Updated to show PPE / special preparation threshold changes.
1.7A	September 2018	Updated to reinstate the LGFS 10,000 PPE threshold (for cases with a representation order dated **earlier** than 1 April 2018).
1.8	April 2018	This version incorporates a revised Advocates' Graduated Fee Scheme.
1.9	September 2018	Updated to reinstate the LGFS 10,000 PPE threshold (for cases with a representation order dated **on or after** 1 April 2018).
1.10	December 2018	Updated with minor amendments to reflect AGFS changes for cases with a representation order dated on or after 31 December 2018.
1.11	June 2019	Appendix R (Video recorded cross-examination under Section 28, Youth Justice and Criminal Evidence Act 1999) updated.
1.12	September 2020	Criminal Legal Aid Review (Accelerated Measures) changes; revised Appendix D; new Appendix E; and other minor updates.
1.12	October 2020	Updated with amendments to paragraph 2.7.3, and previous paragraphs 2.1.19, 2.1.28, and 2.1.29.
1.13	March 2022	Updated to reflect new approach to fees for ineffective trials, plus minor amendments to paragraphs 2.17, 2.17A, 3.20, 3.20A and Appendix E
1.14	October 2022	Updated to reflect new 2022 Standard Crime Contract, removal of ENP fee, minor amendments to costs judge decisions (Appendix K), changes re s.28 hearings (Appendix S) and updated guidance on unused (Appendix E)
1.15	October 2022	Updated to reflect 30 September 2022 crime fee increases being applied to cases with a representation order between 17th September 2020 and 29th September 2022 and with a main hearing on or after 31st October 2022

Contents

Overview

The Advocates' Graduated Fee Scheme (AGFS) and the Litigators' Graduated Fee Scheme (LGFS) are the legal aid fee schemes for Crown Court cases. The fee scheme policy and rates for the AGFS and LGFS are contained in the Criminal Legal Aid (Remuneration) Regulations 2013 as amended (Remuneration Regulations).

The purpose of this document is to provide guidance to complement the Remuneration Regulations and information as to how the Legal Aid Agency (LAA) will process claims for payment. It is for the benefit of legal aid lawyers, legal and billing clerks, LAA caseworkers and participants of the wider criminal justice system who have an interest in the schemes.

The guidance reflects all Remuneration Regulation amendments in existence at the date of guidance publication.

Note that Very High Cost Cases (VHCC) are governed by an individual case contract. The contract will specify whether the VHCC or graduated fee is applicable.

The guidance is structured to mirror the format of the Remuneration Regulations and is divided into three sections:

- Section 1: Guidance on the Remuneration Regulations which applies to both the AGFS and LGFS
- Section 2: Guidance on Schedule 1 of the Remuneration Regulations which applies to the AGFS
- Section 3: Guidance on Schedule 2 of the Remuneration Regulations which applies to the LGFS.

The relevant Remuneration Regulations reference is included on the right-hand side of the page. Paragraphs within the guidance are referenced as follows: for example, Section 1, heading 3, paragraph 1 is referenced as 1.3.1. References to Costs Judge or High Court costs decisions are located within the paragraph. Where no guidance is required, the paragraph will simply refer to the relevant remuneration regulation.

It should be noted that this guidance is not a source of law and, if any conflict is found between the guidance and the regulations, the regulations must take precedence. As the graduated fee schemes (as set out in the regulations) are comprehensive schemes, a determining officer must apply it in accordance with their explicit words (as held in Costs Judge Decision: **R – v – Kemp (1999)**).

In addition to this guidance, the LAA publishes online fee scheme calculators to assist providers in establishing the correct graduated fee to claim. The calculators can be accessed at: https://www.gov.uk/government/publications/graduated-fee-calculators.

1. General Guidance

1.1 Citation and Commencement

1. The AGFS and LGFS are governed by Criminal Legal Aid (Remuneration) Regulations 2013 (No. 435), as amended[1]. These regulations were made by the powers conferred by section 2(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The regulations are published on www.legislation.gov.uk. *Regulation 1*

2. Before LASPO, the Criminal Defence Service (Funding) Order 2007 (as amended) governed all AGFS and LGFS claims, and it continues to be used for claims that have a representation order dated before 1 April 2013. Earlier versions of guidance are available for claims with an earlier representation order date: https://www.gov.uk/government/publications/crown-court-fee-guidance.

1.2 Interpretation

1. Regulation 2 of the Remuneration Regulations contains definitions of the terms specific to the fee schemes. For example, definitions of, 'Appropriate Officer', 'Representation Order', and 'Very High Cost Case'. For these definitions, refer directly to the Remuneration Regulations. *Regulation 2*

1.3 Scope

1. Regulation 3 of the Remuneration Regulations states what is in scope. The regulations contain provision for the remuneration of work in: *Regulation 3(1) – (7)*

- Magistrates' courts
- Crown Court
- High Court, Court of Appeal, and Supreme Court.

2. VHCCs are not in scope. In the High Court case: **Lord Chancellor v. Alexander Johnson (Phillips) (2011)** emphasised that the former Funding Order did not apply to VHCCs. It was held that Paragraph 10, Schedule 2, of the Criminal Defence Service (Funding) Order 2007 as amended (now paragraph 13(8) of the Remuneration Regulations) does not apply to VHCC panel members and where it refers to VHCCs in 10(8) (now 13(8)) that provision is for non-panel members whose cases become VHCCs. *Regulation 3(8) and Regulation 13(8), Schedule 2*

1.4 Claims for fees by advocates – Crown Court

1. For all cases with a representation order dated 5 May 2015 or after, fees for advocacy in Crown Court proceedings are claimed by, and paid to, the Trial Advocate. The Trial Advocate is the advocate who is instructed pursuant to a representation order and who attends the main hearing. 'Main hearing' is one of the following: *Regulation 4(3)*

(a) in relation to a case which goes to trial, the trial;
(b) in relation to a guilty plea (within the meaning of Schedule 1 of the Remuneration Regulations), the hearing at which pleas are taken or, where there is more than one such hearing, the last such hearing;
(c) in relation to a cracked trial (within the meaning of Schedule 1), the hearing at which—
(i) the case becomes a cracked trial by meeting the conditions in the definition of a cracked trial, whether or not any pleas were taken at that hearing; or
(ii) a formal verdict of not guilty was entered as a result of the prosecution offering no evidence, whether or not the parties attended the hearing; *Regulation 2(1)*

[1] The amendments to the Criminal Legal Aid (Remuneration) Regulations 2013 are listed here by Statutory Instrument year and number: 2013 –2803, 2014-415, 2014-2422, 2015-325, 2015-882, 2015-1369, 2015-2049, 2016-313, 2018-220.

(d) in relation to an appeal against conviction or sentence in the Crown Court, the hearing of the appeal;
(e) in relation to proceedings arising out of a committal for sentence in the Crown Court, the sentencing hearing; and
(f) in relation to proceedings arising out of an alleged breach of an order of the Crown Court, the hearing at which those proceedings are determined.

2. Where a case has a representation order dated between 17th September 2020 and 29th September 2022 **and** has a main hearing on or after 31st October 2022, that case will be eligible for the uplifts agreed following the Criminal Legal Aid Independent Review. Advocates should ensure that the main hearing date for these cases is clearly made out on any claim for payment. *Regulation 4(2)*

3. Where the representation order provides for more than one advocate, each Trial Advocate must claim for payment. *Regulation 4(3),4(6)*

4. For older cases (with a representation order dated 4 May 2015 or earlier), it is the Instructed Advocate who must submit the claim for payment.

5. The claim for payment must be submitted within three months of the case conclusion. If confiscation proceedings are scheduled for 28 days from the case conclusion, the Trial Advocate may submit their claim for payment of the main case early (prior to the confiscation hearing). Refer to the Out of Time Guidance at **Appendix A** for the rules relating to claiming past three months of case conclusion.

6. Where a representation order states that a junior advocate can undertake the case, and subsequently a KC provides representation, then the KC can only be paid junior advocate rates. *Regulation 4(7)*

7. All advocacy in the Crown Court is paid either under the Advocates' Graduated Fee Scheme, or VHCC scheme regardless of whether the advocate is a barrister, a solicitor with extended rights of audience or an "ordinary" solicitor in hearings in chambers. No advocacy in the Crown Court should be paid as part of a litigator's bill. *Regulation 4(1)*

8. Where an advocate is instructed only to do work for which a fixed fee is payable (e.g., a Disclosure Hearing or to attend a mention hearing) then the fixed fee should be claimed as if the case as a whole qualifies for graduated fees but should be claimed within the claim of the Trial Advocate. *Regulation 4(2)*

9. All AGFS claims must be made through the Crown Court Defence (CCD) online billing system, and further information about the CCD is available on our website: https://www.gov.uk/government/publications/simplifying-criminal-legal-aid-processing. Advocates can sign up to the billing system by emailing their details to: crowncourtdefence@legalaid.gsi.gov.uk. All disbursement receipts must be scanned into a document and submitted with the online claim. *Regulation 4(4)*

10. Electronic material served via the DCS must be provided to the LAA to determine whether it is PPE. Please note that the LAA do not have direct access to the DCS, Egress or any other DEMS, therefore when necessary, practitioners may be invited to provide the LAA with access to the prosecution bundle in the DCS.

11. Supporting electronic evidence can be uploaded to CCD by selecting "Disc Evidence". Pdf, doc, rtf, jpeg, tiff and bmp are the accepted formats, and the maximum file size is 20 MB. Electronic evidence may also be uploaded to the LAA's Secure File Exchange system (SFE). Discs or USBs should only be provided if it is not possible to submit material electronically. These can be sent to the LAA's Nottingham office and should be clearly labelled with the client's name and T-number.

12. To ensure compliance with data protection legislation, removable media should be provided in an encrypted state, along with the necessary password/s. Unencrypted items will still be processed, but providers must make arrangements for their secure return, as the LAA is unable to take the risk of data loss if unencrypted media is returned via the post or DX. If arrangements are not made the LAA will destroy the item/s after 28 days. Please refer to our data security requirements for further information - https://www.gov.uk/government/publications/legal-aid-agency-data-security-requirements

13. Where the Trial Advocate is registered for VAT, they must claim VAT for all the work done, regardless of whether or not any substitute advocate is registered for VAT. Where the Trial Advocate is not registered for VAT, they will not receive VAT for any of the work done, regardless of whether any substitute advocate is registered for VAT. For further guidance on this issue see: http://www.barcouncil.org.uk/media/10175/2014.01.20_graduated_fee_payment_protocol_v3.0_final.pdf. *Regulation 4(4)*

14. Some Proceeds of Crime Act claims must be submitted directly to the LAA's Criminal Cases Unit (CCU). These are claims involving more than 50 pages of evidence. Applications are made according to Paragraph 14, Schedule 1 of the Remuneration Regulations and the rates for the 51+ pages are set out in the table under paragraph 14(2). See **Appendix C** for contact details of the CCU.

15. The Advocate Supplier Number on the AF1 form is the same as the Legal Aid Account number. Solicitor Advocates must use an Advocate Supplier Number specifically for AGFS claims. For advocates who do not have an advocate number any claim submitted will be rejected. If this is the case the advocate will need to contact the LAA's Provider Records team by email: ProviderRecords-London@legalaid.gsi.gov.uk, or 020 3334 6177.

16. Provider Records will then send the advocate the appropriate form to complete and return. Once the form has been processed, the advocate will be contacted with their Advocate Supplier Number.

1.5 Claims for fees and disbursements by litigators – Crown Court

1. Schedule 2 of the Remuneration Regulations contains provision for claiming under the LGFS. Additionally, it summarises the elements which need to be included when claiming special preparation and when claiming for higher Confiscation Hearing rates. *Regulation 5*

2. Where a case has a representation order dated between 17th September 2020 and 29th September 2022 **and** has a main hearing on or after 31st October 2022, that case will be eligible for the uplifts agreed following the Criminal Legal Aid Independent Review. Litigators should ensure that the main hearing date for these cases is clearly made out on any claim for payment

3. Litigators have three months from the end of the case or the date of the transfer to submit their bills under the LGFS. Please refer to Appendix A for guidance on 'out of time' claims. *Regulation 5(3)*

4. Litigators must submit their claim using the online Crown Court Defence (CCD) billing system. More information can be viewed on our website: https://www.gov.uk/government/publications/simplifying-criminal-legal-aid-processing *Regulation 5(4)*

4. Electronic material served via the DCS must be provided to the LAA to determine whether it is PPE. Please note that the LAA do not have direct access to the DCS, Egress or any other DEMS, therefore when necessary, practitioners may be invited to provide the LAA with access to the prosecution bundle in the DCS. *Regulation 5(4)*

5. Supporting electronic evidence can be uploaded to CCD by selecting “Disc Evidence”. Pdf, doc, rtf, jpeg, tiff and bmp are the accepted formats, and the maximum file size is 20 MB. Electronic evidence may also be uploaded to the LAA’s Secure File Exchange system (SFE). Discs or USBs should only be provided if it is not possible to submit material electronically. These can be sent to the LAA’s Nottingham office and should be clearly labelled with the client’s name and T-number.

6. To ensure compliance with data protection legislation, removable media should be provided in an encrypted state, along with the necessary password/s. Unencrypted items will still be processed, but providers must make arrangements for their secure return, as the LAA is unable to take the risk of data loss if unencrypted media is returned via the post or DX. If arrangements are not made the LAA will destroy the item/s after 28 days. Please refer to our data security requirements for further information - https://www.gov.uk/government/publications/legal-aid-agency-data-security-requirements

7. Invoices and receipts for disbursements must be scanned and attached to the online claim.

8. For a case that includes a trial and a retrial, and there is no change of litigator, the litigator should submit two separate claims i.e., a trial claim and a retrial claim. *Regulation 5(4)*

9. If a solicitor-advocate has undertaken both the litigation and advocacy work on the same case, they should submit separate claims under LGFS and AGFS. *Regulation 4(1) and 5(1)*

10. No advocacy in the Crown Court can be paid for as part of a litigator’s bill and should be claimed under the AGFS. However, solicitor advocates can have their fee paid to their firm when submitting a claim using the firm's Advocate Supplier Number provided the advocate is the Trial Advocate. *Regulation 4(1)*

11. Every claim should have a case conclusion date. However, if this date is not submitted the processing team will instead use the payment request date. If a payment is claimed on CCD, then the relevant date is the date the claim was entered and saved.

1.6 Proceedings in the Court of Appeal

1. Regulation 6 of the Remuneration Regulations directs the claimant to Schedule 3 of the Remuneration Regulations for claiming for Court of Appeal work. *Regulation 6*

1.7 Proceedings in the Supreme Court

1. Regulation 7 of the Remuneration Regulations specifies that all Supreme Court cases are paid by the Supreme Court and the Remuneration Regulations do not apply. *Regulation 7*

1.8 Claims for fees for certain categories of work to which the Standard Crime Contract applies

1. Regulation 8 applies to advice and assistance and representation in the police station and the magistrates’ court, appeals by way of case stated to the High Court, and proceedings prescribed as criminal proceedings under section 14(h) of the Act. The fees are set out in Schedule 4 of the Remuneration Regulations and the rules which apply are set out in the 2022 Standard Contract. *Regulation 8*

1.9 Payments from other sources

1. Regulation 9 of the Remuneration Regulations states that for legally aided cases no additional payment can be received from another source except where the LAA has refused an application to incur costs for advice from an expert or other person, further *Regulation 9*

evidence, or to obtain transcripts or recordings.

1.10 Cases sent for trial at the Crown Court

1. Where cases start in the magistrates' court, but are sent or committed to the Crown Court, all work for the case is payable under the Crown Court fee schemes. *Regulation 10*

2. If the case is remitted back to the magistrates' court, then the work is payable under the magistrates' court fee scheme.

3. For cases with a representation order on or after 19 October 2020 a fixed fee is payable to a litigator in respect of a case sent for trial to the Crown Court (and will be paid under the magistrates' court scheme via CWA).

1.11 Proceedings for contempt

1. Regulation 11 of the Remuneration Regulations states that the Lord Chancellor may only pay for contempt proceedings in accordance with Schedules 1, 2, and 3. *Regulation 11*

1.12 Notification of Very High Cost Cases

1. Litigators are under a contractual and regulatory obligation to notify the CCU of the LAA if they are representing a defendant on a case that is likely to be a VHCC. *Regulation 12(1)*

2. The CCU must be notified using the VHCC Notification Request Form which may be accessed at: https://www.gov.uk/high-cost-cases-crime.

1.12A Fees in Very High Cost Cases

Regulation 12A

1. Regulation 12A provides for the fees to be paid according to the terms of the VHCC contract using rates set out in Schedule 6 of the Remuneration Regulations.

1.13 Authorisation of Expenditure

1. Only litigators may apply for Prior Authority to incur certain expenses, such as reports from experts and transcripts as per regulation 13 and may apply to the Prior Authority Team. *Regulation 13(1)*

2. Both litigators and advocates may apply to the LAA for permission to incur travelling and accommodation costs, which the LAA has labelled 'Prior Approval'. *Regulations 13(3)*

3. Before applying for Prior Approval, advocates must consider paragraph 2.29, Non-Local appearances. Applications for Prior Approval must be made by email and include a full explanation for incurring the costs. For example, if it is on the basis of specialised knowledge or experience, a copy of the indictment and details of the relevant expertise must be supplied. *Regulation 13(3) and Paragraph 29, Schedule 1*

4. Prior Approval requests should be emailed with the subject heading, 'Crown Court Travel Prior Approval', to: crime.queries@justice.gov.uk.

1.14 Interim payment of disbursements

1. Regulation 14 of the Remuneration Regulations contains the criteria for claiming and authorisation of interim payments for litigators' disbursements. *Regulation 14*

2. Litigators may claim interim payments for disbursements of £100 or more before submitting the final bill for the case, where prior authority to incur the expenditure has been granted and the expense has already been incurred. *Regulation 14(2)*

3. 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. *Regulation 14(6)*

1.15 Interim disbursements and final determination of fees

1. The processing officer will adjust the final payment to the litigator if an interim payment made during the course of the case is more or less than the assessed cost of the disbursement. *Regulation 15(2)*

1.16 Expert Services

1. The LAA will pay for experts' fees but will pay no more than is set out in Schedule 5 of the Remuneration Regulations, unless there are exceptional circumstances. *Regulation 16(2)*

1.17 Determination of litigators' disbursements

1. Regulation 17(1) makes provision for a litigator to incur reasonable disbursements. *Regulation17 (1)*

2. Litigators may claim disbursements for reasonable travel and experts' fees. If the travel disbursements are extensive because of the distance travelled, the processing officer may reduce the disbursement allowed. *Regulation 17(1) and (2)*

3. Travel time for litigators is included in the graduated and fixed fees. It is important to note that the litigator instructed should be local to the client. Refer to section 3.9 of the Criminal Bills Assessment Manual. *Regulation 17(2)*

4. 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 wish2.

5. 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 Trial Advocate, instructed advocate etc. and will be similar to the type of supporting evidence usually required under ex post facto. *Regulation 17(1)*

6. In house photocopying charges for routine copying are not recoverable since these constitute general office overheads3. 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 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. The photocopying of fewer than 500 pages would not be considered a reasonable disbursement and would be considered part of general office overheads. *Regulation 17(1)*

7. Routinely informing experts of when both full and interim payments are made would place a significant administrative burden on the LAA and the time taken to process claims may suffer as a result. Therefore, while the LAA 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. *Regulation 14(8)*

[2] Refer to paragraph 3.6 of the Criminal Bills Assessment Manual for guidance on agent's fees (the same principles apply for Crown Court work).

[3] Refer to paragraph 3.1 Criminal Bills Assessment Manual for administration and overheads not included in the graduated fee.

8. If an expert is claiming travel and accommodation, their expert receipts should be included in the litigator's claim for payment. *Regulation 17(1)*

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

10. When looking at the reasonableness or otherwise of travel disbursements, the LAA will apply the guidance and principles set out in the Criminal Bills Assessment Manual[4]. *Regulation 17(1)*

11. Disbursements, including VAT, over £20 should be justified and, so far as possible, be accompanied by valid receipts or tickets, except for receipts for night subsistence and personal incidence disbursements which should be supplied for any amount[5]. Litigators should keep copies of all receipts with their paper files as they may need to be called upon. *Regulation 17(1)*

12. Where travel has been authorised, the LAA will use the following guide rates (excluding VAT) when assessing travel and accommodation expense claims: *Regulation 17(1)*

Expense	**Rate**
Standard (motor vehicle) Mileage Rate	45p per mile.
Public Transport Mileage Rate	25p per mile.
Cycling Mileage Rate	20p per mile.
Overnight Hotel (including serviced apartments) – London, Birmingham, Manchester, Leeds, Liverpool or Newcastle-Upon-Tyne city centres	£85.25
Overnight Hotel – elsewhere	£55.25
Night Subsistence	£21
Personal Incidental	£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 litigator 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, litigators carrying exhibits or that travelling by car, including any claim for parking, was cheaper than using public transport). *Regulation 17(1)*

13. 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. Therefore, where the court at which a litigator is required to attend is reasonably accessible by public transport, though the litigator 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 (1984) at *Regulation 17(1)*

[4] Refer to paragraph 3.9 of the Criminal Bills Assessment Manual for guidance on travel and waiting disbursements.

[5] Refer to paragraph 3.9(19) of the Criminal Bills Assessment Manual for guidance on receipts for disbursements.

section 3.9 of the Criminal Bills Assessment Manual for more information: https://www.gov.uk/funding-and-costs-assessment-for-civil-and-crime-matters).

Regulation 17(1)

14. A claim for Night Subsistence can be made for the cost of an evening meal up to £21 and must be accompanied by receipts.

Regulation 17(1)

15. A Personal Incidental claim can be made only when the litigator has stayed over in a hotel and must be supported by receipts. The items claimable are:

- Newspapers
- Tea or coffee at court.

The defence is responsible for obtaining interpreters for attendance on clients and witnesses during case preparation and can claim according to the Legal Aid Reform – Expert Rates Guidance available at: https://www.gov.uk/expert-witnesses-in-legal-aid-cases.

1.17A Interim Payment of litigators' fees

Regulation 17A

1. For cases with a representation order dated on or after 2 October 2014, litigators may claim for an interim payment at two stages:

- A first interim payment can be claimed in cases after the first hearing at which the assisted person enters a plea of not guilty (at a Plea and Trial Preparation Hearing (PTPH) or a Further Case Management Hearing (FCMH)). This interim payment is not payable for either way offences where the defendant elected a Crown Court trial.
- A second interim payment can be claimed where a trial has commenced, and that trial is estimated to last for 10 days or more.

2. A litigator can choose to make an interim payment claim at one or both stages (if applicable).

3. The first interim payment which is payable after a PTPH (or FCMH) can be made at any time after the PTPH (or FCMH) has taken place up until the trial conclusion.

4. The second 'trial start' interim payment may be claimed any time up until the trial conclusion.

5. A claim for a PTPH (or FCMH) interim payment cannot be made after a claim for a 'trial start' interim payment as there will be nil payable. The 'trial start' payment will have included the PTPH (or FCMH) payment.

Value of interim payments

Paragraph 17A (11-15), Sch.2

6. The fees paid to litigators will vary by offence class, number of defendants and will depend on the number of pages of prosecution evidence ('PPE') served at the time.

- The amount payable for a first interim payment (after the PTPH or FCMH) is 75% of the Cracked Trial fee (based on PPE served at the time plus defendant uplift if applicable).
- The fee paid for the second interim payment (trial start) will be paid as a 1-day trial plus PPE served at the time plus defendant uplifts if applicable.

7. If a claim for a first interim payment (after the PTPH or FCMH) has been made, then this will be offset against the value of the fee payable for the second interim payment (trial start).

8. Uplifts for additional PPE served, days at trial and defendants will be claimable when the final claim is submitted.

9. If the offence class changes then this will also be amended at the end of the trial upon

submission of the final claim.

10. Travel claims cannot be paid as part of the interim payment and must be made at the end of the case in the final claim.

11. Disbursements cannot be claimed unless prior authority has been obtained.

Interim payments and retrials

Paragraph 17A (6)

12. For retrials, where the same litigator represents the defendant, no interim payments can be claimed.

Paragraph 17A (12)

13. In the case of retrials where there is a different litigator an interim payment may be claimed at two stages:

- A first interim payment can be claimed where the date for the retrial has been set and the representation order has been transferred to the new provider. For transferred retrials, 50% of the Cracked Trial fee will be payable (based on PPE served at the time plus defendant uplift if applicable).
- A second interim payment can be claimed where a retrial has commenced, and that retrial is estimated to last for 10 days or more. The fee will be paid as a 1-day trial plus PPE served at the time plus defendant uplifts if applicable.

14. If a claim for a first interim payment has been made, then this will be offset against the value of the fee payable for the second interim payment.

15. Uplifts for additional PPE served, days at trial and defendants will be claimable when the final claim is submitted. If the offence class changes then this will also be amended at the end of the retrial upon submission of the final claim.

16. Travel claims cannot be paid as part of the interim payment and must be made at the end of the case in the final claim.

How to submit a claim for an LGFS interim payment

17. Interim Payment claims must be submitted through the CCD online billing system. Claims will be validated by the Litigator Fee Team to ensure that PTPH or FCMH (where the defendant pleaded 'not guilty') has taken place or that the trial has started and is estimated to last for 10 days or more.

18. Claims must be accompanied by evidence of the PPE, the LAC1 (where applicable), a copy of the representation order and indictment. If the normal attachments (supporting evidence) are not submitted with the claim, then the claim will be rejected.

19. If the offence class and PPE have not changed there will be no need to amend your claim with the evidence. However, if they change then evidence must be uploaded to make a claim for any uplifts.

20. The LAA will offset any interim payments already made against the final claim.

21. Interim Claims will not be considered as a final claim for the purposes of determining if a claim has been submitted on time or not.

22. Providers will continue to be able to claim hardship payments at any time up until the final bill has been submitted. Any hardship payments made will be offset against any interim payments received and vice versa.

23. Claims for interim disbursements will not be affected by the interim payment process and may be claimed separately through the CCD system.

24. There is no right to request a redetermination for an interim payment.

1.18 Interim payments in cases awaiting determination of fees

1. It is the Trial Advocate who may make a claim for an interim payment in cases awaiting determination of fees (for cases with a representation order dated 5 May 2015 or later). Cases with an earlier representation order date must be claimed by the Instructed Advocate. *Regulation 18*

2. Where a Trial Advocate has submitted a claim for a graduated fee of £4,000 or more (exclusive of VAT) and has not received payment three months after submitting the claim, and six months have elapsed since the conclusion of the proceedings, the advocate may submit a claim for an interim payment. *Regulation 18(1-5)*

1.19 Amount of interim payments in cases awaiting determination of fees

1. Regulation 19 of the Remuneration Regulations permits an interim payment in the amount of 40% of the total claim. *Regulation 19*

1.20 Staged payments in long Crown Court proceedings

1. Regulation 20 of the Remuneration Regulations describes the criteria for allowing an Instructed Advocate to apply for a staged payment during the course of a case, defines 'preparation', and describes how to calculate the staged payment. *Regulation 20*

2. A staged payment may be claimed where the case involves preparation of 100 hours or more, and the period from sending for trial to the conclusion of the Crown Court proceedings is likely to exceed 12 months. *Regulation 20(2)*

3. Once the Instructed Advocate has performed 100 hours of preparation and it is known that the case will conclude after 12 months, the advocate may submit their claim for a staged payment to the LAA using the CCD billing system. It should be noted that the claim is for case preparation only. Staged Payments continue to be claimed by, and paid to, the Instructed Advocate (rather than the Trial Advocate) for cases with a representation order dated on or after 5 May 2015. *Regulation 20(5)*

1.21 Hardship payments

1. Regulation 21 of the Remuneration Regulations contains provision for claiming for a hardship payment for advocates and litigators. *Regulation 21*

2. A representative can apply for a hardship payment where: *Regulation 21(2)*
   - the representative has spent at least 1 month on the case
   - the representative is unlikely to receive a final payment within three months of applying for a hardship payment
   - the representative can demonstrate that financial hardship will result.

3. The regulations do not allow for predicted future costs of the case to be considered. *Regulation 21(5)*

4. Litigators and advocates will need to manually check that their claim meets the *Regulation 21(6)*

requirement of £450 or more exclusive of VAT before they submit an online claim. Litigators and advocates may use the calculators on the LAA website for this purpose. The calculators can be accessed here: https://www.gov.uk/government/publications/graduated-fee-calculators

5. Litigators and advocates may make a hardship claim through the CCD billing system, with a copy of the Representation Order, the case details (e.g., offence type, PPE and number of defendants), and evidence of financial hardship (where required). *Regulation 21(3) and (4)*

6. The one-month rule applies to the representative and not to the Representation Order. For example, if a litigator began 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 one month) commences on the date of transfer of legal aid, not from the original date of grant. *Regulation 21(1)*

7. Evidence needs to be provided to prove hardship. Evidence should take the form of bank statements and/ or letters from the bank. *Regulation 21 (3) and (4)*

7a. We will accept that trial delays, and subsequent delays to billing, during the COVID-19 transmission control period will likely result in financial hardship. When this happens for cases you are working on you do not need to submit evidence of the likelihood of financial hardship.

8. The representative 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 representative must inform the LAA. The LAA will regularly review hardship payments to ensure duplicate payments have not been made. *Regulation 4(4) and 5(4)*

9. Any hardship payments made will be offset against any interim payments received and vice versa.

10. An application for hardship payment may be submitted by any advocate working on a case. For cases with a representation order dated on or after 5 May 2015, hardship payments are made to the Trial Advocate. If the trial has not started and there is no Trial Advocate, payment will be made to the Instructed Advocate.

1.22 Computation of final claim where an interim payment has been made

1. When determining a final claim from a representative to whom an interim payment has been made, the amount already paid should be deducted before any further payment is made. If the amount already paid is greater than the amount payable on determination of the final claim, the representative should be asked to repay the amount in question. If this is not forthcoming, recovery can be made from any other amounts due to be paid to the representative. *Regulation 22(2)*

2. For litigators, because of the way CCLF is configured, hardship payments can only be paid under certain scenarios. However, the LAA will reconcile the difference when the final fee is claimed.

3. All advocates have a duty to provide the Trial Advocate with the correct details of any interim payment made.

1.23 Payment of fees to advocates—Crown Court

1. For cases with a representation order dated on or after 5 May 2015, advocacy fees are claimed by, and paid to, the Trial Advocate. For cases with an earlier representation order date, the fees are claimed by, and paid to, the Instructed Advocate. *Regulation 23*

2. Advocates should receive payment for their AGFS claim in the next available LAA BACS payment run after their claim has been authorised. *Regulation 23(1)*

1.24 Payment of fees to litigators—Crown Court

1. Regulation 24 of the Remuneration Regulations contains provision for the LAA notifying and paying litigators for fees payable, as well as any increase or decrease in fees as a result of an appeal. *Regulation 24*

2. LGFS payments are made by the LGFS system and will show up on a separate line on the litigator's monthly statement. Litigators should receive a payment for all LGFS claims in the next available LAA BACS payment run after their claim has been authorised. *Regulation 24(1)*

1.25 Recovery of Overpayments

1. Regulation 25 of the Remuneration Regulations makes provision for recovering an overpayment from the representative. *Regulation 25*

2. The LAA can recover overpayments for whatever reason. In the High Court decision of **Lord Chancellor v Eddowes, Perry and Osbourne Ltd (2011)**, it was held that the LSC is entitled to recoupment when there has been an overpayment "for whatever reason" and this must include overpayment through the LSC's own error. That decision also confirmed that if the LSC does seek recoupment when it has made an error, the solicitor has a right to seek a redetermination and then appeal following receipt of the written reasons. *Regulation 25(1)*

1.26 Adverse observations

1. Where the court makes adverse observations of a representative's conduct, the LAA may reduce the usual fee payable. Prior to reducing the fee, the LAA must allow the representative a chance to make representations as to whether it is reasonable to reduce the fee. *Regulation 26*

1.27 Wasted costs orders

1. The LAA has the power to deduct wasted costs from a claim according to the Wasted Costs Order. If the officer has disallowed some of the claim which relates to the Wasted Costs Order then they can reduce the fee by the value of work disallowed or the value of the order, whichever is the greater. *Regulation 27(1) and (2)*

1.28 Redetermination of fees by appropriate officer

1. Regulation 28 of the Remuneration Regulations contains the rules for applying for and assessing a redetermination. It distinguishes the different criteria for a redetermination of claim made by an advocate, a Trial Advocate, and a litigator. *Regulation 28*

2. Where a representative is dissatisfied with the calculation of the fees, the representative may seek a redetermination. *Regulation 28(1)*

3. The representative has 21 days, from the date of the LAA decision, to ask the LAA to review the decision. Representatives should submit their request for a redetermination through the CCD online billing system. *Regulation 28(3)*

4. A redetermination involves the LAA checking the information, including any additional information supplied by the applicant against actual court case file information or prosecution information. *Regulation 28(4) and (6).*

5. The LAA will then determine whether any amendments need to be made to the payment and amend the payment accordingly. *Regulation 28(7)*

6. For requests for a redetermination of the offence banding or class, the LAA will confirm banding 17.1 under the AGFS, Class H under the LGFS, or attribute a different, more appropriate band or class to the case.

7. The LAA will subsequently notify the applicant of the redetermination decision. The LAA may provide written reasons for the decision as part of the same process or may inform the applicant of their right to request written reasons. *Regulation 28 (7) and (8)*

8. If no written reasons have been provided, the applicant may request written reasons, through the CCD billing system, within 21 days of the review decision. *Regulation 28(8) and (9)*

9. If the applicant is dissatisfied with the written reasons given by the LAA, then the applicant has a right to appeal to the Costs Judge. *Regulation 28(9)*

1.29 Appeals to a Costs Judge

1. Regulation 29 provides the timeframe, documentation required, and the Lord Chancellor's involvement, when appealing to a Costs Judge against the determination of a claim. *Regulation 29*

2. Representatives can only appeal to a Costs Judge after they have sought a redetermination and received the written reasons from the LAA. The importance of this is reflected in the Costs Judge decision: R. v. Charlery and Small (2010) where it was held that if the solicitor does not request a redetermination under article 29 of the Criminal Defence Service (Funding) Order 2007 as amended there is no right of appeal for recovery of payments under 26. (Note: under the 2013 Remuneration Regulations the regulation references are 28, and 25 respectively). *Regulation 29(1)*

3. An appeal must be made within 21 days of the receipt of the written reasons, by giving notice in writing to the Senior Costs Judge. Please note that all appeals must be submitted to the Senior Courts Costs Office electronically using the CE-File system: https://www.gov.uk/guidance/ce-file-system-information-and-support-advice *Regulation 29(2)*

4. Representatives must inform the LAA of their decision to appeal so the LAA can also provide appropriate information to the Costs Judge if necessary. Representatives must send the request for redetermination, including any information and documents supplied to the LAA, and the LAA's written reasons to the Costs Judge. *Regulation 29(3)*

5. At the close of the appeal process, the LAA will amend the payment as appropriate and inform the litigator or advocate. *Regulation 29(12) and (13)*

1.30 Appeals to the High Court

1. Regulation 30 allows representatives a further limited right of appeal to the High Court. *Regulation 30*

1.31 Time Limits

1. Regulation 31 of the Remuneration Regulations sets out the rules for an extension of any time limit, and the penalty for failing to meet a time limit without good reason. Refer to **Appendix A** for policy on out of time claims. *Regulation 31*

2. Advocates' Graduated Fee Scheme

Schedule 1: Advocates' Graduated Fee Scheme

2.1 Interpretation

1. Paragraph 1, of Schedule 1 to the Remuneration Regulations contains definitions for terms specific to the AGFS. The following paragraphs provide further guidance on the Remuneration Regulation terms.

Paragraph 1, Schedule 1

Definition of a Case

2. 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 representative may claim two fees.

3. It was held in R v Moore (2022) that a quashed or stayed indictment is not of itself an indication that the subsequent indictment is a second or new case. Where the second indictment is merely an amendment of the original indictment a litigator or advocate is only entitled to one fee. This principle was also held in R v Wharton (2021) where, although two indictments were produced to reflect the change in the offence faced by the defendant, there was in fact only one indictment on which he would be tried, and therefore only one case.

4. Conversely, where defendants are joined into 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 advocate may claim one fee. Refer to Costs Judge decision: Eddowes, Perry, and Osbourne (2011) which held that in cases involving multiple defendants represented by the same solicitor one claim should be submitted with the appropriate uplift for the relevant number of defendants.

5. For appeals, committals for sentence, and breach hearings, a case is defined as a single notice of appeal, a single committal for sentence whether on one or more charges, or a single breach of a Crown Court order.

Paragraph 1(1), Schedule 1

6. Where a case is transferred between Courts and is allocated a different court reference number, only one fee should be claimed.

Trials and Retrials

7. The term 'Trial' is not defined in the regulations, but the following paragraphs provide guidance on determining when trials have begun and when retrials are payable.

8. A 'trial' includes all hearings that pertain to the main case i.e., from when the jury is sworn (or before if legal argument is part of trial process) and evidence is called or from the date of a preparatory hearing to the day of the verdict. Refer to paragraph 2.1.12 below.

9. Mentions, bail applications etc between a preparatory hearing and the start of a jury trial do not count as trial days, only days where a preparatory hearing takes place.

10. 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. Refer to Costs Judge decision: R. v. Jones (2000) which

held that this, and any subsequent preparatory hearing, will therefore be included in the length of trial calculation irrespective of whether the preparatory hearing(s) is 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).

11. 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, a trial fee is payable.

12. Where there is likely to be any difficulty in deciding whether a trial has begun, and if so when it began, the judge should be prepared, upon request, to indicate his or her view on the matter for the benefit of the parties and the Appropriate Officer, as Mitting J did in R v Dean Smith, in the light of the relevant principles explained in the judgment.

13. Further, it was held in Lord Chancellor v. Henery (2011) that in deciding whether a trial has begun the question is whether there has been a trial in any meaningful sense; whether the jury has been sworn is only one of the relevant factors to be considered. The judgment provides the following guiding principles:

> *96. I would summarise the relevant principles as follows:*
>
> *(1) Whether or not a jury has been sworn is not the conclusive factor in determining whether a trial has begun.*
>
> *(2) There can be no doubt that a trial has begun if the jury has been sworn, the case opened, and evidence has been called. This is so even if the trial comes to an end very soon afterwards through a change of plea by a defendant, or a decision by the prosecution not to continue (R v Maynard, R v Karra).*
>
> *(3) A trial will also have begun if the jury has been sworn and the case has been opened by the prosecution to any extent, even if only for a very few minutes (Meek and Taylor v Secretary of State for Constitutional Affairs).*
>
> *(4) A trial will not have begun, even if the jury has been sworn (and whether or not the defendant has been put in the charge of the jury) if there has been no trial in a meaningful sense, for example because before the case can be opened the defendant pleads guilty (R v Brook, R v Baker and Fowler, R v Sanghera, Lord Chancellor v Ian Henery Solicitors Ltd [the present appeal]).*
>
> *(5) A trial will have begun even if no jury has been sworn, if submissions have begun in a continuous process resulting in the empanelling of the jury, the opening of the case, and the leading of evidence (R v Dean Smith, R v Bullingham, R v Wembo).*
>
> *(6) If, in accordance with modern practice in long cases, a jury has been selected but not sworn, then provided the court is dealing with substantial matters of case management it may well be that the trial has begun in a meaningful sense.*
>
> *(7) It may not always be possible to determine, at the time, whether a trial has begun and is proceeding for the purpose of the graduated fee schemes. It will often be necessary to see how events have unfolded to determine whether there has been a trial in any meaningful sense.*

(8) Where there is likely to be any difficulty in deciding whether a trial has begun, and if so when it began, the judge should be prepared, upon request, to indicate his or her view on the matter for the benefit of the parties and the determining officer, as Mitting J did in R v Dean Smith, in the light of the relevant principles explained in this judgment.

14. To expand on Principle 5, the R v Bullingham 2011 judgment states:

i. *The LSC's contention that as no jury was sworn, the trial could not have started, is wrong since it is plain from the authorities that the swearing of the jury is not the conclusive factor in deciding under the scheme when the trial begins.*
ii. *Even if a jury is sworn, the trial will not start unless it begins "in a meaningful sense", that is to say otherwise than for the mere convenience of the jurors or so that the legal representatives will be paid a trial fee rather than a cracked trial fee.*
iii. *If the jury is sworn and the prosecution opens its case only for the defendant to change his plea, a trial, not a cracked trial fee is payable.*

Where (as here), no jury is sworn, but the judge directs that there will be a voir dire involving substantial argument which may affect the evidence that the prosecution can use in the case, the trial starts when he gives that direction.

14. 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 sentencing hearing is remunerated as a fixed fee.

15. In reference to principle 6 of Henery, the determining officer may refer to the court log to ascertain whether the court was engaged in substantial case management. Costs judge decisions in Barnes/Bowden (2022) and Williamson (2022) held that pre-trial preparation such as editing evidence or preparing jury bundles, applications to adjourn or critiquing the Crown's case during plea negotiation would not be sufficient to meet this criterion.

Retrials

15. If there is no order by the judge that there will be a new trial and the new trial is deemed to be part of the same trial process, then the fee payable is for one trial only. Refer to Costs Judge decision: R. v. Nettleton (Mr Doran) (2012) which held that despite there being a gap of more than one day after the first jury was discharged, this case should be paid as one trial because it was all part of the same trial process and no further preparatory work was required before the case recommenced. Also refer to Costs Judge decision: R. v Cato (2012) which held that the length of the delay does not necessarily mean there has been a retrial. For a retrial to take place the trial must have run its course and an order for retrial must be made. In R. v Forsyth (2010) it was held that in order for a trial to be considered a retrial there must be an order for a new trial or the trial must have run its course without the jury reaching its verdict.

16. In addition, refer to the additional retrials guidance at Appendix P which provides detail on how to claim for cases where, despite the court not making a formal order for a retrial, the circumstances suggest there is trial plus a new trial/retrial.

17. All Trial Advocates must submit a claim for payment for the trial they conduct. When there is a trial followed by a new trial (retrial) and a new advocate has conduct of the new trial, the first Trial Advocate must submit a claim for the trial and the new Trial Advocate must submit a claim for the retrial.

Guilty Pleas and Cracked Trials

18. A Cracked Trial is a case that is terminated between the first hearing at which pleas of not guilty are entered and the first day of Trial. A case where the matter is listed for trial without a hearing at which the assisted person enters a plea at any point in the case is also

Paragraph 1(1) Schedule 1

deemed to be a Cracked Trial.

19. As held in Costs Judge decision: **R. v. Baxter (2000)**, following a PTPH (or FCMH) where a 'not guilty' plea had been entered followed by a subsequent change of plea to 'guilty' on the same day only a Guilty Plea fee can be paid. *Paragraph 1(1), Schedule 1*

20. Once a trial has started with the jury being sworn and evidence called, a case cannot attract a fixed fee in any circumstances. Refer to Costs Judge decision: **R. v. Maynard (1999) and R. v. Karra (2000)** held that a claim cannot be made for a Cracked Trial fee once a jury is sworn even where a change of plea to 'guilty' is made after prosecution has opened on the first day.

21. There is no provision in the Remuneration Regulations that a Cracked Trial fee should be paid on the grounds that the indictment was amended before pleas were taken.

22. A Cracked Trial fee may be paid for a hearing regardless of whether or not there has been a change of plea. Where a KC or leading junior had not previously been assigned when pleas were taken, they can still claim the applicable graduated fee.

24. At any hearing where there is a change of plea, that hearing becomes the main hearing for a Cracked Trial

25. Adjourning a case to allow the prosecution time to decide whether or not to proceed would not qualify for a Cracked Trial fee.

26. Where a trial is aborted, or a jury is unable to reach a verdict, with the prosecution later offering no evidence, a Cracked Trial fee should not be paid for the second or any subsequent intended trial unless the case was again considered ready for trial by being given a fixture listing or placed in a warned list. Adjourning the proceedings to allow the prosecution time to decide whether or not to proceed further – with the case subsequently being listed for mention at which the prosecution offer no evidence – would not qualify for a Cracked Trial fee.

27. Refer to Costs Judge decision: R. v. Pelepenko (2002) which held that a Cracked Trial fee can only be paid after an abortive Trial, where the prosecution has confirmed that they are proceeding to another Trial, and the case subsequently cracks.

28. It is possible under administrative procedures introduced on 1 November 1996 for the prosecution to offer no evidence and for the acquittal to be pronounced in court without either party, or their legal representatives, being present at court. It being a condition of this procedure that the defendant has to have already been arraigned and pleaded 'not guilty', a Cracked Trial fee should be paid to the Trial Advocate in such circumstances. *Paragraph 7(1), Schedule 1*

29. PPE guidance is set out in **Appendix D**. Guidance on the payment of electronic evidence is included.

2.2 Application

1. Paragraph 2, Schedule 1 of the Remuneration Regulations describes the types of case that the AGFS covers. It additionally contains the provisions for: *Paragraph 2, Schedule 1*

- Payment of a new trial
- How Newton Hearings are treated
- Discontinued proceedings.

2. Whenever 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. Refer to Costs Judge decision: R. v. Gemeskel *Paragraph 2(8), Schedule 1*

(1998).

3. Paragraph 2(8), Schedule 1 of the regulations only applies where a Newton Hearing takes place following a case on indictment. Where there is no indictment, and a guilty plea is entered before the case reaches the Crown Court, the paragraph cannot apply and there is no other provision in the schedule that would allow for the payment of a graduated fee. Accordingly, for litigators, only a fixed fee (Committal for Sentencing) is payable in such a situation. Refer to Costs Judge decision: **R. v. Holden (2010).** Advocates can claim ex post facto fees under Schedule 1, paragraph 20(4).

Paragraph 2(8), Schedule 1

4. If the advocate at the Newton Hearing was different from the advocate at the main hearing (when the guilty plea was taken), it is the advocate who attended the main hearing who is the Trial Advocate and claims for payment.

5. In cases that were adjourned for a Newton Hearing and the Newton Hearing does not take place, either because the basis of the plea or the prosecution version are subsequently accepted, then the type of case reverts to either a Guilty Plea case or (if either a guilty plea was entered after a not guilty plea had previously been entered or there was no first hearing at which pleas were taken, and the case was listed for trial) a Cracked Trial. The advocate at the ineffective hearing may be paid the Standard Appearance fee. Also refer to Costs Judge decision, R. v Stafi (2015), which confirms that if there is no PCMH (now called a PTPH or FCMH), the case was not listed for trial, and a scheduled Newton Hearing does not take place, then a Guilty Plea fee is payable.

6. If the Crown discontinues a case at or before the first hearing at which pleas are taken then the case is treated as a guilty plea. If the case is discontinued before the prosecution papers are served, 50% of the basic fee for a guilty plea is payable.

Paragraph 22(2), Schedule 1

7. If, following a trial, a new trial is ordered and the same advocate appears at both trials or at the main hearing following the first trial, the advocate must be paid two graduated fees, subject to whether the case has been re-fixed or re-warned for trial. However, payment for the new trial is calculated as follows:

Paragraph 2(3), Schedule 1

- If the new trial starts within one calendar month of the conclusion of the first trial, the advocate is paid a new trial Graduated Fee but reduced by 30%.
- However, where the new Trial starts later than one calendar month from the conclusion of the first Trial the advocate is paid a new Trial graduated fee but reduced by 20%. Where this provision applies, the advocate can elect from which trial the reduction should be made.
- When submitting the retrial claim, the advocate should specify which trial will be subject to the reduction.
- An advocate can elect to have the percentage reduction on the claim for payment for a Trial before the retrial has taken place. Refer to Costs Judge decision: R v Connors (2014). However, the advocate should note:
- If the claim for the first trial is submitted before the re-trial commences/concludes, it will be assumed that the advocate has elected to have the reduction applied to the later claim unless the election is made at the time the first claim is submitted.
- If it is the first trial fee that is to be reduced, the election must be declared clearly on the first trial claim form (the LAA will pay it in full at first and then apply the reduction manually when the later claim is received).

- When the later claim is submitted, the fact that the election was made on the first claim must be clearly highlighted.

- Once the election has been made it is not open to the advocate to change it.

- Fixed Fees are not affected.

- Where there is a change of plea at or before the start of the second trial (or where the prosecution does not proceed on re-trial), and such change of plea occurs within one calendar month of the conclusion of the first trial, the advocate is paid a cracked trial fee for the second trial but reduced by 40%.

- Where there is a change of plea at or before the start of the second trial (or where the prosecution does not proceed on re-trial), and such change of plea occurs later than one calendar month from the conclusion of the first trial, the advocate is paid a cracked trial fee for the second trial but reduced by 25%.

8. The same provisions apply where a retrial is ordered following a Trial that was privately funded. Note that as the advocate has been paid for the first trial, they must elect to receive a reduce fee for the new trial as described in paragraph 2(3), Schedule 1 of the Remuneration Regulations.

9. If the advocate at the first trial and the advocate at the new trial (or new main hearing) are different each advocate receives a full graduated fee subject to whether the case has been re-fixed or re-warned for trial.

10. Where at a Preliminary Hearing under Section 51 of the Crime and Disorder Act 1998, the prosecution draws up an indictment and guilty pleas are entered a guilty plea graduated fee is to be paid, unless there is Newton Hearing.

11. When a trial stops and starts again and is deemed to be one trial and a new advocate starts acting in the second leg of the case, just one Trial fee is payable, and the advocates must decide on the split. Although in certain circumstances the original advocate may claim for wasted costs. Refer to Paragraph 18, Schedule 1 of the Remuneration Regulations.

2.3 Bands of Offences

1. The list of offences and their corresponding bandings are published in the AGFS Banding Document on Gov.uk: https://www.gov.uk/government/publications/banding-of-offences-in-the-advocates-graduated-fee-scheme

Paragraph 7, Schedule 1

2. Where a case is based on a new offence, the offence will fall under band 17.1. The trial advocate may apply to the LAA to have the new offence placed into another banding when they submit their claim for payment.

3. For offences which fall into an offence banding which the value**,** amount or weight involved exceeds a stated limit, the advocate must include evidence to show this with their claim for payment. Advocates can submit indictments, prosecution case summaries, or witness statements to assist the LAA with their assessment.

Paragraph 3(1)(a), Schedule 1

4. Where a case has more than one count on the indictment in different offence bandings, the advocate must select one offence and the fee is based on that offence banding. The fee can only be based on an offence with which the defendant represented by the advocate is charged on the indictment. As held in **R. v. Mira (2007) and R. v. Martini (2011)** the defence

Paragraph 27(1), Schedule 1

cannot claim for an offence that only co-defendants are charged with.

5. Conspiracy, incitement and attempts of offences are treated the same as the substantive offence would be. The exception to this rule is attempted murder, which is treated as a Band 3 offence, whereas murder cases are paid under Band 1 (see R v Atkinson & Khan, 2021)

Paragraph 3(1)(b), Schedule 1

Armed Robbery

6. The LAA will consider the facts of the case when determining whether a case should be classed under the Remuneration Regulations as robbery (offence banding 11.2) or armed robbery (banding 11.1) and will apply the reasoning from the judgments in R. v Stables (1999) and R. v Kendrick (2011).

7. S.8(1) of the Theft Act 1968 states:

A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

8. 'Armed robbery' is defined in 5(1), Schedule 1, of the Serious Crime Act 2007:

5(1) An offence under section 8(1) of the Theft Act 1968 (c. 60) (robbery) where the use or threat of force involves a firearm, an imitation firearm or an offensive weapon.
(2)An offence at common law of an assault with intent to rob where the assault involves a firearm, imitation firearm or an offensive weapon.
(3)In this paragraph—
"firearm" has the meaning given by section 57(1) of the Firearms Act 1968;
"imitation firearm" has the meaning given by section 57(4) of that Act;
"offensive weapon" means any weapon to which section 141 of the Criminal Justice Act 1988 (c. 33) (offensive weapons) applies.

9. In Costs Judge decision, **R. v. Stables (1999),** it was held that for robbery to be treated as armed robbery (offence group B– now offence banding 11.1), one of the following two examples must apply:

- 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, the case should not be classified as an armed robbery.

10. In addition to firearms and imitation firearms, there are three categories of offensive weapon covered by the offence:

i) Articles made for causing injury to the person. Articles falling within this category are considered to be offensive weapons *per se*, and there is no need to go on to consider the intention or purpose of the person carrying them. An important criterion in determining whether or not a particular weapon comes within this category appears to be that the article in question has no other reasonable use. Appendix Q is a list of weapons which have been classified as offensive weapons under legislation.

ii) Articles that have been adapted for use for causing injury to the person, such as sharpened screwdrivers, deliberately broken bottles and so on. Many household and industrial items are capable of being modified in this way, so inclusion in or exclusion from this category is once again largely a matter of fact to be determined on a case-by-case basis.

iii) Articles that are not specifically made or adapted for the purpose of causing injury, but which may be considered offensive if court or jury a decides that the defendant intended them to be used for the purpose of causing injury to the person. Examples might include a sledgehammer or axe. The Appropriate Officer has a discretion to allow a claim to be paid as an armed robbery or robbery where the Defendant has an article that is not made or adapted for the purpose of causing injury. A case is more likely to be paid as an armed robbery where the article is similar in nature to an offensive weapon listed in Appendix Q. Whether the item is capable of causing serious and long-term injury will be the determining factor, taking into account all of the facts of the case.

11. The LAA will process claims first by considering whether the article is a firearm, imitation firearm, an offensive weapon per se or an article which has been adapted or carried with the intent of being used to cause serious injury to another, if it does then the claim will be classed as an armed robbery. If the defendant says he/she is armed with a firearm but is not, the claim will also be classed as armed robbery. If the defendant intimates that he/she has an offensive weapon, then the claim will not be classed as an armed robbery.

12. Appendix Q provides a list of offensive weapons found in legislation. Other items will be considered on a case-by-case basis as indicated in the paragraph above.

13. There have been some conflicting decisions on what facts may constitute an armed robbery (See the costs judge decision in *R v Adebayo* (SCCO 37/2011)). In the LAA's view, the Stables and Kendrick decisions justify the higher offence class B – now offence banding 11.1 - fee.

Burglary

14. A charge of burglary falls within offence banding 11.2, notwithstanding the fact that an allegation of inflicting grievous bodily harm may have been made. In Costs Judge decision, R. v. Crabb (2010), it was held that if the indictment states that the offence is burglary, and not aggravated burglary, then the fee payable falls under Offence Class E (new banding 11.2), and not Class B (new banding 11.1). *Paragraph 3(1)(c), Schedule 1*

15. Where a count is in the form of a specimen then only the value of the count should be included.

16. Where two or more counts relate to the same property, then the value of the property should only be counted once e.g., alternatives or a course of conduct involving the same property. *Paragraph 3(1)(d), Schedule 1*

17. As held in **R v Knight (2003)** TICs (offences taken into consideration) should not be taken into account when calculating the value of an offence.

18. Where an advocate is dissatisfied with the banding of offence banding 17.1 for an offence not listed in the table of offences, the advocate may apply to the LAA to re-band the offence. *Paragraph 3(2), Schedule 1*

19. Note that in Costs Judge decision, **R. v. Parveen Khan (2012),** it was held that where the defence applied for reclassification in order to classify a case offence as Class J (now categories 4 and 5) it would have to be a serious sexual offence. (The offence was conspiracy to traffic persons into the UK).

20. There are some cases where the offence class might change because of an additional factor such as where a Restriction Order is made, under S.41 of the Mental Health Act 1983. For more information on the limited instances where the offence classes may change, please refer to paragraph 3, Schedule 1 of the Remuneration Regulations.

Paragraph 3(1)(g), Schedule 1

Part 2 - Graduated Fees for Trial

2.4 Calculation of graduated fees

1. Paragraph 4, Schedule 1 of the Remuneration Regulations specifies the formula for calculating the advocate's graduated fee. The calculation of the graduated fee for a trial is the basic fee (according to the offence banding and advocate), and a daily attendance fee for each day at trial (except for the first day). Standard Appearances attract separate payments. A Special Preparation rate is payable for pages beyond 10,000 PPE, or the specific PPE threshold for the offence banding. Refer to paragraph 2.17.2 for further details.

Paragraph 4, Schedule 1

Paragraph 5, Schedule 1

2. A full list of offences and offence bandings are set out in a separate document: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/683445/agfs-banding-of-offences.pdf There are two versions of this document: for cases with a representation order dated between 1 April 2018 and 30 December 2018, version 1.1 applies; for cases with a representation order dated on or after31 December 2018, version 1.2 applies.

3. Travel and other disbursements may be claimed separately in line with the rates set out in paragraph 2.29 of this guidance.

Paragraph 5, Schedule 1

4. Where a trial continues in excess of one day, the second and subsequent days attract the Daily Attendance Fee as appropriate to the offence for which the assisted person is tried and the category of the advocate. This fee is only paid in respect of the days on which the advocate actually attends court, irrespective of the actual length of trial. E.g., in a five-day trial, where the advocate did not attend one of the days after the first day of trial, three Daily Attendance Fees will be paid in addition to the basic fee.

5. Non-sitting days cannot be included as part of the trial. Refer to Costs Judge decision: **R v Nassir (1999)**

2.5 Table of Fees

1. Paragraph 5, Schedule 1 of the Remuneration Regulations contains a list of advocates' graduated fees for Trials.

Part 3 – Graduated Fees for Guilty Pleas and Cracked Trials

2.6 Calculation of graduated fees in guilty pleas and cracked trials

1. Paragraph 7, Schedule 1 of the Remuneration Regulations contains provision for the fee applicable for Guilty Pleas and Cracked Trials. *Paragraph 7, Schedule 1*

2. A Guilty Plea case is payable where the case ends before trial because the defendant pleaded guilty at or before the PTPH or first hearing at which pleas are taken. The fee payable is a basic fee according to the offence banding and advocate type and includes payment for the PTPH hearing. The fees are set out in Table A, paragraph 7, Schedule 1 to the Remuneration Regulations.

3. The fee payable for a Cracked Trial is set out in, Table A1, paragraph 7, Schedule 1 of the Remuneration Regulations. *Paragraph 8, Schedule 1*

2.7 Table of Fees

1. Paragraph 8, Schedule 1 of the Remuneration Regulations lists the fees for Guilty Plea cases. *Paragraph 8, Schedule 1*

Part 4 – Fixed Fee for Guilty Pleas and Cracked Trials

2.8 Scope of Part 4

1. A fixed fee is payable for elected cases where the judge has deemed the case is suitable for summary trial. Exceptions apply as set out in paragraph 2.6.1. *Paragraph 9, Schedule 1*

2. As set out in paragraph 2.6.2 the advocate must provide appropriate evidence to assist the LAA with their assessment.

2.9 Fixed fee for guilty pleas or cracked trials

1. Paragraph 10 of the Remuneration Regulations sets out the fixed fee for elected cases *Paragraph 10, Sch. 1*

NB – Part 4 does not apply to cases with a representation order dated on or after 30th September 2022

Part 5 – Fixed Fees.

2.10 General Provisions

1. Paragraph 11, Schedule 1 of the Remuneration Regulations specifies that all work is included in the basic fee except for the fixed fees set out in the table which follows the paragraph. *Paragraph 11, Schedule 1*

2.11 Fees for Standard Appearances

1. Paragraph 12, Schedule 1 of the Remuneration Regulations specifies the fee payable for a Standard Appearance. For cases with a representation order dated on or after 1 April 2018, every Standard Appearance is subject to a separate fee in addition to the Basic Fee. Please note that standard appearances are payable for cases on indictment and that additional hearings in cases not on indictment are governed by Paragraph 20 of Schedule 1. *Paragraph 12, Schedule 1*

2. The Basic Fee covers all preparation (including viewing or listening to evidence on tapes or discs), the first three conferences or views and the first day of Trial. There is not a separate fee for an unattended advocate attending court. *Paragraph 12(1), Schedule 1*

3. The execution of bench warrant/breach of bail hearings should be treated as any other Standard Appearance but can be paid as a stand-alone hearing in certain circumstances.

Note that if the hearing for Crown Court breach of bail is heard in the magistrates' court and a solicitor without higher rights attends, then they are permitted to claim for a Standard Appearance fee under the AGFS. This is because they have rights of audience for magistrates' court advocacy.

4. A Standard Appearance is classified as any of the following hearings:

- The hearing of a case listed for plea which is adjourned for trial

- Any hearing (except a trial, the first hearing at which the assisted person enters a plea, or any hearing referred to in paragraph 2(1)(b) of Part 1 of Schedule 1 which is listed but cannot proceed because of the failure of the assisted person or a witness to attend, the unavailability of a pre-sentence report, or other good reason

- Custody time limit applications

- Execution of bench warrants in the magistrates' court and Crown Court

- Breach of bail hearings in the magistrates' court and Crown Court

- Bail and other applications (other than those that form part of a hearing referred to in paragraph 2(1)(b) of Part 1 of Schedule 1

- Mentions – including applications relating to a Trial date but excluding those that form part of a hearing referred to in paragraph 2(1)(b), Part 1 of Schedule 1.

- a hearing, whether contested or not, relating to breach of bail, failure to surrender to bail or execution of a Bench Warrant.

5. The Standard Appearance fee is paid for any hearing on indictment (other than a Trial) that does not proceed for any reason i.e., any non-effective non-trial hearing subject to the conditions set out in paragraph 2.12.4. As held in Costs Judge decision: **R. v. Bailey (1999)** once proceedings have been committed to the Crown Court any hearings regardless of venue in relation to an application for bail following breach of Crown Court bail conditions are still proceedings in the Crown Court.

6. The fee is also paid for Bail Applications, Custody Time Limit Applications, Mentions, and any other applications including applications relating to date of trial subject to the conditions set out in paragraph 2.12.4. Refer to Costs Judge decision: **R. v. Bailey (1999**) as described in paragraph 2.12.5 above.

7. The fee for any Bail Application or Bench Warrant executed in the magistrates' court after the Crown Court is seized of the case is remunerated as if it had been heard in the Crown Court subject to the conditions set out in paragraph 2.12.3. See also paragraph 2.17.9. Refer to Costs Judge decision: R. v. Bailey (1999) as described in paragraph 2.12.5 above.

8. The fee should be paid for any application not specifically covered in paragraph 24, Schedule 1 of the Remuneration Regulations regardless of the length of time of the hearing subject to the conditions set out in paragraph 2.12.4.

9. As held in Costs Judge decision **R. v. Muoka (2013),** where the Representation Order has been withdrawn part way through a case, the advocate may claim a standard appearance fee for each day at court that the representation order was in operation.

2.12 Fees for abuse of process, disclosure, admissibility, and withdrawal of plea hearings

1. Paragraph 13 sets out the rules for claiming fees for the following hearings:
   - where there is an Application to Stay the Proceedings
   - a hearing to determine whether any material should be disclosed
   - an application for a witness summons to ensure the disclosure of third-party material or
   - a hearing relating to the question of the admissibility as evidence of any material, (including bad character evidence).

Paragraph 13, Schedule 1

2. If the hearing is on the same day as the main hearing then no separate fee is paid but the hearing, for payment purposes, is included in length of the main hearing.

Paragraph 13(2), Schedule 1

3. If the hearing is held prior to the first day of the main hearing, then the fee payable is listed in the Table of Fixed Fees, after paragraph 1, Schedule 1 of the Remuneration Regulations. Paragraph 13(3) additionally explains the rules for claiming a half or full day fixed fee.

Paragraph 13(2), Schedule 1

4. A hearing relating to the failure to disclose material e.g., the prosecution not complying with a previous order rather than the court deciding whether material should be disclosed, does not attract the half-day/ full day fee and the standard appearance fee should be claimed subject to the requirements of paragraph 2.12.4. Refer to Costs Judge decision: **R. v. Russell (2001).**

5. For the full day fee to apply, the hearing must have started before lunch and continue after lunch.

Paragraph 13(3)

6. The time of the listing of the hearing does not matter for this fee. An application to adjourn a hearing for more time does not constitute the start of a hearing.

7. The full day/half day fee is also payable for an unsuccessful Application to Withdraw a Plea of Guilty, where the application is made by an advocate other than the one attending when the original plea was tendered.

8. A daily fixed fee is payable for Ground Rules Hearings to consider video-recorded cross-examination, and the fee is set out in paragraph 24, Schedule 1 of the Remuneration Regulations. It is not payable if the hearing takes place during the trial.

Paragraph 13(da), Schedule 1

2.13 Fees for confiscation hearings

1. Paragraph 14, Schedule 1 of the Remuneration Regulations specifies the types of confiscation proceedings to which the paragraph applies. It further specifies which fee is applicable according to the number of PPE.

Paragraph 14, Schedule 1

2. A Drug Trafficking Act 1994 or Criminal Justice Act 1988 or Proceeds of Crime Act 2002 Confiscation Hearing attracts a half day/full day fee in addition to any other fee for work done that day. i.e., if there is an effective DTA/CJA/POCA hearing at the same time as a sentence, then both the sentence fee and the confiscation fee are allowed (subject to paragraph 2.12.4).

Paragraph 14(2) and (3), Schedule 1

3. If the hearing forms a continuous part of a Trial, the time of the confiscation hearing should not be included in the length of the Trial.

4. Paragraph 14(2) contains a table of fees which apply depending on:
- Where the PPE are fewer than 51 pages
- Where the PPE are between 51 – 1,000 pages
- Where the PPE exceeds 1,000 pages.

Paragraph 14(2), Schedule 1

5. The time of the listing of the hearing does not matter for this fee. An application to adjourn a hearing for more time does not constitute the start of a hearing.

6. For Confiscation Proceedings to have proceeded, a Confiscation Hearing (so called by the court) must take place. There is no requirement for evidence to be called or for a Confiscation Order to be made. This principle was held in **Costs Judge decision, R. v. Ali (Keir Monteith) (2013).**

For confiscation proceedings which involve more than 50 PPE (served specifically for the confiscation proceedings), Advocates should send their claim, including the disbursements for the Confiscation Proceeding, to the CCU. The form to use can be accessed at: https://www.gov.uk/guidance/claims-paid-out-of-the-legal-aid-fund

7. Confiscation Proceeding claims involving fewer than 50 PPE must be submitted to the LAA.

8. Refer to Appendix R for information about the remuneration of confiscation proceedings.

2.14 Fees for sentencing hearings

Paragraph 15, Sch. 1

1. Provisions of paragraph 15, Schedule 1 of the Remuneration Regulations (and this section of the guidance) only apply to cases on indictment. The fee payable for a sentencing hearing for cases with a representation order dated on or after 1 April 2018 is a daily fixed fee. The fee is payable unless the hearing is held on a day where a graduated fee applies. Sentencing hearings that are held on the same day as the verdict are counted towards a day at trial.

Paragraph 15(4), Schedule 1

2. Cases which have an earlier representation order date will not be subject to a separate sentencing hearing fixed fee and any sentencing hearing not heard at the end of a trial will be paid as a Standard Appearance hearing.

3. A deferred sentencing hearing fixed fee is payable according to the rate set out in paragraph 24, of Schedule 1.

Paragraph 15(2), (3), Schedule 1

4. A DAF Equivalent Fee is payable for a sentencing hearing where the assisted person is under a hospital direction, a hospital order, or a restriction order.

5. A sentencing hearing that takes place at the same time as a Confiscation Hearing attracts both the sentencing hearing fixed fee and the half day or full day confiscation fee (subject to paragraph 2.12.3).

Paragraph 14(2), Schedule 1

6. If sentencing is deferred at a hearing listed for sentencing, then the advocate is entitled to the Standard Appearance fee for that hearing and the deferred sentencing fee when the case comes back to court after the period of deferral (subject to paragraph 2.12.3).

Paragraph 1 and 15, Schedule 1

7. The making of an anti-social behaviour order at the time of sentencing is remunerated as part of the sentencing hearing fee only, whether the application is contested or not (subject to paragraph 2.12.3) as held in Costs Judge decision: R. v. Brinkworth (2005).

Paragraph

2.15 Fees for ineffective trials

16, Schedule 1

1. Paragraph 16 of Schedule 1 to the Remuneration Regulations states that an ineffective trial fixed fee is payable in respect of each day on which the case was listed for trial but did not proceed on the day for which it was listed, for whatever reason.

2. The appropriate officer will use their discretion when assessing whether an ineffective trial fee or a daily attendance fee is payable for a listed trial day.

3. An ineffective trial fee is likely to be payable where:

- The case was listed for trial and remained in the final daily list (whether as a floating trial or backing trial) and did not proceed on the day it was listed

4. A daily attendance fee (DAF) will be payable:

- In circumstances where the trial has commenced and the advocate attends court on a day listed for trial, irrespective of whether it is called on. The advocate should ensure they have signed in.
- As Paragraph 4 of Schedule 1 expressly sets out, a DAF is payable in respect of daily attendance at court for the number of days by which the trial exceeds 1 day. The regulations do not permit payment of a DAF where the trial has not commenced, or the advocate is not required to attend court on a day originally listed for trial

2.16 Fees for special preparation

1. Paragraph 17, Schedule 1 of the Remuneration Regulations sets out the circumstances where special preparation may be claimed and how it is to be calculated.

2. An hourly rate fee is paid for special preparation in any case on indictment in the following circumstances:

Paragraph 17, Schedule 1

a) It has been necessary to do work by way of preparation substantially in excess of the amount normally done for cases of the same type because the case involves a very unusual or novel point of law or factual issue.

b) The number of PPE exceeds 10,000, or 15,000 in drugs cases, or 30,000 in dishonesty cases.

c) Cases with a representation order dated on or after 17 September 2020 and the PPE exceeds the following offence category thresholds:

AGFS Offence Band[6]	PPE Thresholds (in number of pages)
1	10,000
2	750
3	700
4	750
5	650
6	N/A – see b) above.
7	550
8	600
9	N/A – see b) above.
10	800
11	350
12	750
13	750
14	350
15	150
16	300
17	100

and for b) and c) the LAA considers it reasonable to make a payment in excess of the graduated fee, given the circumstances of the case.

3. The appropriate officer must consider:

Paragraph 17(3), Schedule 1

a) The number of hours in excess of the amount considered reasonable for cases of the same type where 2(a) applies.
b) The reasonable number of hours to read the evidence where 2(b) applies.

4. Advocates must supply justification of what made the case very unusual or novel. In addition, advocates must supply details of all the work that was carried out, identifying that which is in excess of the normal amount and how the very unusual/novel features triggered it. The appropriate officer must be able to be satisfied that all the work claimed is eligible preparation and be able to assess what preparation would be "normal" in such a case. Prior to assessing the special preparation, the determining officer will first confirm that the relevant PPE threshold is met, including whether any electronic evidence used towards meeting the threshold satisfies the relevance test to be counted as PPE.

Paragraph 17(5), Schedule 1

5. The presumption will be that the defence need to read the served evidence, with reasonable time actually spent to be determined according to the importance/relevance/significance, volume, density, and/ or complexity of the material. Where (large volumes of) electronic material is served we would expect digital analysis techniques to be used unless justification is provided for a different approach.

[6] For more detail on the AGFS offence types please refer to Banding of Offences in the Advocates' Graduated Fee Scheme. Available at: https://www.gov.uk/government/publications/banding-of-offences-in-the-advocates-graduated-fee-scheme

6. The supporting information required by the determining officer will vary from case to case, however the following documents are commonly requested:

- Representation order and any amendment orders: To determine the date from which work may be paid and to confirm representative details.
- Indictment: To determine the specific charges made against the defendant.
- Case summary: To give an overview of the case and the defendant's particular role, especially for multi handed cases.
- Defence case statement: To provide information about the defendant's response to the charges and where the team's focus might be directed when considering the served evidence.
- NAE, LAA report, exhibit list: To provide detail as to the page count and makeup of the served evidence.
- Background: To provide insight of the case against the defendant, the key evidence and the defence put forward.
- Justification: To provide detail as to why the time you have claimed is reasonable, giving detail as to the approach you have taken.

7. When approaching the assessment of the material, the determining officer may ask some or all of the following questions:

a. Has all the relevant supporting documentation been provided?
b. What was the defendant charged with?
c. What was the defendant's specific role (conspiracy cases)?
d. At what stage did the proceedings conclude for the defendant?
e. Can the material in question be physically viewed by the determining officer (sometimes discs are blank, or the contents corrupted), and if password protected have the correct passwords been supplied?
f. When was the material served?
g. What is the prosecution seeking to demonstrate with this material?
h. What is the significance of the material to the case against the defendant?
i. What is the origin of the data and who is attributable e.g., defendant, co-defendant, complainant, third party etc?
j. What is the material in question e.g., telephone download, call data, financial information etc?
k. What format is it in?
l. Are there blank pages?
m. Is there any duplication either of electronic material in multiple formats or between material on disc and as uploaded to DCS/served in paper format?
n. Does the electronic material require a similar degree of consideration as paper material?
o. Has a search function been used on electronic material?

Please be aware that the larger the claim the more detailed information the determining officer would expect you to provide.

8. Where a claim for Special Preparation does not satisfy the criteria or has insufficient supporting documentation then the claim will be rejected. The advocate will be informed in writing of any decision not to pay.

9. Each case should be treated on its own merits when considering what satisfies the criteria.

10. As held in Meeke and Taylor v DCA (2005) Special Preparation cannot be claimed to make up a perceived shortfall in graduated fees due to a trial going short.

11. Claims that are based on a unit of time per page read will not be accepted and the same will apply to claims for evidence served in an electronic form. However, although claims should be submitted based on work actually done, as a guide the LAA would usually allow

between thirty seconds (for example documentary exhibits such as images and invoices) and up to two minutes (for example documentary statements, comment interviews, medical records, expert reports) per page for the consideration of documentary material The determining officer may allow a rate outside of this guideline based on the facts of the case and where justification has been provided.

12. Special preparation claims must be made using the appropriate form which corresponds to the date of the representation order, and which can be found here. A running log is required of all the work an advocate does on a case, giving dates, times and the nature of the work and in the case of perusal of prosecution evidence particulars of the documents. In this way, the advocate when formulating their claim and the Appropriate Officer when considering it will be able to identify the work that is the subject of a special preparation claim. A best practice pro forma of a work log is set out in Appendix F of this document.

13. As held in the decision of the Honourable Mr Justice Penry-Davey in the matter of The Lord Chancellor v Michael J Reed Ltd (2009) video or audio footage cannot be claimed under special preparation as moving footage does not fall within the context of "any document".

14. As upheld in the decisions R v Adeniran (2015 SCCO 50/15) and R v Elnmendorp (2016 SCCO Ref 459/14), special preparation cannot be claimed for work during Proceeds of Crime Act proceedings.

2.16A Fees for consideration of unused material

1. Payment for considering unused material may be claimed in respect of any case on indictment in the Crown Court (other than a guilty plea) with a representation order dated on or after 17 September 2020. A fixed fee is payable for viewing 0-3 hours of material. Material considered which is in excess of 3 hours is payable at the hourly rates specified and may be claimed in addition to the fixed fee for the first 3 hours. Paragraph 17A, Schedule 1 of the Remuneration Regulations sets out the circumstances where the consideration of unused material may be claimed.

Paragraph 17A, Schedule 1

2. Consideration of unused material of 3 hours or less should be claimed as a fixed fee on CCD. If the time for considering unused material is in excess of 3 hours a claim must be made using form AU1 together with a supporting work log (for claims in excess of 10 hours). The schedule of unused material and Disclosure Management Document (DMD) or other documentation evidencing disclosure of unused material must also be provided with your claim.

3. The appropriate officer must take into account:
(a) the reasonableness of the hours claimed in respect of the case taken as a whole; and
(b) the reasonableness of the hours claimed in respect of the consideration of the unused material.

The larger the claim the more detailed justification would be expected.

4. For further details please refer to Appendix E.

2.17 Fees for wasted preparation

1. Paragraph 18, Schedule 1 of the Remuneration Regulations specifies the rules under which a wasted preparation fee can be claimed. It includes the circumstances where an advocate is prevented from attending the Trial and the number of days and amount of preparation that is required before a claim for Wasted Preparation can be made.

Paragraph 18, Schedule 1

2. Wasted Preparation is never paid in Guilty Pleas, appeals or Committals for Sentence. *Paragraph 18(2), Schedule 1*

3. The LAA will make a simple assessment of reasonable preparation. Travel, waiting, and time spent in Court will not be paid as it is not considered preparation.

4. Evidence of the circumstance which applies, and the details of the reasonable preparation must be submitted with the claim. In addition, advocates must supply details of all the work that was carried out. The Appropriate Officer must be able to be satisfied that all the work claimed is eligible and reasonable preparation. *Paragraph 18(5), Schedule 1*

5. Wasted Preparation fees for any advocate working on the case can only be claimed by the Trial Advocate. *Paragraph 18(4), Schedule 1*

6. A single advocate cannot make a claim for wasted preparation in a case where s/he is entitled to claim the graduated fee, in whole or in part, for representation of the same defendant in the same case. Entitlement to claim wasted preparation is triggered only when an advocate is prevented from attending the whole of the main hearing. Refer to R v Majeed (SCCO Ref. 19/17 – 2019) for further detail.

2.18 Fees for conferences and views

1. Paragraph 19, Schedule 1 of the Remuneration Regulations lists the types of conferences and views which may be claimed. It further sets out when a separate fixed fee may be paid and the circumstances for when more than three conferences or views are permissible. *Paragraph 19, Schedule 1*

2. An hourly rate fee is allowed for time reasonably spent with a prospective or actual expert witness subject to certain criteria. Pre-Trial conferences not at court are subject to meeting the criteria and must be reasonably necessary. *Paragraph 19(1), Schedule 1*

3. The fees payable in respect of the first three Pre-Trial Conferences (which includes conferences with the assisted person or an expert, or view of scene of the alleged offence), are included in the basic fee. This aspect has not changed in the reformed version of the AGFS implemented from April 2018 (Scheme 10 and 11). *Paragraph 19(2), Paragraph 19(1)(d) and (e), Schedule 1*

4. Further Conferences and Views are payable subject to the time limits in paragraph 2.19.6. Travel expenses and travel time are paid for all Conferences and Views, including those for which payment for the conference is included in the basic fee, provided they are reasonably incurred. Advocates must demonstrate to the assessor that the additional conferences were reasonable. Travel time for conferences is only payable if the advocate satisfies the Appropriate Officer that the defendant or expert was unable or could not reasonably have been expected to attend a conference at the advocate's chambers or office.

5. Travel time and travel expenses are allowed for views of the scene of the alleged offence, conferences with expert witnesses or visits to see prosecution evidence, provided they are reasonably incurred. *Paragraph 19(4), Schedule 1*

6. Conferences where held, will be paid as follows: *Para. 19(3), Schedule 1*

- For Trials lasting not less than 21 days and not more than 25 days, and Cracked Trials where it was accepted by the court at the PTPH (or FCMH) hearing that the Trial would last not less than 21 days and not more than 25 days – 1 additional conference or view, not exceeding 2 hours.
- For Trials lasting not less than 26 days and not more than 35 days, and Cracked Trials where it was accepted by the court at the PTPH (or FCMH) that the Trial would last not less than 26 days and not more than 35 days – 2 additional conferences or views, each not exceeding 2 hours.

- For Trials lasting not less than 36 days, and Cracked Trials where it was accepted by the court at the PTPH (or FCMH) that the Trial would last not less than 36 days – 3 additional conferences or views, each not exceeding 2 hours.

7. Unless the Appropriate Officer has reason to believe a conference that has been claimed has not in fact taken place, it should be allowed, but the conferences will be restricted to Pre-Trial Conferences not held at court and within the capped number and length. Travel time is rounded up to the nearest 15 minutes.

8. All advocates that have been instructed to appear in the main hearing are entitled to claim a conference fee up to the capped number and hours, although payment will only be made to the Trial Advocate. However, paragraph 19(2) of Schedule1 requires that the appropriate officer is satisfied that the work was reasonably necessary. As held in R. v. Bedford (2003) the limit to pay for only one conference per Trial where a Trial lasts 1-10 days should be construed as per advocate (where conferences are attended separately) and not per case.

2.18A Fees for further case management hearings and plea and trial preparation hearings

Paragraph 19A, Schedule 1

1. The fees payable for a PTPH and FCMH are listed in the table of fixed fees in paragraph 24, Schedule 1 of the Remuneration Regulations. If a guilty plea is entered at the PTPH, only a Guilty Plea fee is payable.

2.19 Fees for appeals, committals for sentence, and breach hearings

1. A fixed fee is payable for appeals, committals for sentence, and breach hearings as set out in paragraph 20, Schedule 1 of the Remuneration Regulations. If an appeal lasts for more than one day, the fee payable is the graduated fee for offence banding 17.1.

Paragraph 20, Schedule 1

The Regulations provide for a fee to be paid in certain circumstances where a hearing is listed but does not proceed; for mention and bail hearings, etc. That fee should be claimed as an "Adjourned Appeal.

2. Where an Appropriate Officer considers that a fixed fee for an appeal, committal for sentence, or breach does not provide reasonable remuneration for the particular case, they may instead allow an ex post facto fee. If the advocate seeks to make an ex post facto claim in the first instance, they may not also claim a fixed fee. Claims for ex post facto fees must be submitted to the CCU unit of the LAA.

Paragraph 20(4), Schedule 1

3. For applications for representation for breach hearings, refer to guidance at **Appendix G** in the Appendices.

2.20 Fees for contempt proceedings

1. Where an advocate is instructed to appear in contempt proceedings, they are paid a fixed fee for each day of the hearing in accordance with the fees set out in the paragraph. The fee should be claimed as a fixed fee.

Paragraph 21, Schedule 1

2.21 Discontinuance or dismissal of proceedings

1. Paragraph 22, Schedule 1 of the Remuneration Regulations sets out the level of fee payable for advocates where a case is discontinued, dismissed or remitted to the magistrates' court.

Paragraph 22, Schedule 1

2. In a case where the main hearing took place before the prosecution has served papers (i.e., a case that is discontinued or otherwise disposed of before the prosecution has served its case in accordance with the Crime and Disorder Act (Service of Prosecution Evidence) Regulations 2005) a fee of 50% of the basic fee element for a guilty plea is paid, appropriate to the offence group and the category of advocate.

Paragraph 22(2), Schedule 1

3. Where the case is discontinued or otherwise disposed of after the service of the prosecution case, at the first hearing at which a plea is entered (either at the PTPH or FCMH), or at any other time before a PTPH (or FCMH) has taken place, the advocate shall receive a Guilty Plea fee. The advocate must provide evidence with their claim that the prosecution had served evidence.

Paragraph 22(3), Schedule 1

4. Where there is an Application to Dismiss, the fee payable will depend on the outcome and length of the hearing. (See examples at **Appendix J**).

5. A full or half-day fixed fee (as appropriate) can be paid on the second and subsequent days of an application to dismiss the charge or charges under Schedule 3 of the Crime and Disorder Act 1998.

Paragraph 22(6)(a) and (b), Schedule 1

2.22 Noting Brief Fees

1. A daily fee is payable for advocates that take a note of the proceedings where the defendant's case falls within the graduated fee scheme and legal aid has been extended for this purpose. The Noting Brief fees should be claimed by the Trial Advocate (if the case representation order is dated on or after 5 May 2015). Though please note that for cases with a Leading Junior and Led Junior, the Led Junior must make the claim for the Noting Brief fee because the payment system will not pay it otherwise.

Paragraph 23, Schedule 1

2.23 Fixed Fees

1. Fixed fees payable in addition to the graduated fee are listed at paragraph 24 of Schedule 1.

Paragraph 24, Schedule 1

2.23A Warrant for Arrest

Paragraph 24A, Schedule 1

1. If an assisted person fails to attend a hearing, the court issues a warrant, and the case does not proceed, the fee payable is:

- A Guilty Plea fee for indictable cases, if the warrant is not executed within three months (this does not include the PTPH / Standard appearances to date), or
- The relevant fixed fee for appeals, committal for sentencing, or breach proceedings.

2. If the warrant for an indictable case is executed within 15 months, the advocate must submit a claim for the entire case and any amount paid already will be deducted (or recouped if the final cost is lower than the earlier amount claimed).

Part 6 – Miscellaneous

2.24 Identity of Instructed Advocate

1. The Instructed Advocate should be the advocate notified to the court in writing on or before the PTPH, and if that is not done, the advocate who appears at the PTPH will be deemed to be the Instructed Advocate. The Instructed Advocate may withdraw in certain circumstances. See paragraph 2.25.2 below. Where the Instructed Advocate does withdraw, they must identify the new Instructed Advocate (in writing) within 7 days. Once the identity of the Instructed Advocate has been established (or is amended), the court must attach a written note to that effect to the Representation Order.

Paragraph 25(1), Schedule 1

2. An Instructed Advocate must remain an Instructed Advocate at all times, except where:

Para. 10, Schedule 1

- a date for Trial is fixed at or before the PTPH (or FCMH) and the Instructed Advocate is unable to conduct the Trial due to his/her other pre-existing commitments
- s/he is dismissed by the assisted person or the litigator
- s/he is required to withdraw because of his professional code of conduct.

3. In cases where more than one advocate is assigned, i.e., King's Counsel and junior advocate or two junior advocates, there will be a Trial Advocate for each type of advocate. This advocate will be responsible for the whole of the claim for that type of advocate however many may be involved.

Paragraph 26, Schedule 1

4. Advocates retained pursuant to paragraphs 32 (Cross-examination of vulnerable witnesses), 33 (Provision of written or oral evidence) and 34 (Mitigation of sentence) are likely to be instructed under a specific representation order, or amendment to an existing representation order. They are not subject to the provisions mentioned above for Instructed Advocates. They may therefore claim their fees independently of any other advocates in the case.

Paragraph 32, 33, and 34, Schedule 1

5. If the Trial Advocate claims ex post facto fees in respect of the main hearing under paragraph 17(1) of Schedule 1, he or she should also claim the fees in relation to any other hearings (whether he/she or a substitute advocate attended).

2.25 Payment of Fees to Trial Advocate

1. Paragraph 26 specifies how the LAA will make payment to the Trial Advocate(s).

Paragraph 26, Schedule 1

2. Where a trial advocate does not attend court on any trial day, but a stand-in is instructed to appear in his/her place, calculation of the graduated fee will be unaffected. Consequently, no separate fee for the advocate who stood-in for the Trial advocate may be paid. It is a matter for the Trial advocate to remunerate his/her stand-in from the graduated fee.

2.26 Additional charges and additional cases

1. An uplift of 20% of the main hearing fee (basic fee on indictment, fixed fee for appeals and committals) of the principal case is allowed for each additional case involving the advocate that had been heard concurrently and/or each additional defendant that the advocate represents.

Paragraph 27, Schedule 1

2. For two cases to be heard concurrently, the main hearing in each case will have been heard at the same time. As held in Costs Judge decisions: R. v. Fletcher (1998) and R. v. Fairhurst (1999) cases where the main hearings are held on different days are not heard concurrently, counsel is entitled to separate fees for each case.

3. Only the pages and witnesses for the principal case are counted when there is more than one case.

4. Where an advocate selects one offence, in preference to another, or one case as the principal case, in preference to another, the advocate is still entitled to claim such fixed fees

Paragraph 27 (6)

to which they would have been entitled had they selected a different offence or principal case.

5. For the following ancillary hearings, an uplift of 20% of the hearing fee is allowed for each additional defendant that the advocate represents at that hearing: *Paragraph 27(4), Schedule 1*

- Fees for plea and trial preparation hearings and standard appearances
- Fees for abuse of process, disclosure, admissibility and withdrawal of plea hearings
- Fees for confiscation hearings
- Fees for sentencing hearings
- Fees for ineffective trials.

6. Uplifts are never allowed for ancillary hearings for additional cases, or for additional defendants at hearings not on the list in paragraph 2.27.5.

2.27 Multiple advocates

1. Where a representation order is granted for more than one advocate, each advocate is paid separately according to the table of fees appropriate for each grade of advocate. Where Legal Aid is extended to cover three advocates, the two led advocates will each receive the same fees. *Paragraph 28, Schedule 1*

2.28 Non-local appearances

1. Travel expenses to Court are not allowed for any advocate that has an office within 40km of the Court. *Paragraph 29, Schedule 1*

2. Travel expenses to Court are allowed when a Court does not have a local Bar. However, travel is only allowed as if the advocate came from the nearest local Bar. In certain circumstances, an advocate may be allowed travel from outside the nearest Bar. Examples of possible circumstances are: *Paragraph 29, Schedule 1*

- Where an advocate has particular specialised knowledge or experience;
- Where an advocate has previously been instructed to represent a defendant in related matters and continuing representation would assist the preparation and/or presentation of the case in question;
- Where a case is transferred to the Court and it would assist the preparation and/or presentation to keep the same advocate;
- Where the instruction of a local advocate may lead to suspicion of prejudice (e.g., cases of local notoriety involving public figures or officials).

3. Travel expenses to Court would not be justified solely on the following grounds:

- Where instructing solicitors normally chose to instruct a particular set of chambers or individual advocate;
- Where the defendant had specifically asked for the advocate in question;
- Where the advocate had acted for the defendant in an unrelated case of no relevance to the case in question.

4. Travel and other expenses are disbursements not allowances. Rail tickets or other written proof must be provided for all disbursements over £20.

5. Refer to the train fare documents at: https://www.gov.uk/government/publications/graduate-fee-travel-expenses.

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

Expense	Rate
Standard (motor vehicle) mileage rate	45p per mile
Public transport mileage rate	25p per mile
Cycling mileage rate	20p per mile
Overnight hotel (including serviced apartments)– London, Birmingham, Manchester, Leeds, Liverpool, or Newcastle-upon- Tyne city centres.	£85.25
Overnight hotel – elsewhere	£55.25
Night subsistence	£21
Personal incidence	£5
Overnight (other than a hotel)	£25

7. 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 advocate 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, advocates carrying exhibits or that travelling by car, including any claim for parking, was cheaper than using public transport),

8. 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. Therefore, where the court at which an advocate is required to attend is reasonably accessible by public transport, though the advocate 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 (1984)** at Section 3.9 in the Criminal Bills Assessment Manual for more information: https://www.gov.uk/funding-and-costs-assessment-for-civil-and-crime-matters

9. The LAA will apply all travel rules and guidance consistently and will not uphold any previous local arrangements.

10. A claim for Night Subsistence can be made for the cost of an evening meal up to £21 and must be accompanied by receipts.

11. A Personal Incidental claim can be made only when the advocate has stayed over in a hotel and must be supported by receipts. The items claimable are:

- Newspapers
- Tea or coffee at court.

2.29 Trials lasting over 40 days

1. A single Daily Attendance Fee rate (according to offence banding and advocate type in Table 5A of the Banding of Offences document) applies to every day at trial and no longer reduces as the case progresses.

2.30 Assisted person unfit to plead or stand trial

1. Paragraph 31, Schedule 1 of the Remuneration Regulations contains provision for the calculation of fee for a fitness hearing. *Para.31, Sch. 1*

2. If there is a fitness hearing, the advocate may choose whether the offence banding is: *Para. 3(1) (f),*

a) Relevant to the charge on the indictment, b) or banding 5.3.	*Sch.1*
3. If a trial is held, or continues, following a fitness hearing, the length of trial includes the fitness hearing.	*Para. 31(a), Sch.1*
4. If a trial is not held because the defendant is found unfit, the advocate can elect to be paid either: a) a trial fee, based on the combined length of the fitness hearing and the "did the act etc." hearing, or b) a cracked trial fee.	*Para. 31(b), Sch.1*
5. If at any time the defendant pleads guilty, the advocate can elect to be paid either: a) a trial fee, based on the length of the fitness hearing, or b) a guilty plea fee.	*Para. 31(c), Sch.1*
6. Any case in which a Restriction Order is made under Section 41 of the Mental Health Act 1983 falls within offence banding 1.3, regardless of the offence.	*Para. 3(1)(g), Sch.1*
2.31 Cross examination of witness	
1. If an advocate is retained, solely for the purposes of cross-examining a witness under section 38 of the Youth Justice and Criminal Evidence Act 1999, he or she is paid a trial graduated fee. However, the advocate calculates the graduated fee from the number of days of attendance at court. 2. This does not apply in circumstances where a defendant previously acting in person chooses to be represented; nor where an advocate appointed by the Court solely for the purposes of cross examination.	*Paragraph 32, Schedule 1*
2.32 Provision of written or oral advice	
1. If specifically assigned under a representation order solely for the purposes of providing written or oral advice, the advocate will be paid a fee calculated from the number of hours reasonable preparation, at the prescribed hourly rate. Preparation time is only paid where an advocate is assigned specifically under a representation order to give written or oral advice.	*Paragraph 33, Schedule 1*
2.33 Mitigation of sentence	
1. Where specifically assigned under a representation order to mitigate on the defendant's behalf solely at a sentencing hearing, the advocate may claim the Hearing for Mitigation of Sentence fee, together with such reasonable preparation at the prescribed hourly rate. Preparation time is only paid, in addition to the sentencing hearing fee, where an advocate is assigned specifically under a representation order to appear at a sentencing hearing either because the defendant was not represented earlier in the case or the original advocate was sacked or allowed to withdraw. It is also payable in the rare circumstance where a judge orders that a KC or leading counsel be added to the representation order after the trial but before the mitigation of sentence hearing, and they provide advocacy only for that hearing (R v Gravette (2016)).	*Paragraph 34, Schedule 1*

3. Litigators' Graduated Fee Scheme

Schedule 2 - Litigators' Graduated Fee Scheme

Part 1 – Definition and Scope

3.1 Interpretation

1. Paragraph 1, Schedule 2 of the Remuneration Regulations contains definitions for terms specific to the LGFS. The following paragraphs provide further clarification of the terms.

Paragraph 1, Schedule 2

Definition of a Case

2. 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 representative may claim two fees.

Paragraph 1(1), Schedule 2

3. It was held in R v Moore (2022) that a quashed or stayed indictment is not of itself an indication that the subsequent indictment is a second or new case. Where the second indictment is merely an amendment of the original indictment a litigator or advocate is only entitled to one fee. This principle was also held in R v Wharton (2021) where, although two indictments were produced to reflect the change in the offence faced by the defendant, there was in fact only one indictment on which he would be tried, and therefore only one case.

4. 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. Refer to Costs Judge decision: Eddowes, Perry, and Osbourne (2011) which held that in cases involving multiple defendants represented by the same solicitor one claim should be submitted with the appropriate uplift for the relevant number of defendants.

Paragraph 1(1), Schedule 2

5. For appeals, committals for sentence, and breach hearings, a case is defined as a single notice of appeal, a single committal for sentence whether on one or more charges, or a single breach of a Crown Court order.

Paragraph 1 (1), Schedule 2

6. Where a case is transferred between courts and obtains a different court reference number, only one fee should be claimed.

Trials and Retrials

7. 'Trial' is not defined in the regulations, but the following provides some guidance on determining when trials and retrials are payable.

8. A 'trial' includes all hearings that pertain to the main case i.e., from when the jury is sworn (or before if legal argument is part of trial process) and evidence is called or from the date of a preparatory hearing to the day of the verdict.

Paragraph 3, Schedule 2

9. If a jury has been selected but not sworn, then provided the court is dealing with substantial matters of case management it may well be that the trial has begun in a meaningful sense. Costs Judge decision, R. v. Henery (2010), held that in determining whether a trial has begun the question is whether there has been a trial in any meaningful sense; whether the jury has

been sworn is only one of the relevant factors to be considered. For further details see paragraph 2.1.12.

10. See paragraphs 2.1.8-12 in the Advocates' Graduated Fee Scheme section for further guidance and scenarios for when a trial begins.

11. 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.

12. 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. Refer to Costs Judge decision: R. v. Jones (2000) which held that this, and any subsequent preparatory hearing, will therefore be included in the length of trial calculation irrespective of whether the preparatory hearing(s) is 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).

13. The graduated 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 sentencing hearing is not added to the trial length as it is wrapped up in the graduated fee.

Guilty Pleas and Cracked Trials

14. A Cracked Trial is a case that is terminated between the first hearing at which pleas are entered and the first day of Trial. A case where the matter is listed for trial without a hearing at which the assisted person enters a plea at any point in the case is also deemed to be a Cracked Trial.

Paragraph 1(1), Schedule 2

15. A 'Guilty Plea' is a case that comes to an end without a trial and is not a cracked trial or a discontinuance.

Paragraph 1(1), Schedule 2

16. 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, a trial fee is payable.

17. There is no provision in the Remuneration Regulations that a Cracked Trial fee should be paid on the grounds that the indictment was amended before pleas were taken.

18. A change of plea from 'not guilty' between PTPH and further FCMH hearings need not attract a Cracked Trial graduated fee. This principle was held in the High Court judgment: The Lord Chancellor v. Taylor (R. v. Beecham) (1999).

19. As held in Costs Judge decision: R. v. Baxter (2000), following a PTPH (or FCMH) where a not guilty plea had been entered followed by a subsequent change of plea to 'guilty' on the same day only a Guilty Plea fee can be paid.

20. It was held in Costs Judge decision: R. v. Maynard (1999) and R. v. Karra (2000) that once a trial has started with the jury being sworn and evidence called a case cannot attract a cracked trial fee in any circumstance.

21. At any hearing where there is a change of plea, that hearing becomes the main hearing for a Cracked Trial.

Paragraph 1(1), Schedule 2

23. Adjourning a case to allow the prosecution time to decide whether or not to proceed would not qualify for a Cracked Trial fee.

24. The essence of a Cracked Trial is that after the conclusion of the first hearing at which a plea is entered (either the PTPH hearing or FCMH), there are still counts on which the prosecution and defence are not agreed, so that a Trial remains a real possibility, marked by the court either fixing the date of trial, or ordering it to be placed in a warned list. Adjourning a PTPH (or FCMH) to allow the prosecution time to decide whether or not to proceed would not qualify for a Cracked Trial fee. Refer to Costs Judge decision: R. v. Mohammed (2001) which held that a Cracked Trial fee to be payable there would need to be a real possibility of a Trial marked by either the judge fixing a date or ordering it be placed in a warned list.

25. Where a Trial is aborted, or a jury is unable to reach a verdict, with the prosecution later offering no evidence – a Cracked Trial fee should not be paid for the second or any subsequent intended Trial unless the case was again considered ready for Trial by being given a fixture listing or placed in a warned list. Adjourning the proceedings to allow the prosecution time to decide whether or not to proceed further – with the case subsequently being listed for mention at which the prosecution offer no evidence – would not qualify for a Cracked Trial fee.

26. The Costs Judge decision, R. v. Pelepenko (2002), held that a Cracked Trial fee can only be paid after an abortive Trial, where the prosecution has confirmed that they are proceeding to another Trial, and the case subsequently cracks. This follows the principle taken in R v Mohammed (2001) (see paragraph 3.1.23 above), and the definition of a Cracked Trial contained therein.

27. For graduated fee purposes if a Trial is aborted before the jury have retired to consider their verdict and another jury is sworn, whether immediately afterwards, or after a gap, even of a few months, then the case is considered to be one Trial.

28. Additionally, if there is no order by the judge that there will be a new Trial and the new Trial is deemed to be part of the same Trial process, then the fee payable is for one Trial only. Refer to Costs Judge decision: R. v. Nettleton (Mr Doran) (2012), which held that despite there being a gap of more than one day after the first jury was discharged, this case should be paid as one Trial because it was all part of the same Trial process and no further preparatory work was required before the case recommenced. Also, refer to Costs Judge decision: R. v Cato (2012) which held that the length of the delay does not necessarily mean there has been a Retrial. For a Retrial to take place the Trial must have run its course and an order for Retrial must be made. In R. v Forsyth (2010) it was held that in order for a Trial to be considered a Retrial there must be an order for a new Trial and the Trial must have run its course without the jury reaching its verdict.

29. PPE guidance is set out in the appendices to this document at Appendix D. Guidance on the payment of electronic evidence is included.

3.2 Application

1. Paragraph 2, Schedule 2 of the Remuneration Regulations describes the types of cases funded under the LGFS. It additionally contains the provisions for:

Paragraph 2, Schedule 2

- how Newton Hearings are treated within the payment scheme
- discontinued proceedings
- non-VHCC cases which exceed the PPE cut-off figure or 10,000 pages.

2. 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.

Paragraph 2(4), Schedule 2

3. Costs Judge decision, R. v. Gemeskel (1998), held that whenever 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.

4. It was held in Costs Judge decision, R. v. Holden (2010), that paragraph 2(4), Schedule 2 of the Criminal Defence Service (Funding) Order 2007 as amended (paragraph 2(4), Schedule 2 of the 2013 Remuneration Regulations) only applies where a Newton Hearing takes place following a case on indictment. Where there is no indictment, and a guilty plea is entered before the case reaches the Crown Court, the paragraph cannot apply and there is no other provision in the schedule that would allow for the payment of a graduated fee. Accordingly, only a fixed fee (Committal for Sentencing) is payable in such a situation.

Paragraph 2(4), Schedule 2

5. A case cannot be treated as a Trial where a Newton Hearing is listed but does not take place.

Paragraph 2(4), Schedule 2.

6. If the Crown discontinues a case at or before the first hearing at which a plea is entered – the PTPH (or FCMH)- then the case is treated as a Guilty Plea. If the case is discontinued before the prosecution papers are served, 50% of the basic fee for a Guilty Plea is payable.

Paragraphs 2(5), and 21(2), Schedule 2

7. The same provisions apply where a retrial is ordered following a Trial that was privately funded.

8. Where at a preliminary hearing under Section 51 of the Crime and Disorder Act 1998, the prosecution draws up an indictment and guilty pleas are entered a Guilty Plea graduated fee is to be paid, unless there is a Newton Hearing.

3.3 Class of Offences

1. Litigators must only claim one offence class under the LGFS. A full list of offences and their respective offence class can be found under Part 7 in Schedule 2 of the Remuneration Regulations.

Paragraph 3(a), Schedule 2

2. Litigators can claim under the class of any offence with which their client is 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.

Paragraph 24(1), Schedule 2

3. Costs Judge decision R. v. Martini (2011) held that 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.

4. The LAA 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 Appropriate Officer with their assessment.

5. The majority of commonly prosecuted indictable offences are classified as shown in the Table of Offences in the Remuneration Regulations.

Paragraph 3(2), Schedule 2

6. New offences or unusual offences fall under Category H.

Paragraph 3(2), Schedule 2

7. 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, the litigator may apply to the LAA, when lodging the 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.

Paragraph 3(a) and (b)), Schedule 2

8. It was held in Costs Judge decision R. v. Parveen Khan (2012) where the defence applied for reclassification in order to classify a case as an Offence Class J it would have to be a serious sexual offence. (The offence was conspiracy to traffic persons into the UK).

9. 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. *Paragraph 3(b), Schedule 2*

10. For cases relating to an attempt to cause/inflict grievous bodily harm the litigator should make a claim under offence Class B. Refer to the Costs Judge decision in the case of **R. v. Davis (2012)** which held that the substantive Class B offence is causing/inflicting grievous bodily harm with intent. The Costs Judge ruled that if you attempt something you must intend the consequences of your actions.

Armed Robbery

11. Refer to paragraph 2.3.6-13 for guidance on cases classed as Armed Robbery.

12. While the statutory provision of Burglary (Section 9(1) of the Theft Act 1968) is not included in the Table of Offences, the statutory provision of the sentence for Burglary is included. Therefore, Burglary falls under Class E.

13. When claiming that an offence falls within Class K, it is for the litigator to provide evidence to support any valuation over £100,000 that takes an offence into the higher class if the value is not specified on the indictment. Paragraph 3(c), Schedule 2

14. Where two or more counts relate to the same property, then the value of the property should only be counted once. *Paragraph 3(d), Schedule 2*

15. A charge of Burglary falls within class E, notwithstanding the fact that an allegation of inflicting grievous bodily harm may have been made. In Costs Judge decision R. v. Crabb (2010) it was held that if the indictment states that the offence is burglary, and not aggravated burglary, then the fee payable falls under offence Class E, and not Class B.

16. 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. Refer to paragraph 3(g), Schedule 2, of the Remuneration Regulations. *Paragraph 3(g), Schedule 2*

Part 2 – Graduated Fees for Guilty Pleas, Cracked Trials, and Trials

3.4 Scope

1. It is important to note the aspects of litigation included within the graduated fee. The LGFS was modelled on historical case data and most aspects of litigation for the case are included in the final graduated fee, and therefore do not attract separate remuneration. The main areas of litigation included in the graduated fee are:

- 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. (Though note that separate remuneration is available for cases with a representation order dated on or after 17 September 2020).
- Sentence hearing if separate from the trial
- Interlocutory appeals
- Special measures hearings.

3.5 Pages of prosecution evidence

1. Paragraph 5, Schedule 2 of the Remuneration Regulations contains the table of PPE cut-off figures in a cracked trial or guilty plea case.

Paragraph 5, Schedule 2

3.6 Cracked trial or guilty plea where the number of pages of prosecution evidence is less than or equal to the PPE cut-off

1. Paragraph 6, Schedule 2 of the Remuneration Regulations specifies how to calculate the fee payable where the PPE for a cracked or guilty plea case is less than or equal to the PPE cut-off and contains the table of rates which should be included in the calculation.

Paragraph 6, Schedule 2

3.7 Trial where the number of pages of prosecution evidence is less than or equal to the PPE cut-off

1. Paragraph 7, Schedule 2 of the Remuneration Regulations specifies how to calculate the fee payable where the PPE for a trial is less than or equal to the PPE cut-off and contains the table of rates and the table of length of trial proxy which should be included in the calculation.

Paragraph 7, Schedule 2

3.8 Cracked trials and guilty pleas where the number of pages of prosecution evidence exceeds the PPE cut-off

1. Paragraph 8, Schedule 2 of the Remuneration Regulations specifies how to calculate the fee payable where the PPE for a cracked or guilty plea case is more than the PPE cut-off and contains two tables of final fees for Cracked Trials and Guilty Pleas, which should be included in the calculation.

Paragraph 8, Schedule 2

3.9 Trials where the number of pages of prosecution evidence exceeds the PPE cut-off

1. Paragraph 9, Schedule 2 of the Remuneration Regulations specifies how to calculate the fee payable where the PPE for a trial is more than the PPE cut-off and contains a table of final fees, which should be included in the calculation.

Paragraph 9, Schedule 2

Part 3 Fixed Fee for Guilty Pleas and Cracked Trials

3.10 Scope of Part 3

1. Paragraph 10, Schedule 2, of the Remuneration Regulations states that, for cases with a Representation Order dated from 3 October 2011 to 30th September 2022, a fixed fee (instead of a graduated fee) will be paid to litigators for cases where the defendant elects for the case to be tried in the Crown Court and subsequently the case does not proceed to Trial, either by reason of pleas of guilty or otherwise.

Paragraph 10, Schedule 2

3.11 Fixed fee for guilty pleas and cracked trials

1. The fee for cases as described under paragraph 11 where the representation order is dated prior to 30th September 2022 is £330.33.

Paragraph 11, Schedule 2

2. The fixed fee does not apply to elected either way cases where the prosecution offer no evidence on all counts and the judge directs that a not guilty plea is entered. For these cases a graduated fee is payable.

Part 4 – Defendant Uplifts, Retrials, and Transfers

3.12 Defendant uplifts

1. Where a litigator represents two or more legally aided defendants on the same case, they must submit one claim and the defendant uplift. *Paragraph 12(2), Schedule 2*

2. 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.

3. In Costs Judge decision: R. v. Hackett (2010) it was held that if there are two or more defendants who are both named on the same indictment, despite having different T numbers allocated by the court, the case should be paid as one case with the appropriate defendant uplift.

3.13 Retrials and transfers

1. Where there has been a transfer between the original litigator and the new litigator on a case, the date of grant of representation order applies for the purposes of making a claim under the 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. *Paragraph 13, Schedule 2*

2. For graduated fee purposes if a Trial is aborted before the jury have retired to consider their verdict and another jury is sworn, whether immediately afterwards, or after a gap, even of a few months, then the case is considered to be one Trial.

3. 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). *Paragraph 13(12), Schedule 2*

4. Costs Judge decision R. v Greenwood (2010) held that where a case is transferred to a new solicitor, the fee is calculated using PPE served at the point of transfer.

5. The Remuneration Regulations were amended on 3 August 2009 to provide greater clarity regarding transfers. Even though the following was introduced for proceedings on or after 3 August 2009, the LAA will use the guidance in this section for all proceedings that fall within the LGFS as the Remuneration Regulations were previously silent.

6. 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: *Paragraph 13(3), Schedule 2*

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

7. In both scenarios in paragraph 6, 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.

8. 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.

9. A case will not be considered to be a transfer to a new litigator in the following situations: *Paragraph 13(4), Schedule 2*

a) 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.
b) 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

c) 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.

10. Where a case has been transferred to a new litigator (Litigator B), and is transferred again (to Litigator C), then Litigator B: *Paragraph 13(5), Schedule 2*

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.

11. Point c) in paragraph 10, 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.

12. A litigator may not be treated as an original litigator and as a new litigator in a case. Refer to Appendix I for a table of case type scenarios. *Paragraph 13(12), Schedule 2*

Part 5 – Fixed Fees

3.14 General provisions

1. Paragraph 14, Schedule 2 of the Remuneration Regulations states all work is included in the basic fee except for the fixed fees set out in the table which follows the paragraph. *Paragraph 14, Schedule 2*

3.14A Fees for cases sent to the Crown Court

1. For cases with a representation order on or after 19 October 2020 a fixed fee is payable to litigators for work done in the magistrates' court in respect of a case sent for trial to the Crown Court. *Reg.8 and Paragraph 6, Schedule 4.*

2. The fixed fee will be payable under the magistrates' court scheme (via CWA).

3.15 Fees for appeals and committals for sentence hearings

1. An appeal against conviction or sentence can be claimed provided a notice of appeal has been lodged, an application for legal aid has been granted. *Paragraph 15, Schedule 2*

2. The litigator must submit a representation order which covers representation for the appeal hearing (and not for the advice on appeal) together with the claim for payment.

3.16 Fees for hearings subsequent to sentence

1. Paragraph 16, Schedule 2 of the Remuneration Regulations describes the types of hearings subsequent to sentence which are payable as a fixed fee. *Paragraph 16, Schedule 2*

3.17 Fees for contempt proceedings

1. Paragraph 17, Schedule 2 of the Remuneration Regulations describes the fees payable to a litigator when: *Paragraph 17(2), Schedule 2*

a) The contempt is committed by someone other than the defendant

b) The contempt is committed by the defendant.

2. 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 17 (2), part 5, of Schedule 2 of the Remuneration Regulations. This paragraph 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).

3.18 Fees for alleged breaches of a Crown Court order

1. Paragraph 18, Schedule 2 of the Remuneration Regulations provides the fee payable for breach proceedings.

Paragraph 18, Schedule 2

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

3. The use of the word 'single' in paragraph 18(1) of Schedule 2 of the Remuneration Regulations is defined as proceedings against one person arising out of a single alleged breach of an order. It therefore refers to every breach so if a person committed two breaches of an order at the same time, paragraph 18 applies separately to each breach.

Paragraph 18(1), Schedule 2

4. If a new litigator is instructed to represent the defendant at the Crown Court breach hearing, then the new litigator must apply to the Crown Court for a representation order to cover representation at the hearing.

3.19 Fixed Fees

1. Paragraph 19 of Schedule 2 provides a list of fixed fees payable.

Paragraph 19, Schedule 2

3.20 Fees for special preparation

1. Litigators can claim special preparation where:

Paragraph 20(1), Schedule 2

a) any or all of the prosecution evidence, as defined in paragraph 1(2) of the Remuneration Regulations, is served in electronic form (and has never existed in paper form – see Appendix D for more information), or

b) the representation order is dated on or after 3 August 2009 and the number of PPE exceeds 10,000.

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

Paragraph 20(3), Schedule 2

2. The Appropriate Officer must consider:

- The reasonable number of hours to view the evidence where paragraph 3.20.1(a) applies
- The reasonable number of hours to read the evidence where paragraph 3.20.1(b) applies.

The presumption will be that the defence need to read the served evidence, with reasonable time actually spent to be determined according to the importance/relevance/significance, volume, density, and/ or complexity of the material. Where (large volumes of) electronic material is served we would expect digital analysis techniques to be used unless justification is provided for a different approach.

3. Special preparation claims must be made using form LSP2, which can be found here. The supporting information required by the determining officer will vary from case to case, however the following documents are commonly requested:

- Representation order and any amendment orders: To determine the date from which work may be paid and to confirm representative details.
- Indictment: To determine the specific charges made against the defendant.
- Case summary: To give an overview of the case and the defendant's particular role, especially for multi handed cases.
- Defence case statement: To provide information about the defendant's response to the charges and where the team's focus might be directed when considering the served evidence.
- NAE, LAA report, exhibit list: To provide detail as to the page count and makeup of the served evidence.
- Background: To provide insight of the case against the defendant, the key evidence and the defence put forward.
- Justification: To provide detail as to why the time you have claimed is reasonable, giving detail as to the approach you have taken and where applicable reasoning for utilising higher grade fee earners.

4. When approaching the assessment of the material, the determining officer may ask **some or all** of the following questions:

a. Has all the relevant supporting documentation been provided?
b. What was the defendant charged with?
c. What was the defendant's specific role (conspiracy cases)?
d. At what stage did the proceedings conclude for the defendant?
e. Can the material in question be physically viewed by the determining officer (sometimes discs are blank, or the contents corrupted), and if password protected have the correct passwords been supplied?
f. When was the material served?
g. What are the prosecution seeking to demonstrate with this material?
h. What is the significance of the material to the case against the defendant?
i. What is the origin of the data and who is attributable e.g., defendant, co-defendant, complainant, third party etc?
j. What is the material in question e.g., telephone download, call data, financial information etc?
k. What format is it in?
l. Are there blank pages?
m. Is there any duplication either of electronic material in multiple formats or between material on disc and as uploaded to DCS/served in paper format?
n. Does the electronic material require a similar degree of consideration as paper material?
o. Has a search function been used on electronic material?

Please be aware that the larger the claim the more detailed information the determining officer

would expect you to provide.

5. Costs Judge decision, R. v Brandon (2011), concluded that for the purpose of determining a Special Preparation fee it is not appropriate to use a "time per page" calculation. Instead, the amount of time considered reasonable to consider the evidence should be allowed. The LAA would usually allow between thirty seconds (for example documentary exhibits such as images and invoices) and up to two minutes (for example documentary statements, comment interviews, medical records, expert reports) per page for the consideration of documentary material. Enhanced rates do not apply to Special Preparation.

6. In Lord Chancellor v McLarty (2011) it was held that a Special Preparation fee is not payable for listening to audio-visual tapes as these are specifically excluded from the Remuneration Regulations. The payment for this work is included within the initial fee.

7. In addition, as held in R v Nazir (2013 SCCO 135/13) and R v Starynskyj (2017 SCCO 93/16), time cannot be claimed for preparing working documents such as schedules and chronologies.

8. The decision of the Honourable Mr Justice Penry-Davey in the matter of **The Lord Chancellor v Michael J Reed Ltd (2009**) held that video or audio footage cannot be claimed under Special Preparation as moving footage does not fall within the context of “any document”.

3.20A Fees for consideration of unused material

1. Payment for considering unused material may be claimed in respect of any case on indictment in the Crown Court (other than a guilty plea) with a representation order dated on or after 17 September 2020. A fixed fee is payable for viewing 0-3 hours of material. Material considered which is in excess of 3 hours is payable at the hourly rates specified and may be claimed in addition to the fixed fee for the first 3 hours. Paragraph 20A, Schedule 2 of the Remuneration Regulations sets out the circumstances where the consideration of unused material may be claimed.

Paragraph 20A, Schedule 2.

2. Consideration of unused material of 3 hours or less should be claimed as a fixed fee on CCD. If the time for considering unused material is in excess of 3 hours a claim must be made using form LU1 together with supporting attendance notes (for claims in excess of 10 hours) . The schedule of unused material and Disclosure Management Document (DMD) or other documentation evidencing disclosure of unused material must also be provided with your claim.

3. The appropriate officer must take into account:
(a) the reasonableness of the hours claimed in respect of the case taken as a whole; and
(b) the reasonableness of the hours claimed in respect of the consideration of the unused material.

The larger the claim the more detailed justification would be expected.

4. For further details please refer to Appendix E.

3.21 Discontinuance or dismissal of proceedings

1. The term, 'Discontinuance' is used very specifically in the LGFS. 'Discontinuance' relates to a type of fee applied to certain types of cases that conclude up to and including the first hearing where a plea is entered (PTPH or FCMH).

Paragraph 21, Schedule 2

2. The term 'Discontinuance' is used more widely in the Courts to refer to certain proceedings, such as where proceedings 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. This is because where a case concludes up to and including PTPH, but the prosecution has served some of its case, a pre PTPH (Guilty Plea) fee will be paid.

Paragraph 21(3), Schedule 2

3. Where a case concludes up to and including a first hearing where a plea is entered (PTPH or FCMH) and the prosecution has not served any of its case, a Discontinuance fee will be paid.

Para. 21(2), Sch. 2

3.22 Defendant uplifts

1. Paragraph 22, Schedule 2, of the Remuneration Regulations contains the rules for defendant uplifts for Discontinuances and Dismissals.

Paragraph 22, Schedule 2

3.23 Warrant for arrest

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.

Paragraph 23, Schedule 2

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 three 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.

Paragraph 23(3), Schedule 2

3. Where the warrant has not been executed after three months since the issue of the warrant, the litigator can claim an Interim Payment for the portion of the case that occurred before the

Paragraph 23(2), Schedule

client absconded. Provision for such payments is made within CCLF under Bill Type 'Fee Advance', sub bill type 'Warrant'. | *2*

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. | *Paragraph 23 (4) and (5), Schedule 2*

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. | *Paragraph 23(4), Schedule 2*

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.

Part 6 - Miscellaneous

3.24 Additional charges

1. Paragraph 24, Schedule 2 of the Remuneration Regulations contains provision for selecting an offence code when the defendant is charged with more than one offence. | *Paragraph 24, Schedule 2.*

3.25 Assisted Person Unfit to Plead or Stand Trial

1. Paragraph 25, Schedule 2 of the Remuneration Regulations contains provision for the calculation of fee for a fitness hearing. | *Para. 25, Sch. 2.*

2. If there is a fitness hearing, the litigator may choose whether the offence banding is: | *Para. 3(1)(f), Sch.2*
- Relevant to the charge on indictment, or
- Class D.

3. If a trial is held, or continues, following a fitness hearing, the length of trial includes the fitness hearing. | *Para. 25(1)(a), Sch.2*

4. If a trial is not held because the defendant is found unfit, the litigator can elect to be paid either: | *Para. 25(1)(b), Sch.2*

a) trial fee, based on the combined length of the fitness hearing and the "did the act etc." hearing, or
b) a cracked trial fee.

5. If at any time the defendant pleads guilty, the litigator can elect to be paid either: | *Para. 25(1)(c), Sch.2*

a) a trial fee, based on the length of the fitness hearing, or
b) a guilty plea fee.

6. Any case in which a Restriction Order is made under Section 41 of the Mental Health Act 1983 falls within offence class A, regardless of the offence. | *Para. 3(1)(g), Sch.2*

3.26 Fees for confiscation proceedings

1. Confiscation proceedings continue to be remunerated by ex post facto determination. | *Paragraph 26, Schedule 2*

2. Litigators should send their claims for Confiscation Proceedings, including the disbursements for the Confiscation Proceeding, to the CCU. The form to use can be accessed at: https://www.gov.uk/guidance/claims-paid-out-of-the-legal-aid-fund

3. Refer to Appendix R for information about the remuneration of confiscation proceedings.

3.27 Prescribed fee rates

1. Paragraph 27, Schedule 2 of the Remuneration Regulations contains the table of fees for confiscation proceedings. *Paragraph 27, Schedule 2*

3.28 Allowing fees at less than the prescribed rates

1. Paragraph 28, Schedule 2 of the Remuneration Regulations specifies when it is possible that a lower fee will be paid for confiscation proceedings. *Paragraph 28, Schedule 2*

3.29 Allowing fees at more than the prescribed fee rates (to a maximum of 100%)

1. Paragraph 29, Schedule 2 of the Remuneration Regulations specifies the criteria for when it is possible to allow a higher fee to be paid for confiscation proceedings. *Paragraph 29, Schedule 2*

3.30 Evidence Provision Fee

1. 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.

2. 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.

3. The fee is only payable when ALL of the additional evidence required has been provided.

4. The evidence fee cannot be claimed for:
   a) Summary only proceedings
   b) An either way offence that concludes in the magistrates' court
   c) Applicants who are under 18 or in receipt of a passporting benefit
   d) Applicants who do not have capital assets and there is no additional evidence to be provided
   e) Equity evidence as this is not required
   f) Hardship applications sent to LAA's National Courts Team
   g) Evidence provided post-conviction
   h) Applications where evidence is required but this has not been provided. This includes cases sent to the LAA's National Courts Team.

5. 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, i.e., 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.

6. The EPF may be claimed on the LF1 form. For details on how to claim, refer to Appendix L and further guidance in the Criminal Legal Aid Manual at: https://www.gov.uk/government/publications/criminal-legal-aid-manual.

Appendices to the Crown Court Fee Guidance

Appendix A

Out of time Guidance for AGFS and LGFS claims

Appendix revisions:	
April 2014	***To include reference to R v Moses (2013).***
April 2013	***Note: This guidance has been revised to update references to secondary legislation following the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.***
November 2012	***Note: this guidance was first published on 3 August 2012 as part of the 3rd issue of the Advocates' Bulletin and was concerned with the out of time submission of AGFS claims. The guidance has been revised, following Costs Judge decisions in a number of LGFS cases, to further address the issue of out of time claims where "good reason" and/or "exceptional circumstances" have been claimed, and is applicable to all AGFS and LGFS claims.***

1. Out of Time Claims and Crown Court Means Testing

1.1 The remuneration regulations[7] set out time limits for the submissions of claims, which will result in non-assessment and non-payment of those claims unless there is good reason to allow an extension.

1.2 The LAA's starting point when a claim is received more than three months after the end of the proceedings is that it must be rejected.

1.3 For LGFS claims, "the conclusion of the proceedings" is the date on which the defendant was acquitted or sentenced. If, following sentence, the defendant is subject to proceedings under the Proceeds of Crime Act 2002, the LAA treats these as separate proceedings. This approach has been confirmed as an accurate interpretation of the Funding Order by the Costs Judge (R v Turnbull).

[7] Article 5(3) and Article 6(3) of The Criminal Defence Service (Funding) Order 2007 (as amended) ("The Funding Order") (from 1 April 2013 Regulation 4(3) and Regulation 5(3) of the Criminal Legal Aid (Remuneration) Regulations 2013 ("The new Remuneration Regulations"))

1.4 For AGFS claims, “the conclusion of the proceedings” is either the date on which the defendant was acquitted / sentenced **or** the date on which confiscation proceedings are concluded. The reason for treating the two payment schemes differently is because, for AGFS claims, the confiscation proceedings may form part of the claim for the main hearing and submitted in the same AF1 claim. Litigators’ confiscation claims do not form any part of the LGFS claim and are assessed and paid *ex post facto* by the LAA’s Criminal Cases Unit (CCU).

1.5 There are apparently conflicting authorities as to whether the time taken, following conviction, to obtain and provide advice on an appeal should be taken into account when determining when proceedings conclude i.e., should the end of proceedings be the date on which advice was provided?

1.6 This issue has been addressed in the case of Costs Judge decision **R. v. Moses (2013)** and it was held that for the purposes of payment in relation to a section 16 determination, under the LGFS the conclusion of the case is defined as from the acquittal, sentencing, or where advice on appeal is sought, when that advice is given, or, if relevant, when the appeal is lodged. In such circumstances, it is for the claimant to provide evidence that this circumstance applies and of the relevant dates.

1.7 Article 32(1) of the Funding Order (Regulation 31(1) of the new Remuneration Regulations (as listed in footnote 6 under paragraph 1.1) allows for the three-month deadline to be extended “for good reason”. Article 32(2) (Regulation 31(2) of the new Remuneration Regulations) goes onto say that where the representative fails, without good reason, to comply with the time limit, then the LAA may, in exceptional circumstances, extend the time limit and must consider whether it is reasonable in the circumstances to reduce the fees payable.

1.8 Since the introduction of Crown Courts Means Testing (CCMT) in 2010, the LAA has adopted a robust approach to the three-month time limit. This is because of the potential impact late claims can have on the defendant, the LAA and the taxpayer.

1.9 There are two types of contribution that defendants in the Crown Court may have to make - either from income and/or capital. They may have to pay all, some or none of their defence costs, depending on what the means test decides they can afford from their income and capital assets. If a defendant has to make contributions from income, this will be for a maximum of 6 months and will begin once their case has been sent to the Crown Court. At the end of the case, defendants who are found not guilty will get all their money back with interest at a rate of 2%.

1.10 Where defendants are found guilty or plead guilty, the LAA will review the amounts paid in contributions against the final defence costs. The final defence costs are calculated by adding together the litigators and advocates’ fees. Defendants may be refunded contributions if there has been an overpayment, or they may have to pay additional sums towards their defence costs from capital if they have assets of £30,000 or more. Delays in the submission of claims under the LGFS or AGFS can cause issues for the defendant, the LAA and the taxpayer. For example,

- Refunding overpayments can be delayed, causing financial issues and stress for the defendant and their family.
- Delays can allow defendants to reorganise their finances to prevent the LAA from reclaiming any additional costs beyond those already paid. Collecting contributions in these circumstances can be complex and time consuming.
- Uncollected contributions and the administrative cost of chasing these contributions are ultimately borne by the taxpayer.

2. "Good reason"

2.1 The Funding Order (the new Remuneration Regulations) does not define "good reason" but appeals to Costs Judges have consistently held that administrative errors within a solicitor's firm, chambers or an advocate's office are unlikely to be considered "good reason" for late submission. Bereavement due to the death of a close family member or a practitioner's serious illness, burglary, floods leading to a loss of records are all likely to be considered to be "good reason."

2.4 Costs Judges have recently confirmed that late submission due to the need to obtain page count from the prosecution (R v Fletcher) does not constitute "good reason".

3. Requesting an extension to the time limit

3.1 If, under either the LGFS or AGFS, you think that you are unlikely to be able to submit your claim within time, please e-mail the appropriate Graduated Fee Team to seek an extension of time as soon as possible before the deadline expires setting out the grounds to justify your request. Advocates who are requesting an extension on the basis that they cannot obtain documents from the instructing solicitor will be asked to provide details of the firm that is refusing to provide documents so that they can be passed on, if necessary, to the relevant Contract Manager.

4. "Exceptional Circumstances"

4.1 Where there is no "good reason" for a claim being submitted after the time limit the LAA will only consider assessing it in "exceptional circumstances". Where there are "exceptional circumstances" the LAA must consider whether it is reasonable to impose a financial penalty. As with "good reason" the Funding Order (the Remuneration Regulations) does not define "exceptional circumstances", nor does it set out a framework for the imposition of financial penalties. Under "exceptional circumstances" appeals have held that the disallowance of the entirety of a claim could constitute a disproportionate sanction, and accordingly, an exceptional circumstance.

4.2 The Costs Judge, in assessing four linked appeals, on 10 August 2012 provided general observations on the issue of "exceptional circumstances", financial penalties and the approach the LAA takes to assessing out of time claims in contrast to the approach previously adopted by the National Taxing Team when they assessed *ex post facto* claims before the introduction of the LGFS.

4.3 The Costs Judge noted that, prior to 2007, the National Taxing Team (now the CCU) did not enforce the time limits for submitting claims "either vigorously or consistently" but, in January 2007, published guidance:

> *with a view to applying consistent criteria to the time limits set out under the Funding Order 2013. Claims submitted less than three months out of time (viz within six months of conclusion) would suffer no penalty. Outside that time scale, the NTT would refuse to determine claims unless there was good reason or there were exceptional circumstances for the delay. Where a good reason was advanced, it was unlikely that there would be a penalty. Where exceptional circumstances existed, there was a tariff: for claims submitted over three months but less than six months out of time there was a 10% penalty, between six months and twelve months, a 15% penalty, and over twelve months out of time, a 20% penalty. It follows that many appeals which have come before Costs Judges over the past five years arising out of delays in requesting determination of ex post facto claims have been resolved on the basis of this criteria.*

4.4 The Costs Judge, however, recognised that the introduction of both the LGFS and CCMT justify a different approach to assessment of late claims to that which had been adopted by the National Taxing Team in 2007, noting that the National Taxing Team approach:

> *recognised that time limits were likely to be tight where bills were complex and required the lodging of the case papers. The former (i.e., the LAA approach), on the other hand, places emphasis on the fact that all that is now required is form LF1: no longer is there any need for complicated bills or case papers. In addition, the CCMT has placed an extra burden on the LAA in its running of the Scheme.*

4.5 When considering whether the LAA was justified in rejecting claims in their entirety when they were submitted out of time without either "good reason" or "exceptional circumstances" the Costs Judge considered, and rejected, the argument that a total disallowance of the claim would represent a disproportionate penalty and therefore constitute "exceptional circumstances":

> *If it was known that article 6 was not imperative and that litigators would almost always be forgiven when total disallowance was under consideration, there would be little incentive for complying with article 6. The fact that that was almost invariably the case under the ex post facto regime when disallowance only occurred in cases of extreme delay, would not be a proper reason for the LAA to continue that practice. Timetables and deadlines are part and parcel of everyday life: where solicitors fail to comply, for example, with the requirements for serving notices under the Landlord and Tenant Act Part II, there is no way back: here, all that the LAA is asking is that litigators comply with the Article. For professional firms, it should not be too much to expect that they should do so within the three months allowed*.

4.6 Having concluded that, in some circumstances, it is not unreasonable to disallow a claim in its entirety as a result of out of time submission, the Costs Judge provided guidance on how the LAA should treat cases that are submitted out of time without "good reason":
I agree in principle with XXXX that the length of the delay and the amount of money involved are capable of being exceptional circumstances. However, if that be right, it does not automatically follow there is therefore a hard and fast rule that so many days late results in a disallowance of £x, but if the sum involved exceeds £y, the reduction should be capped at £z.

4.7 Rather than addressing "exceptional circumstances" arguments by adopting a rigid framework for imposing financial penalties where claims are submitted out of time without "good reason" the Costs Judge has directed the LAA to assess these claims on a case-by-case basis:

It follows that I consider that each case must turn on its own facts and must be looked at on an individual basis; it is not possible to deal with the appeals before me by creating a tariff in the sense that one month late might not attract any penalty, but that two months would do so, depending on the sum in question or the size of the litigator firm. This would also apply to appeals is under the Advocates' graduated fee scheme where total disallowance might bear more heavily on a junior counsel at the start of his or her career than a Leader with many years in practice.

4.8 Therefore, litigators and advocates who submit claims out of time without "good reason" should provide an explanation as to the impact on them of a total disallowance of fees for the specific case. The amount of detail need not be equivalent to that provided when asking for payments to be expedited on hardship grounds but must be sufficient to enable the Appropriate Officer to understand the impact of any decision to disallow or reduce fees. The Appropriate Officer may, in addition to considering the imposition of a financial

penalty, share the information provided with the relevant LAA Contract Manager if there is cause for concern.

5. Penalty for Late Submission

In situations where the Appropriate Officer considers that there are exceptional circumstances but a penalty for late submission is appropriate, in order to improve the claimant's cash flow, the LAA will apply the penalty straight away (giving details with the determination) but the claimant has the right to challenge this rather than delaying payment further pending determination as to the reasonableness of any penalty and the level thereof.

Appendix B

Claiming Guidance

This guidance has been produced to help you with the rules around claim submission for AGFS and LGFS. All claims must be made through the Crown Court Defence (CCD) online billing system. For more information about online claiming please refer to information on our website: https://www.gov.uk/government/publications/simplifying-criminal-legal-aid-processing

If you have any questions relating to the use of the CCD system, you can contact a member of the team at crowncourtdefence@legalaid.gsi.gov.uk. For general billing queries, please contact the customer service team on 0300 200 2020, or alternatively on Twitter: https://twitter.com/LAAHelpTeam (open from 9.30 am to 3pm Monday to Friday).
Note: Only in the unexpected situation that the online billing system becomes unavailable, contingency AF1 and AF2 forms may be submitted.

AGFS Claim Guidance

Case, Trial Advocate and Offence

Trial Advocate details – Claims must be made by the Trial Advocate (as defined in the Remuneration Regulations) for all cases with a representation order dated on or after 5 May 2015. If the representation order date is older, it is the Instructed Advocate who makes the claim.
It is important that the details match those that have been provided to the court during the case as payment will be made to the Trial Advocate only.

Additional Case Number - If claiming a case uplift, please ensure that all additional case numbers are provided.

Principal defendant – If you represented more than one defendant you must select one as the principal. We will use this defendant's case to derive the case scenario. You only need to give details of additional defendants if you represented them. Details of co-defendants with separate counsel are not required.

Types of case – Which case scenario are you claiming? Cases on indictment can be: Guilty Plea, Cracked Trial, Discontinuance, Trial, Cracked before Retrial or Retrial. You can also claim for some hearings without an indictment, these are: Committal for Sentence, Contempt, Breach of a Crown Court Order, Appeal Against Sentence and Appeal Against Conviction. Detailed definitions of the case types are available in the AGFS section of Crown Court Fee Guidance.

For Cracked Trials, you must provide us with the date when the matter was first given a fixed or warned trial date, the date of that proposed fixed/warned trial, and the date the case cracked. This is so the system can calculate which third the crack occurred in.

If you are claiming for an either way Cracked Trial or Guilty Plea case where the defendant has elected Crown Court trial but one of the exceptions apply, then you must provide evidence to support this.

Special Preparation – Any claim for Special Preparation must be made with the main AGFS claim for payment and must be submitted using the appropriate form which corresponds to the date on the representation order. The Special Preparation claim forms can be found here:

Advocates' Graduated Fee Scheme claims - GOV.UK (www.gov.uk)

Offence banding and description -You can select any charges included on the indictment for your case. If your case is an indictable only offence and was **Sent by the magistrates' court**, please make this clear in the relevant selection. This will entitle you to claim a graduated fee.
If your case was **Transferred/Directed by the magistrates' court**, this option must also be selected. This is where the magistrates' court has deemed that the case was unsuitable for summary trial. If claiming a Cracked trial, Discontinuance or Guilty Plea graduated fee, where appropriate, please ensure that a Legal Aid Committal Form (LAC1) has been fully completed and certified by the correct magistrates' court. The instructing solicitor will have obtained a copy of this form at the Committal Hearing. Please ensure that your solicitor has attached a copy of the form to your instructions. Without this form your claim will be paid as a fixed fee. If the defendant **Elected Crown Court** AND the case didn't proceed to trial OR retrial, please select the relevant option. NB – these provisions do not apply to cases with a representation order dated on or after 30th September 2022.

Basic Fee and Enhancements
Please provide total quantities of the relevant elements you are claiming; do not deduct any elements included in the basic fee as this will be done by the system.

Uplift for Defendants - Please ensure that you provide a copy of the Representation Orders for each defendant for which you are claiming an uplift.

Number of case uplift – Please provide the additional case number(s) at the front of the form in Section 1.

Fixed Fees

If claiming a fixed fee please ensure that this section is completed, using the correct codes. We will use the information you provide to validate against information held on the court records. Where the representation order is dated on or after 3 Oct 2011 AND the defendant elected Crown Court trial OR retrial did not proceed, please select - Elected case not proceeded (ENP). NB – the ENP fee does not apply to cases with a representation order dated on or after 30th September 2022.

Elected case not proceeded Uplift (ENU) – If you are claiming an uplift because additional defendants please ensure that a representation order is provided for each defendant. If you are claiming an uplift for additional cases, please ensure that you include the additional case number in Section 1.

Miscellaneous fees

Please ensure the correct code is selected when claiming a half day for any of the miscellaneous fees as this will be validated against information held on the court records.
For standard appearance fees, please provide total quantities using the same principle as section 2.

Section 5: Travel and Hotel Expenses

For Guidance on claiming travel and hotel expenses, please refer to the AGFS section of Crown Court Fee Guidance.

Travel & Hotel Expenses Breakdown

Please provide a summary of any travel and hotel expenses you have incurred including dates and miles travelled where relevant. Where you are instructed to appear at a non-local court, please provide justification for attendance and amount claimed.

Travel Time to Conference and Views Total Breakdown

Please provide a detailed breakdown of any travel to conference and views you have incurred including dates and miles travelled where relevant.
Please provide full destinations e.g., HMP Walton, so that reasonable time and expenses can be determined.

Section 6: Claim Summary

For guidance on VAT please refer to HM Revenue and Customs.
Please ensure you tick the relevant box if you wish to receive a single payment for your claim as opposed to individual payments for each element.

Enclosure Check List – Please ensure you have provided all the relevant materials to support your claim.

Additional information – Please give us any further information here that will allow us to process your claim. If there was anything out of the ordinary in your case, please provide sufficient detail to properly explain what happened.

LGFS Claim Guidance

Firm's Name & Address – It is important that these details are completed and are accurate as they will be used to return posted items, such as disks, to you. *The LAA cannot take responsibility for lost items if an incorrect address was provided on the claim.*

Defendant details - You only need to give details of additional defendants if you represented them. Details of co-defendants represented by another solicitor are not required.

Evidence Provision Fee Claimed – This element of the claim is explained in paragraph 3.30 of the Crown Court Fee Guidance.

VHCC notification – Refer to paragraph 1.12 of the Crown Court Fee Guidance for more information on Very High Cost Cases.

Details of disbursements – All disbursements claimed, regardless of the value, must be listed. A copy of disbursement receipts or invoices should be provided for every individual disbursement that is more than £20 (and uploaded as a document to the CCD system).

Committal for Trial - You may only claim this fee when you are claiming your final litigator fee. You may claim one fee per committal hearing. Therefore, if you represented more than one defendant at the same hearing, you may claim one fee. If you represented more than one defendant for the Crown Court case but they appeared at different committal for trial hearings, you may claim one fee for each hearing.

Special Preparation - Where you have been served evidence that meets the definition of PPE (see paragraph 20, Schedule 2, of the Criminal Legal Aid (Remuneration) Regulations 2013) and it has been served electronically on the court, you may submit a claim for special preparation. This is done through the

CCD online billing system by uploading the special preparation form as part of the attachments to the claim. The special preparation claim form can be found here:

LF1: claim litigator fees - GOV.UK (www.gov.uk)

Where you have been served with more than 10,000 PPE (for cases with a representation order dated on or after 3 August 2009) you may make a claim for special preparation.

The hourly rates can be found in the table following paragraph 27, Schedule 2 of the Criminal Legal Aid (Remuneration) Regulations 2013. See paragraph 3.20 of the Crown Court Fee Guidance for further information on Special Preparation.

Trial Type – The type of case on indictment can be guilty plea, cracked trial, discontinuance, trial, cracked before re-trial or re-trial. You can also claim for some hearings without an indictment, these are: committal for sentence, contempt, breach, appeal against sentence and appeal against conviction.

Offence class and Description: you may select any charges included on the indictment for your case.

Change of solicitor – original or new – Refer to paragraph 3.13 of the Crown Court Fee Guidance for information regarding the rules for claiming as an original or new litigator.

Hardship Claims – Evidence of hardship must be provided (e.g., bank statements, letters from bank). Refer to paragraph 1.21 of the Crown Court Fee Guidance.

Warrant Claims – These are for work up to and including warrant issue date. Where the case has subsequently finished, a final fee payment should be claimed. Refer to paragraph 3.23 of the Crown Court Fee Guidance.

Appendix C

Key Contact List

For general queries about Crown Court claims:
Email:
LGFS Claims - Litigators-fee@justice.gov.uk
AGFS Claims - Advocates-fee@justice.gov.uk

Telephone:
Tel. 0300 200 2020– lines are open 9am - 5pm

To post disks containing evidence for claims made through the CCD billing system the envelope should be marked either 'AGFS' or 'LGFS' and posted to:
Legal Aid Agency
1 Unity Square
Queensbridge Road
Nottingham, NG2 1AW
DX: 10035 Nottingham 1

All discs must be accompanied by a cover sheet providing details of the sender, their return address, the client's name, case number and court and the date upon which the claim was submitted

Prior Authority Applications to Incur Expenses
Litigators may apply for Prior Authority (to incur expenses under regulation 13(1) of the Remuneration Regulations) to the Prior Authority team by submitting an online CRM4 application.

Prior Authority Applications to Incur Travel and Accommodation Costs
Advocates and litigators may apply for approval for Crown Court travel (Regulation 13(3)) by emailing the request to the LAA Prior Approval team at crime.queries@justice.gov.uk

The LAA's Criminal Cases Unit (CCU):

The CCU processes claims for the following areas of work:

Confiscation claims:
- Ex post facto claims from litigators in the Crown Court relating to confiscation proceedings.
- Ex post facto claims from Advocates in the Crown Court relating to confiscation proceedings which have 50 PPE or more.

Ex-post facto confiscation claims for the Criminal Cases Unit should be submitted as follows:

- Advocates should submit a PA1 form to advocatespoca@justice.gov.uk
- Litigators with profit costs below £2,000 should be submit a PL1 form to pocafastrak@justice.gov.uk
- Litigators with profit costs of £2,000 or above should submit a PL2 form to poca@justice.gov.uk

The forms and guidance can be found at https://www.gov.uk/guidance/claims-paid-out-of-the-legal-aid-fund

Special and wasted preparation claims:

- Assessment of AGFS claim where the advocate is claiming higher than the specified fixed fee.
- Assessment of LGFS claims where the litigator is claiming higher than the specified fixed fee.

All new claims for special/wasted preparation must be submitted alongside the graduated fee scheme claim through the CCD online billing system and must be made using the correct claim forms (see links in Appendix B). Please note that failure to use the claim form, or submission of an incorrect form, may result in your claim being rejected or delayed.

All AGFS and LGFS special preparation claims are assessed by the Criminal Case Unit (CCU).

If you are required to provide further information, wish to request a redetermination of the original decision, or require written reasons prior to cost appeal solely in relation to AGFS special preparation or LGFS special preparation claims and not any other element of the graduated fee assessment, then you may do so directly to the CCU. However, if there are outstanding issues also in relation to the graduated fee all requests must be submitted to the graduated fee teams in Nottingham. You should not split your requests.

Special Preparation Assessment team:

Criminal Cases Unit
Legal Aid Agency
Level 6
The Capital
Union Street
Liverpool
L3 9AF

DX: 745810, Liverpool 35
Email: specialpreparation@justice.gov.uk

Note that claims for special and wasted preparation must be submitted through the CCD online billing system.

Appendix D

Pages of Prosecution Evidence

PPE Definition

1. Pages of prosecution evidence (PPE) is defined at paragraph 1 (2)-(5) of Schedules 1 and 2 of the Criminal Legal Aid (Remuneration) Regulations 2013. PPE includes all witness statements, documentary and pictorial evidence, records of interviews with the defendant and other defendants which form part of the committal bundle or served prosecution documents, or which are included in any notice of additional evidence.

2. PPE also includes:

    a. Transcripts of video evidence requested by the judge
    b. Expert reports which have been commissioned by the prosecution and which relate to the alleged offence as opposed to fitness to plead or mitigation
    c. ABE interviews where the transcript is relied on by the prosecution
    d. First Stage Streamlined Forensic Report (SFR1) – this will be paid as PPE where it results in an early agreement of forensic issues. If no SFR2 is served, for whatever reason, the SFR1 will be paid as PPE regardless of whether or not it is agreed

3. PPE does not include:

    a. Unused Material.
    b. CCTV, video evidence (including video interviews), and audio evidence.
    c. Versions of a transcript that have been edited for the jury.
    d. Title pages, index pages, exhibit labels, separator pages, fax covering sheets.
    e. Duplicated pages (including those that have minor differences (R v El Treki (2001)) or those with small or large typefaces
    f. Evidence served after the litigator or advocate is no longer representing the client.
    g. Defence generated evidence (including the product of any defence analysis of forensic computer images or copies of electronic storage media (e.g., hard drives)).
    h. Recordings of interviews with victims, and transcripts of those interviews, do not fall within the PPE definition in regulations and are not considered PPE (R v Gleeson (2011)).
    i. Pre-sentence and psychiatric reports.
    j. Physical exhibits.
    k. Software or databases.
    l. Advance disclosure, except in the circumstances described in paragraph 57
    m. Defence generated printed material (R. v. Ward (2012)).
    n. Applications for Special Measures.
    o. Prosecution Opening.
    p. Case Summary.
    q. Indictment.
    r. Application to adduce bad character or hearsay evidence.
    s. Evidence served for confiscation proceedings.
    t. Admissions.
    u. Livenote transcripts

4. Evidence served in paper form, or converted to digital format, will be remunerated as PPE. Electronic evidence which has only ever existed in a digital format will be remunerated as PPE only where the determining officer is satisfied that it would be appropriate to do so, taking into account the nature of the document and any other relevant circumstances. Electronic evidence which is not remunerated as PPE may be claimed as special preparation.

5. Under the AGFS, special preparation in respect of PPE is only payable when the PPE for a case goes beyond 10,000 pages, or 15,000 in drugs cases, or 30,000 in dishonesty cases, or for cases with a representation order on or after 17 September 2020 the thresholds set out in 2.17.2c) of Schedule 1. Electronic evidence can be assessed by way of special preparation as part of the additional evidence if the relevant PPE threshold for the case is exceeded.

PPE Validation

6. Litigators and advocates submit their claim to the LAA, supported by evidence of the PPE. This must include a copy of the electronic evidence that is being claimed as PPE. The CPS may provide paginated evidence bundles and updated running totals of PPE on any NAE.

7. The LAA will validate all claims against the supporting evidence. Where the LAA is made aware that the page count has already been assessed for that defendant or a co-defendant, and full details are given up front, the LAA will normally apply this assessment across schemes/ co-defendants. Note that as PPE is no longer a proxy for the graduated fee in most AGFS claims (from Scheme 10 onwards), this is likely to become less common.

8. In exceptional cases, and where PPE cannot be validated in any other way, the LAA may attempt to liaise with the prosecuting authority to determine the correct PPE figure.

NAE Validation

9. The CPS often serve 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.

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

11. If evidence is provided to the defence and it is unclear whether the evidence was served as used material, the defence should seek written clarification from the prosecuting authority at the time.

LAA report validation

12. In cases where the advocate or litigator is relying on the LAA Report from the DCS as evidence of PPE, the whole of the LAA Report must be provided, i.e., the front page which gives details of the defendant and case as well as the subsequent pages that give details of the documents, etc, contained within each section.

13. Exhibit cover sheets or notices of evidence uploaded to DCS will not count towards the PPE because they do not fall within the statutory definition.

14. Material uploaded to DCS is served electronically and therefore could be subject to the exercise of discretion set out at paragraph 1(5) of Schedules 1 and 2. As per paragraph 1, witness statements, documentary exhibits and interviews which form part of the served prosecution evidence or are included in an NAE will be included as PPE**.** Material which originally existed in a non-digital format (e.g., medical records) which have been scanned and uploaded to the DCS will be included in the PPE.

Supporting Evidence

15. Electronic material served via the DCS must be provided to the LAA to determine whether it is PPE. Please note that the LAA do not have direct access to the DCS, Egress or any other

DEMS, therefore when necessary, practitioners may be invited to provide the LAA with access to the prosecution bundle in the DCS

16. Supporting electronic evidence can be uploaded to the CCD online billing system by selecting "Disc Evidence". Pdf, doc, rtf, jpeg, tiff and bmp are the accepted formats, and the maximum file size is 20 MB. Electronic evidence may also be uploaded to the LAA's Secure File Exchange system (SFE). Discs or USBs should only be provided if it is not possible to submit material electronically. These can be sent to the LAA's Nottingham office and should be clearly labelled with the client's name and T-number.

17. In exceptional circumstances where it is not possible to provide discs or upload material, the LAA may consult our internal systems to note details of cases where disc material has already been assessed and obtain a page count in this way. Where a full determination cannot be made without sight of the disc or other confirmation of the page count, the LAA will make an interim payment based on what can be determined.

18. To ensure compliance with data protection legislation, removable media should be provided in an encrypted state, along with the necessary password/s. Unencrypted items will still be processed, but providers must make arrangements for their secure return, as the LAA is unable to take the risk of data loss if unencrypted media is returned via the post or DX. If arrangements are not made the LAA will destroy the item/s after 28 days. Please refer to our data security requirements for further information - https://www.gov.uk/government/publications/legal-aid-agency-data-security-requirements

19. The following additional information should be provided when making a claim which includes digital material (either uploaded to DCS/SFE or served on disc/USB or by e-mail/file share):

    a. The full prosecution list/s of all evidence served in the case.
    b. Proof of service - NAE, LAA Report, Exhibit List, Correspondence from Prosecuting Authority
    c. An explanation as to which of the electronically served exhibits are being claimed as PPE i.e., for each exhibit listed, explain why you consider that the nature of this document and the relevant circumstances, specific to your client's case, mean that the determining officer should decide that it is appropriate to include this particular item of material within the PPE, and if so, how many additional pages are being claimed from the total page count within that exhibit.
    d. A Schedule in the following format should be considered in all cases and may be required in cases involving high electronic evidence counts/multiple discs:

        - Disc A, Folder B, Sub Folder C, Document D – 12 pages
        - Disc A, Folder E, Document F – 109 pages
        - Disc G, Folder H, Document J, Tab K (if a spreadsheet is claimed for) – 105 pages

20. Depending on the case, it may also assist the assessment of your claim if you provide some or all of the following additional justification:

    a. The prosecution case summary.
    b. The defence case statement.
    c. Any defence schedules prepared from the electronic evidence.
    d. Any skeleton arguments submitted relevant to the electronic evidence claimed as PPE.
    e. Admissions
    f. Basis of plea
    g. Litigator's attendance notes.
    h. Full, detailed work logs or file notes showing all work undertaken in relation to the material

Claiming Electronic Evidence

Starting Point

21. The basic position under the Regulations is that "*electronically served exhibits can only be remunerated as PPE if the determining officer decides that it is appropriate to do so, taking into account the nature of the documentation and all the relevant circumstances*."

22. Whether electronically served material should be included within the PPE depends upon its substance, relevance, importance and context. The fact that material was served and may have contained relevant data or data supportive of the Defendant's case is not, by itself, sufficient basis for inclusion within the PPE. A defence representative is under a duty to review all evidence irrespective of relevance or whether it is served as used evidence or disclosed as unused material.

23. It is well established in various Cost Judge decisions that the determining officer is permitted, and in fact, bound to carry out a qualitative assessment of the material on disc (or if served via the DCS) when exercising discretion under paragraph 1(5). Plainly, the relevance of material to the case against the Defendant will be an important consideration for the determining officer. Paragraph 50(ix) of the High Court decision in Lord Chancellor v SVS Solicitors [2017] EWHC 1045 (QB) makes clear that a qualitative assessment by the determining officer "is an important and valuable control mechanism which ensures that public funds are not expended inappropriately."

24. It is therefore important that defence representatives provide sufficient information and supporting evidence to enable the determining offer to make a decision as to "the importance of the contents of this evidence within the context of the case" (R v Tunstall SCCO Ref 220/15).The electronic evidence must be provided, ideally via CCD or SFE, as well as the full prosecution list of all evidence served in the case and an explanation of which electronic exhibits, and if appropriate how many pages from those exhibits, are being claimed as PPE. A schedule showing the breakdown of where the pages claimed can be found within the electronic material may also be required.

25. The range of factors that the determining officer may take into account when determining whether to include electronically served material within the pages of prosecution evidence is not limited. However, generally, the determining officer will consider whether the material was pivotal to the case and the amount and nature of the work required to be done, including whether the evidence required a similar degree of consideration as a page of evidence served in paper format as per paragraph 11 of R v Jalibaghodelezhi [2014] 4 Costs LR 781 cited with approval by Holroyde, J in Lord Chancellor v SVS.

26. The determining officer will have regard to any relevant High Court authorities and cost judge decisions. A summary of relevant authorities is set out at the end of this section. Determining officers will have particular regard to the test set out in the case of *R v Napper* 2014] 5 Costs LR 947. In R v Napper Master Simons held that when considering whether to allow electronic material as PPE the determining officer must consider whether the evidence is pivotal, whether the evidence underpins the understanding or admissibility of any other piece of evidence, and whether the volume of evidence disrupts the fair and predicted economic balance of the remuneration paid for a case.

Relevance

27. The relevance of the material to the case against the defendant will be a significant factor in any assessment of electronic evidence.

28. The relevance of the material to the case will always be a fact specific decision. The determining officer will make their assessment on the basis of the particular information and evidence supplied with the claim. However, some general principles are set out below.

29. The fact data is served is not sufficient to establish it relevant and should be included within the PPE. There might be included in the served electronic material swathes of photographs of celebrities or, in some cases, pre-loaded images of national flags or other such material which is wholly irrelevant but yet served as part of the electronic material. Whilst it is conceivable that such material may in the particular circumstances of a case require some consideration, absent any such potential relevance it is material that the person charged with considering the evidence, should be able to check with considerable speed. The refusal to allow such material as PPE does not necessarily mean that the representative is not paid for such work but the appropriate way of compensating the representative for such work may be by way of a special preparation fee.

30. When assessing the relevance of electronic evidence, the determining officer will consider the specific nature of the offences with which the defendant was charged and the specific context in which the Prosecution used the evidence.

31. In assessing relevance, the determining officer will consider the relevance of the material to the specific case against the defendant. There is nothing inherently inappropriate in the notion that representatives for different defendants on the same indictments might be paid different amounts. What is due to the representative of a particular defendant will be dependent at least to some extent on the work that has to be done in respect of that defendant. It does not follow that every piece of evidence is going to have the same significance for every defendant.

32. The determining officer will also give consideration as to whether the charges relate to conspiracy or substantive offences. In a conspiracy case it is often the case that electronic evidence in the form of telephone data is the primary and sometimes only evidence in the case. Generally, telephone evidence is more likely to remunerated as PPE in a conspiracy case than in a case involving substantive offences committed on a specific date and in respect of which there is physical, surveillance/CCTV or forensic evidence linking the Defendant to the crime. Although this will always be a fact specific decision.

33. The nature of the evidence will also have an impact on whether it is likely to be considered suitable for remuneration as PPE or special preparation. Communications data e.g., call history, cell site data, contacts and messages is more likely to be relevant to the case and is more likely to be included in the page count than technical metadata such as cookies, databases and configuration files which will generally be excluded from the PPE. “Social material” such as audio files, images and web data is generally more suitably remunerated as special preparation. However, depending on the nature of the charges and the Prosecution case there may be cases where this material is more properly remunerated as PPE, for example where images or song lyrics may be relevant to demonstrating gang affiliation.

34. In cases which concern historic offences electronic evidence which does not cover the relevant offending period is less likely to merit inclusion within the PPE as it cannot provide evidence directly relevant to the alleged criminal behaviour. Where telephone evidence is claimed as PPE in cases involving historic offences the defence representative should set out on what basis the material is being claimed and how it was relevant to the case.

35. A further relevant consideration will be who the data is attributable to. In the case of telephone data defence representatives should ensure they make clear in any claim whose data is

included in the download or call records. Data directly attributable to the defendant is more likely to be in included in the PPE than data attributable to others.

36. In certain circumstances it may be relevant to draw a distinction between material attributable to the defendant and material attributable to co-defendants. R v Sibanda (SCCO Ref: 277/14) held that in cases where a defendant is charged with substantive offences, telephone data relating to a co-defendant would not be sufficiently relevant to merit inclusion within the PPE. Further, in R v Yates (SCCO Ref: 66/17) the cost judge held that in certain cases it is appropriate to draw a distinction between material directly attributable to the defendant which is integral to the case and should be included in the PPE and material attributable to the co-defendant which is useful only as additional background and therefore payable as special preparation.

37. Data attributable to third parties may sometimes be served to assist in the attribution of particular numbers to defendants in a case. Third party telephone data is unlikely to be included within the PPE. Where it is claimed specific justification as to the relevance of the material should be provided to the determining officer.

38. The context in which material was used by the Prosecution will also be a relevant consideration for the determining officer. Where electronic evidence provides direct evidence of criminality e.g., cell site data putting the defendant at the scene of the crime or messages in which the crime is planned/discussed is likely to be included within the PPE. However, in cases where the evidence is relied upon for a narrow purpose such as to attribute a particular phone number to an individual it is more likely that remuneration by special preparation will be appropriate.

39. In certain cases, it may be appropriate to draw a distinction between material directly relevant to the offences and material which is relevant to mitigation only e.g., lifestyle indicators. As per R v Sullivan (SCCO ref 39/19) the fact that material is at best peripherally relevant to the offences and is really only helpful in terms of mitigation for the Defendant, is a factor that the determining officer may take into account when considering the nature of the document and any other relevant circumstances, under para 1(5) of Schedule 1.

Quantification

40. As per R v Lena (SCCO Ref: 89/18) the discretion of the determining officer extends to determining whether all or part of body of served electronic evidence should be included within the PPE. If a determining officer were to make a binary choice between including within the PPE count all of the data on a disc; however peripheral or irrelevant, or none of it at all, then the obvious choice would be to allow none of it at all, as the only way of avoiding overpayment.

41. As held in R v Andras (SCCO Ref 172/19) and other decisions it is self-evidently wrong (as well as contrary to established authority, in particular Lord Chancellor v SVS) to argue that all of the electronic material served on a single disc or forming part of a single telephone download must be included within the PPE count (even after eliminating elements of duplication). That would be to eliminate the discretion which the 2013 Regulations confer upon a determining officer. It is equally wrong to say that the mere possibility that a significant piece or pieces of evidence might have emerged from a larger body of evidence of no real evidential significance, justifies the inclusion of the body of irrelevant evidence within the PPE count.

42. A number of cost judge decisions have held that following the guidance in SVS telephone downloaded material is not to be regarded as one integral whole, as a witness statement would be. To use the analogy of Holroyde J, the downloaded material, which was itself a copy of the material held electronically on telephone, is more in the nature of the contents of a filing cabinet capable, in principle, of subdivision so that some material may count towards PPE and some

may not. Whether it is appropriate to subdivide material and indeed how any such subdivision should occur is, of course, a matter to be determined on the facts of the case.

43. It is not reasonable for a defence team to treat all served evidence as equally relevant or potentially relevant from the outset. At least some of it is likely to be self-evidently of no or limited relevance at the outset. However, as per R v Mooney where a particular section of the download, such as messages, merits inclusion within the PPE count it is not appropriate to undertake a page-by-page analysis for the purposes of identifying the relevance of each individual message; the entire section should be included within the PPE.

44. Generally, there is distinction between the communications data held on the device which will be relevant in the majority of cases and the technical metadata on the device which will seldom, if ever, be relevant.

45. The personal images on a defendant's telephone will seldom merit inclusion within the PPE as whole body of data. Usually, time spent considering images will be remunerated as special preparation as the majority of images will be self-evidently irrelevant to the case and can be checked with relative speed, assisted in most cases by the Defendant's instructions.

46. Unlike the message data where an individual message may be taken out of context such that a consideration of the full chain is necessary, each image on the phone is generally a standalone item. A detailed consideration of the whole body of images would not really add additional context or provide an explanation for how any extracted images specifically relied upon by the Prosecution came to be on the Defendant's telephone.

47. Per R v Sereika (SCCO Ref 168/18) there is no reason why a determining officer (or costs judge on appeal) should not take a broad approach and conclude that as only a proportion of the images may be of real relevance to the case, only a proportion should be included in the page count.

Duplication and Format

48. Where material is provided in multiple formats it is not appropriate to include duplicate material within the PPE. The material would not require separate consideration in more than one format. The fact that material was duplicated is a relevant consideration that the determining officer must take into account. To include the same material multiple times within the pages of prosecution evidence would artificially inflate the graduated fee and disrupt the fair and predicted economic balance of remuneration paid for a case. The issue has been considered in numerous cost judge decisions which all conclude that duplicate material should not be included within the PPE.

49. In the case of telephone material (either call/cell site data or download data) both versions of the reports are digitally created without human intervention. In the case of download reports the extraction software allows data from the telephone to be extracted as raw data in various digital files (as contained in the subfolders on disc) or exported directly into PDF report format or Excel Spreadsheet format (where each section from the report is an individual tab). It is not the case that the police or police instructed expert selects the data which is contained in the PDF or Excel versions of the report. The full download is included and there is no human intervention or opportunity to select or "cherry pick" the raw data that is contained in either version of the report.

50. The content of the data is identical in each of the formats it is presented as it is created via the same extraction software. If there is an error due to data becoming corrupt within the extraction process this will manifest itself in the external data and the PDF and Excel reports. It is not the case that the external data or the Excel data is the "original data" and the PDF report data a copy of this.

51. Further, it is appropriate to exclude duplicate data in the form of the timeline section from the report from the PPE where the substantive sections (e.g., calls, messages etc.) have been included within the PPE. As held in R v Mannix (SC-2019-CRI-000066 & 230/19) it is not a question, for the defence team, of considering edited material against the data from which that edited material has been extracted. It is merely a question of the same data being organised by extraction software in two different ways. It is not unfair to refuse to include the same data twice within the PPE count.

52. Generally, it is expected that the PDF version of material will be used to calculate the PPE. In determining the relevant format to calculate the PPE the question is not whether PDF or Excel is the best format in which to work (it generally being accepted Excel contains additional functionality to PDF). The question is whether PDF or Excel gives the most realistic and representative page count. Fundamentally, the extent of the data is the same in whichever format it is presented.

53. It is incontrovertible that the nearest equivalent to a paper document is the PDF format and it should be that one which is used for the purposes of PPE. PDF is designed to mimic presentation on paper. Excel is not and can offer different page counts depending upon the way in which the information in that format is managed, used or presented. 50 pages of legible data on paper will, if reproduced in PDF format, remain 50 pages of legible data with much the same appearance. In Excel format, depending on how the same data is managed or presented, the page count could run into hundreds.

54. Generally, payment for excel data is better remunerated by special preparation which reflects the time actually spent considering the material. Where reasonable, remuneration may be made for time spent cross-checking for duplication.

55. Further where telephone data is provided in PDF and the raw data is duplicated and exported to various subfolders on the disc (e.g., individual chat messages/images the duplicate material should not be included within the PPE. Where relevant the messages and images will still be included in the PPE, but only the PDF version will be counted.

Unused Material

56. The Criminal Procedure and Investigations Act 1986 (CPIA) requires prosecutors to disclose to the defence material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused. Such material falls within the category of unused material.

57. Unused material is not payable for cases with a representation order dated before 17 September 2020. For cases with a representation order on or after 17 September 2020, payment for unused material is made separately (see Appendix E), and it is not included within the PPE proxy.

58. Advance disclosure does not count towards PPE. This is because such evidence is often duplicated in the committal or first prosecution bundle.

59. However, in circumstances where the case concludes before the prosecution documents are served, and it does not fall within paragraph 22 of Schedule 1 of the Remuneration Regulations (i.e., is not discontinued or dismissed), 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.

60. In the majority of cases, it should be clear whether material has been served as used prosecution evidence (as it will be included in an NAE) or disclosed as unused material. However, in Lord Chancellor v Edward Hayes [2017] EWHC 138 (QB), the High Court held that

defence practitioners should not be penalised for lack of formal service. Therefore, where evidence was served without an NAE, but was clearly integral to the prosecution case it should be treated as PPE.

61. Where there is an issue regarding the status of certain material, the determining officer should have regard to the principles set out in paragraph 50 of Lord Chancellor v SVS Solicitors (2017) EWHC 1045 (QB). This decision re-affirmed that lack of formal service should not necessarily preclude evidence from being included within the PPE count, and emphasised the desirability of all parties reaching an agreement about the status of particular material prior to billing, either by negotiation or, exceptionally, by ruling of the trial judge.

62. It should only be in exceptional circumstances that a claim is submitted to the LAA for payment where issues regarding the status of the material have not been resolved. Any evidence of attempts to resolve the status of the material between the parties including applications to the trial judge should be drawn to the determining officer's attention. The initial prosecution view will be an important factor in the determining officer's assessment and will often be determinative.

63. In cases of dispute the determining officer must decide the status of the material in the light of all the information which is available. The determining officer would be entitled to regard the failure of the parties to reach any agreement, or to seek a ruling from the trial judge, as a powerful indication that the prosecution's initial view as to the status of the material was correct. Otherwise in order to conclude that the material was used the determining officer must be satisfied that the material in question was of central importance to the trial rather than merely helpful to the defence.

64. In the case of R v Ali & Ors (SCCO Ref: 117/17, 153/17, 144/17, 149/17, 10/18,168/17,152/17) it was held that Holroyde J made it clear that it may be entirely appropriate for the prosecution to sever, from a body of electronic data, that which is truly relevant; to exhibit that evidence; and to treat the remainder as unused. It is wrong in principle to treat any form of data which has been reviewed by the prosecution for the purposes of extracting served evidence as though it were used material. Applying Holroyde J's "filing cabinet" analogy, this approach would extend the PPE count not only to the entire content of the filing cabinet, but to the entire content of the office in which it stands. That is not a sustainable approach.

65. Further the Cost Judge commented that that if the status of evidence as unused or served has been raised before a trial judge, as recommended by Holroyde J, then it is incumbent upon any Appellant putting the same issue to a Costs Judge to provide full information about that and to justify raising the issue again. It should not be necessary for the LAA to make its own enquiries. The suggestion that the matter, having been put to the trial judge, should be revisited at a later point before a Costs Judge seems run contrary to Holroyde J's guidance. Further, a Costs Judge would not generally be better placed to determine the issue than the trial judge.

66. It was held in R v Tixe (SCCO Ref 39/19 and 94/19) that simply because it was necessary to consider the material it does not follow that it should be regarded as used material. The normal expectation is that the defence solicitors will consider unused material disclosed by the prosecution.

67. It is not reasonable to assume that because material was not included in an unused schedule or was not accompanied by any covering letter that the material was served as used evidence. As held in R v Jones and Fox (SCCO Ref 182/17) The whole purpose of having the PPE recorded originally and then on NAEs is to demonstrate exactly how much served material there is. If it is not on the NAE, then the assumption is that it is not served. It does not seem to me that it can possibly work the other way around.

68. Where the status of material is uncertain, it is expected that the defence team will agree their position among themselves before claims are submitted to the LAA. It is not possible for material claimed as unused by one team member to also be claimed as PPE by another, and vice versa.

PPE Limits

69. In cases where a representative stops providing representation for any reason before the conclusion of the case, the volume of PPE that can be claimed is limited to what has been served on the court up to the date the representative ceases acting in the case. The PPE proxy reflects the work done by the representative, and therefore it would not be appropriate to include pages served after they have no further involvement in the case.

70. R v Debenham (SCCO Ref 10/12) held that PPE served after a client pleads guilty, but before sentencing, should be included within the total PPE count, as the representatives have not ceased to act for the client and would be under a duty to consider this material for mitigation purposes.

71. In R v Jagelo (SCCO Ref 96/15) it was decided that the SCCO is not bound by the R v Furniss [2015] 1 Costs LR 151 ruling which asserted that the page cap is arbitrary. It was further held that it is not possible under the Criminal Legal Aid (Remuneration) Regulations 2013 to pay PPE in excess of the relevant threshold as part of the litigators' graduated fee. Where a judge does indicate that, in his view, a greater number of pages than the relevant threshold should be paid as PPE, then a claim for work done in respect of that material should be made under the Special Preparation provisions.

Useful SCCO Cases relating to PPE

Case	Synopsis
R v Jalibaghodelezhi [2014] 4 Costs LR 781	Material should be paid as PPE where it is pivotal to the case and requires same degree of consideration as paper evidence. This case has been sited with approval in subsequent High Court judgments.
R v Napper [2014] 5 Costs LR 947	In considering whether to allow electronic material as PPE the determining officer must consider whether the evidence is pivotal, whether the evidence underpins the understanding or admissibility of any other piece of evidence, and whether the volume of evidence disrupts the fair and predicted economic balance of the remuneration paid for a case.
Lord Chancellor v Edward Hayes [2017] EWHC 138 (QB)	The defence should not be penalised for lack of formal service by prosecution. Communication data underpinning that extracted by the prosecution will need to be considered to give a proper understanding of the selected material.
Lord Chancellor v SVS Solicitors [2017] EWHC 1045 (QB)	Unused material may not be paid as PPE. The defence should not be penalised for lack of formal service by the prosecution. Often extracted data can only be fairly considered in light of the surrounding data. Disputes about the status of the material should be resolved by the parties prior to billing, seeking a ruling from the trial judge where necessary. Where the status of the evidence has not been resolved the determining officer must consider all the facts of the case and make a determination. Any view by the prosecution will be an important consideration and in most cases determinative. Where there is any dispute the determining officer must consider whether the material in question was of central importance to the trial. The fact that

	material was helpful to the defence would not be sufficient for the determining officer to conclude the material was used. Used material may be paid either as PPE or special prep. A qualitative assessment by the determining officer, applying the principles outlined in the Crown Court Fee Guidance is an important and valuable control mechanism which ensures that public funds are not expended inappropriately. Duplicated material should not be included in the PPE.
R v MA [2018] 2 Costs LR 419	This was judgment by the Recorder of Leeds in which he criticised defence practices of seeking to have discs of telephone evidence included within the PPE when the material was easily searchable and often irrelevant. The judgment affirmed that it was perfectly proper for the CPS to only serve the portion of the material that they relied upon and it was not reasonable for the defence to scrutinise the entire contents of the disc without first seeking the defendant's instructions.
R v Salman Ahmed (SCCO Ref 214/18)	Following the guidance in SVS and the Crown Court Fee Guidance, downloaded material is not to be regarded as one integral whole, as a witness statement would be. To use the analogy of Holroyde J, the downloaded material, which was itself a copy of the material held electronically on the Defendant's and second Complainant's telephones, was more in the nature of the contents of a filing cabinet capable, in principle, of subdivision so that some material may count towards PPE and some may not. It does not follow that simply because the material was served that it was relevant and appropriately dealt with as part of the PPE: that is apparent from the rules themselves and confirmed by the guidance. Whether it is appropriate to subdivide material and indeed how any such subdivision should occur is, of course, a matter to be determined on the facts and having regard to the discretion set out in the relevant provisions and the guidance.
R v Zameer Ahmed (SCCO Ref 145/18)	The method in which the information is manipulated and the method by which the litigator is to be remunerated do not have to be based on the same format of document. Fundamentally, the extent of the data is the same in whichever format it is presented. It is incontrovertible that the nearest equivalent to a paper document is the PDF format and it should be that one which is used for the purposes of PPE.
R v Ali (SCCO Ref 108/16)	That the phone is an exhibit in this case does not mean that data extracted and burned on a disc is evidence in the case. Where the Judge gives a conclusive ruling that the material was unused it is not appropriate for the LAA or the Cost Judge on appeal to go behind that decision. Any ruling by the trial judge should be bought to the LAA's attention when submitting a claim.
R v Ali & Ors (SCCO Ref: 117/17,153/17,144/17,149/17, 10/18,168/17,152/17)	It is not wrong in principle to treat as unused material any form of data which has been reviewed by the prosecution for the purposes of extracting served evidence. The alternative approach would be to apply Holroyde J's "filing cabinet" analogy, extend the PPE count not only to the entire content of the filing cabinet, but to the entire content of the office in which it stands. That is not a sustainable approach. Holroyde J made it clear that it may be entirely appropriate for the prosecution to sever, from a body of electronic data, that which is truly

	relevant; to exhibit that evidence; and to treat the remainder as unused.
R v Usman Ali (SCCO Ref 85/16)	The fact that material is used does not make it PPE. The determining officer must carry out a qualitative assessment. The defence must supply sufficient information to allow that assessment to be carried out.
R v Andras (SCCO Ref 172/19)	It is self-evidently wrong (as well as contrary to established authority, in particular Lord Chancellor v SVS) to argue that all of the electronic material served on disc must be included within the PPE count (even after eliminating elements of duplication). That would be to eliminate the discretion which the 2013 Regulations confer upon a determining officer. It is equally wrong to say that the mere possibility that a significant piece or pieces of evidence might have emerged from a larger body of evidence of no real evidential significance, justifies the inclusion of the body of irrelevant evidence within the PPE count.
R v Daugintis (SCCO Ref 14/17);	There is a distinction between material in PDF which represents material in a printed format and requires a similar degree of consideration as paper material and material which does not provide a representative or predictable page count and is more easily manipulated by the use of various search tools and filters. Inclusion of the excel material in the page count would inflate the graduated fee and not properly reflect the amount of work done. Payment for excel data is better remunerated by special preparation which reflects the time actually spent considering the material.
R v Greening (SCCO Ref 222/18)	In determining the relevant format to calculate the PPE the question however is not whether PDF or Excel is the best format in which to work. The question is whether PDF or Excel gives the most realistic and representative page count. In that context, one must keep in mind that the calculation of fees by reference to a PPE count dates from a time when all evidence was served on paper and that the 2013 Regulations, like their predecessors, are designed to make similar provision for documents served electronically. The PDF format is designed to mimic presentation on paper. Excel is not and can offer different page counts depending upon the way in which the information in that format is managed, used or presented. 50 pages of legible data on paper will, if reproduced in PDF format, remain 50 pages of legible data with much the same appearance. In Excel format, depending on how the same data is managed or presented, the page count could run into hundreds.
R v. Zigaras and Nikontas (SCCO Ref: 155/18))	In cases where the prosecution rely on telecoms data that is a combination of call and cell site data, making a 32-column spreadsheet, it may be appropriate to upscale the document if the type is too small to be read in A4 when the PDF is printed. In this case, the court concluded that the data could only reasonably be read in A2 size, which meant multiplying the PDF page count by 4. This issue will only arise where call and cell site data are combined, and the

	resulting data is too small properly to read if printed in A4. Not all telecoms companies present their data in this way.
R v Khadir (SCCO Ref: 85/18)	There is nothing inherently inappropriate in the notion that representatives for different defendants on the same indictments might be paid different amounts. What is due to the representative of a particular defendant will be dependent at least to some extent on the work that has to be done in respect of that defendant. It does not follow that every piece of evidence is going to have the same significance for every defendant. It is not reasonable for a defence team to treat all served evidence as equally relevant or potentially relevant from the outset. At least some of it is likely to be self-evidently of no or limited relevance at the outset. PDF is the correct format for determining page count.
R v Mucktar Khan (SCCO Ref 2/18)	Subdivision of telephone download data is permissible and necessary to the proper application of the regulations. The fact data is served is not sufficient to establish it relevant and should be included within the PPE. There might be included in the served electronic material swathes of photographs of celebrities or, in some cases, pre-loaded images of national flags or other such material which is wholly irrelevant but yet served as part of the electronic material. Whilst it is conceivable that some such material may in the particular circumstances of a case be of potential relevance and need to be considered, absent any such potential relevance it is material that the person charged with considering the evidence, should be able to check with considerable speed. The refusal to allow such material as PPE does not necessarily mean that the representative is not paid for such work but the appropriate way of compensating the representative for such work may be by way of a special preparation fee. The alternative approach in allowing all such material to count as PPE, no matter its obvious irrelevance or how peripheral its potential relevance, would not achieve the underlying intention of the provisions as interpreted in Jalibaghodelezhi. Moreover, such an approach would distort the operation of the fee scheme.
R v Lena (SCCO Ref 89/18)	It is not appropriate to treat a single disc or telephone download as a single exhibit. The discretion of the determining officer extends to determining whether all or part of body of served electronic evidence should be included within the PPE. If a determining officer were to make a binary choice between including within the PPE count all of the data on a disc; however peripheral or irrelevant, or none of it at all, then the obvious choice would be to allow none of it at all, as the only way of avoiding overpayment.
R v T Mahmood and Z Mahmood (SCCO Ref 149/16;155/16 and 185/16)	Telephone data would not have existed in paper form prior to April 2012. It is appropriate to subdivide a report into its individual sections and allow only the relevant tabs or sections. In particular digital imprints of audio, video and images is of insufficient importance to be included in the PPE they are better categorised as 'social material' found on most people's smart phones. Similarly, Cookies, installed applications and web bookmarks comprise material invariably downloaded on a modern smart phone which has no bearing on the prosecution case

R v Mannix (SC-2019-CRI-000066 & 230/19)	It is an appropriate use of discretion to exclude duplicate data in the form of the timeline section from the report from the PPE where the substantive sections (e.g., calls, messages etc.) have been included within the PPE. It is not a question, for the defence team, of considering edited material against the data from which that edited material has been extracted. It is merely a question of the same data being organised by extraction software in two different ways. It is not unfair to refuse to include the same data twice within the PPE count.
R v Mooney (SCCO Ref 99/18)	The determining officer should caution against the use of hindsight when determining PPE. Where a given body of served electronic data, such as messages, merits inclusion within the PPE count it is not appropriate to undertake a page-by-page analysis for the purposes of identifying the relevance of each individual message.
R v Motaung (SCCO Ref 179/15)	It does not follow that because the schedules prepared by Prosecution and included in the PPE are derived from a larger body of telecommunications data, that the entire body of underlying telecommunications data must also qualify as PPE. This argument blurs the distinction between Pages of Prosecution Evidence, as served upon a defendant, served upon the court and relied upon by the Prosecution, and the wider body of evidence from which it is derived, which may properly be identified as unused material upon which the Prosecution does not rely, but which must be disclosed to a defendant. A single disc may contain both used and unused material.
R v Muiyoro (SCCO Ref 70/18)	Where telephone data is provided in PDF report a consideration of the raw data as exported to various subfolders on the disc adds nothing to the preparation of the case and the duplicate material should not be included within the PPE.
R v Robertson (SCCO Ref: 22/17)	It is appropriate to allow only relevant sections of reports. Broadly there is a distinction between communications data which should be included in the PPE and social or technical data found on modern smartphones which is peripheral to the case. In particular personal images do not form part of the PPE.
R v Purcell (SCCO Ref 132/19)	The fact that it is necessary to consider material and in particular images does not make it PPE. Where the material is considered for a narrow purpose and where the body of data quite plainly contains large amounts of self-evidently irrelevant material special preparation is the more appropriate method of remuneration. Having regard to the time it would be taken to consider the largely irrelevant material and the nature of that exercise material appropriately compensated by a special preparation fee. If material of this sort were to count as PPE it would very substantially distort the operation of the fee scheme.
R v Sana (SCCO Ref: 248/16)	A line must be drawn between what can be considered PPE and what is special prep. This is a fact specific decision. The starting point of the regulations is that electronic material is specifically excluded from the

	PPE unless the determining officer is able to conclude it is appropriate to include it within the PPE.
R v Sereika (2018) SCCO Ref 168/13	In circumstances where a disc contains a mixture of relevant and irrelevant material there is no reason why a determining officer (or costs judge on appeal) should not take a broad approach and conclude that as only a proportion of the material may be of real relevance to the case, only a proportion should be included in the page count.
R v Sibanda (SCCO Ref: 277/14)	Where a defendant is charged with substantive offences telephone data relating to co-defendants is not sufficiently relevant to merit inclusion in the PPE
R v Hajinder Singh (SCCO Ref: 103/18)	It is not correct to regard the download report as an integral whole (in the same way as a witness statement would be). The download report contains a copy of the material held electronically on the Defendant's telephone. Using the analogy of Holroyd, J in Lord Chancellor v SVS download material is more in the nature of the contents of a filing cabinet.
R v Sullivan (SCCO Ref 38/19)	There is a clear distinction between material directly relevant to the offences e.g., message data and that which is at best relevant to mitigation e.g., images which may give an indication of lifestyle. This (lack of a lavish lifestyle) is a point in mitigation, rather than a point of guilt or innocence. The fact that it is at best peripherally relevant to the offences and is really only helpful in terms of mitigation for the Defendant, is a factor that the DO and this court can take into account when considering the nature of the document and any other relevant circumstances, under para 1(5) of Schedule 1.
R v Tixe (SCCO Ref 39/19 and 94/19)	Simply because it was necessary to consider the material it does not follow that it should be regarded as used material. The normal expectation is that the defence solicitors will indeed consider unused material for anything that might assist their client.
R v Tunstall *(*SCCO Ref: 220/15)	The basic position under the scheme is that electronically served PPE is not included in the number of pages of prosecution evidence. Appellants must supply sufficient information to the determining officer to enable them to consider the nature of the doc and relevant circumstances
R v Yates (SCCO Ref: 66/17)	In certain cases, it is appropriate to draw a distinction between material directly attributable to the defendant which should be included in the PPE and material attributable to the co-defendant which is useful only as additional background.

Please also note the webpage on key Costs Judge decisions which can be found at https://www.gov.uk/government/publications/key-cost-judge-decisions. For non-PPE related Costs Judge decisions please see Appendix J.

Appendix E

Unused Material

1. Unused material is material that forms part of a criminal investigation but is not used by the prosecution for the purpose of criminal proceedings. Unused material may be disclosed voluntarily by the prosecution or in response to specific requests for disclosure by the defence following the serving of a defence case statement.

2. Unused material is defined in the Remuneration Regulations as "material disclosed pursuant to the prosecutors' obligations in Part 1 of the Criminal Procedure and Investigations Act 1996". The LAA can only pay for reasonable time spent considering that material.

3. Time for considering unused material may only be claimed in any case on indictment in the Crown Court in respect of which a graduated fee is payable, other than a guilty plea (i.e., cracked trial or trial fee claims). If in excess of three hours has been spent undertaking that consideration, the claim must be made using the mandatory forms LU1 or AU1, with supporting attendance notes/work log for any claims in excess of 10 hours. Where a schedule of unused material and/or Disclosure Management Document (DMD) has been provided these must be submitted with your claim. The determining officer may also request additional information and documents in order to assess the claim. Please refer to paragraph 26 for some examples.

4. If you are claiming for 3 hours or under you do not need to complete a form. This should be claimed as a fixed fee on CCD. The Impact Assessment (IA) for the package of accelerated measures set out that in only 14% of cases are providers expected to spend more than 3 hours reviewing unused material, and so around 86% of claims will not require the completion of a form.

5. Claims for fewer than 30 hours are assessed by the AGFS and LGFS teams. Claims for 30 hours or more are assessed by the Criminal Cases Unit. The IA set out that in only 4% of cases is it estimated that in excess of 10 hours is spent considering disclosed documentary and electronic evidence.

6. In terrorism or indecent images cases the LAA can contact the CPS to verify the unused page count. In cases where there is an undertaking not to disclose material an application to vary the terms of the undertaking should be made. If this isn't possible, we can liaise directly with the CPS, and will ensure the defence is aware of the outcome of those discussions.

7. Any unused material disclosed pursuant to the prosecutors' obligations under CPIA will be payable. Unused material does not include witness statements, documentary and pictorial exhibits, audio-video material, or records of interviews with the defendant and with other defendants which form part of the served prosecution evidence or which are included in any notice of additional evidence. Defence generated material, evidence served in relation to confiscation proceedings and unused material disclosed after the litigator/advocate is no longer representing the client would also not be included, as would other documents not disclosed pursuant to the prosecutors' obligations under CPIA such as title pages, separator pages, index pages, correspondence, etc.

8. It is accepted that both litigators and advocates will need to consider the unused material on behalf of their defendant. However, further information (e.g., word searches, sorting/filtering Excel data etc) as to the approach taken may be requested where large volumes of material are served, especially in electronic format.

9. Where the status of material is uncertain, each defence team should ensure that they agree their position, and with the court/ CPS where possible, before claims are submitted to the LAA. It should not be possible for a document to be both PPE under the LGFS and unused under the AGFS.

10. When submitting a claim for unused material the first three hours of work should be deducted, as these are covered by the fixed fee payment applicable to all trials and cracked trials. An hourly rate is payable for reasonable time spent in excess of the first three hours; e.g. if 10 hours have been worked in total, payment for the first 3 hours will be covered by the fixed fee, and an hourly rate would be claimed for the remaining 7 hours.

11. Claims should be submitted based on work actually done, but as a guide the LAA would usually allow between thirty seconds (for example documentary exhibits such as images and invoices) and up to two minutes (for example documentary statements, comment interviews, medical records, expert reports, MG6Cs, DMDs) per page for the consideration of unused documentary material. Audio/video material is usually allowed at 1.5 minutes per minute of running time. The determining officer may allow a rate outside these guidelines based on the facts of the case and/or where justification has been provided. Where digital material and/or large amounts of unused have been disclosed please see paragraphs 15 to 22.

12. The time paid for unused material is for the consideration i.e., reading/viewing of the material only. It does not include time spent cross-referencing, noting, scheduling or any other ancillary work.

13. Time spent reviewing unused material may not be claimed in POCA proceedings. All payments in relation to work undertaken for POCA proceedings are to be made under the provisions in paragraph 14, Schedule 1 or paragraph 26, Schedule 2.

Multi handed cases

14. In multi handed cases where large volumes of unused material may have been disclosed to all defence teams, or where a significant number of hours have been claimed, the determining officer may request further information from litigators and/or advocates to assist with assessing the reasonableness of the hours claimed.

Large volumes of unused

15. Where large volumes of unused material are claimed for, in single defendant or multi-handed cases the determining officer will start from the presumption that all unused material needs to be read. The time required to consider it will be subject to an assessment of reasonableness, which may be affected by one or more of the following factors:

    a. There is a relatively small proportion of material which is, or is likely to be, of importance to a particular defendant's case.
    b. There is repetition of material.
    c. The nature and complexity or otherwise of the material, or significant portions of the material, is such that the determining officer may reasonably expect that a fee earner can read and absorb its contents at a faster rate.
    d. The determining officer may reasonably expect that a particular defendant's instructions, or the nature of their defence, will assist the team when reading and absorbing the material.

16. In some circumstances, the determining officer may allow in excess of the guideline rates listed above. Where this is so, it will be expected that the defence teams will provide evidence to satisfy the determining officer that the material in hand is of exceptional difficulty or complexity in comparison to the majority of work that takes place within the graduated fee schemes.

17. In most cases the determining officer would expect to allow litigators' work at B or C grade rates. Where large volumes of unused material are served and/or the case is multi-handed, it may be appropriate to pay the work at C grade depending on the nature of the material and its particular impact on the client. We would not expect to pay A grade rates for considering the entirety of the unused, however it may be reasonable to allow some time at A grade for considering selected material identified by a Grade C fee earner, subject to justification and the overall reasonableness of the time claimed. Justification for A grade rates will generally be determined by the nature of the material considered, and/or any unusual or complex factors, and is not solely dependent on case type.

Electronic unused material

18. With the increasing likelihood of unused material being served electronically, and often in large volumes, the determining officer will consider the overall reasonableness of the time spent as opposed to a rate per page allowance.

19. Where time is claimed for electronic unused material, the files in question must be provided. If the files are under 20 MB and are in pdf, doc, rtf, jpeg, png, tiff, or bmp formats they can be uploaded directly into CCD. LAA staff can be granted access to DCS and Egress, or material may also be uploaded to the Secure File Exchange (SFE). Removable media should only be provided if it is not possible to upload the material.

20. To ensure compliance with data protection legislation, removable media should be provided in an encrypted state, along with the necessary password/s. Unencrypted items will still be processed, but providers must make arrangements for their secure return, as the LAA is unable to take the risk of data loss if unencrypted media is returned via the post or DX. If arrangements are not made the LAA will destroy the item/s after 28 days. Please refer to our data security requirements for further information - https://www.gov.uk/government/publications/legal-aid-agency-data-security-requirements

21. Where unused is provided in both PDF and Excel formats, the determining officer will base their assessment on the page count generated by the PDF. This is because PDF is designed to mimic presentation on paper, whereas Excel is not, and can offer different page counts depending upon the way in which the information in that format is managed, used or presented. Additional time may be allowed to cross-reference the Excel material with the PDF.

22. Raw telephone billing data and cell site evidence which is unused would ordinarily be checked using a search function and so time actually spent considering the material may be more appropriate. Unused parts of telephone handset downloads often comprise of large sections of incomprehensible meta data concerning configurations, calendar entries that have no defendant input data, and images sections which comprise preinstalled graphics, logos, flags and emojis that can be quickly discounted. Again, time actually spent considering such material would be more appropriate.

Assessment of unused material

23. Claims of 0-3 hours are not assessed, as these are paid as a fixed fee through CCD.

24. For all claims for work done in excess of 3 hours, providers must complete the unused claim form, and for all claims in excess of 10 hours also submit a work log/attendance notes. Claims for 3-30 hours may require additional evidence in support of the time spent.

25. Claims for 30 hours or more will generally receive a more comprehensive assessment, increasing in detail with the value of the claim. Where documentary unused material has been disclosed, the LAA recognise that this will need to be considered but would expect to allow more time where there are

large amounts of evidence which directly impact on the client, and/or which are dense or complex. It will therefore aid the assessment process, particularly where the claim is large or outside the guideline rates, or where electronic material has been considered if you can provide details of the nature of the unused material and its significance to the client.

26. The supporting information required by the determining officer will vary from case to case, however, the following documents are commonly requested:

    - Case summary – this gives an overview of the case and the defendant's particular role, especially for multi-handed cases.
    - Representation order – to determine the date from which work may be paid and to confirm details of representatives.
    - Defence case statement – this will provide information about the defendant's response to the charges and where the team's focus might be directed when considering the unused.
    - Indictment – to determine the specific charges made against the defendant, again particularly for multi-handed cases.

27. When approaching the assessment of unused material, the determining officer may ask **some or all** of the following questions:

    a. Has all the necessary supporting documentation been provided?

    b. When was the material disclosed?

    c. Can the material in question be physically viewed by the determining officer (sometimes discs are blank, or the contents corrupted), and if password protected have the correct passwords been supplied?

    d. What was the defendant charged with?

    e. What was the defendants' specific role (conspiracy cases)?

    f. What is the origin of the data and who is it attributable to e.g., defendant, co-defendant, complainant, third party etc?

    g. What is the material in question e.g., telephone download, call data, financial information etc?

    h. What format is it in?

    i. Does the electronic material contain a large number of blank pages or sections containing no data (e.g., in an excel document)?

    j. Is there any duplication either of electronic material in multiple formats or between material on disc and as uploaded to DCS/served in paper format?

    k. Is a search function a more appropriate way of navigating and finding data in electronic material?

28. As part of the assessment process the determining officer will also take into account, where possible and practical, assessments made in respect of co accused as well as the corresponding litigator/advocate claim.

Appendix F

Example Work Log

Date	Nature of work	Nature of documents and pages	Time	Total Time	Special Preparation	a, b, c
10/02/14	Perusing prosecution evidence	Statements P1-100	10:00 – 13:50	3.50		
11/2/14	Conference with solicitor and client in Brixton		14:00 – 16:00	2.00 + 3.00(t)		
12/02/14	Preparation submissions, novel law see skeleton		10:00 – 13:30	3.30	Yes	a
13/02/14	Perusing prosecution evidence	Exhibits, interview of Smith – p10150-10205	15:00-17:00	2.00	Yes	b
13/02/14	Perusing prosecution evidence	Statements p101-150	17:00 – 19:15	2.15		
14/02/14	Perusing prosecution evidence	Exhibits – bank statements p15000-15500	19:00-23:00	4.00	Yes	b
17/02/14	Viewing documentary evidence served on DVD only	30 applications for credit cards – 5 pages each	10:00 - 13:00	3:00	Yes	c
17/02/14	Advice on evidence	4 pages	14:00-15:15	1.15		

Appendix G

Alleged Breach of a Court Order

1 Introduction

This guidance clarifies the position regarding the process and criteria for the grant of criminal legal aid when an individual is alleged to be in breach of an order made by either the Crown Court or magistrates' court.

2 Court orders

There are a wide range of orders that may be made by a criminal court. Whilst this guidance does not seek to deal with every court order, particular focus is given to those orders commonly made following conviction as these have been the most regular subject of queries.

- 'Probation' Order – where a defendant is convicted and the court declines to impose a custodial sentence, the offender is commonly made subject to a 'community order' or 'suspended sentence order'.

- 'Community orders' comprise one or more requirements with which the offender must comply; these can include supervision through regular appointments with a probation officer, curfew, exclusion from a specific place/area, drug rehabilitation, alcohol and mental health treatment, as well as residence at a specific address.

- 'Suspended sentence orders' are sentences of less than 12 months in prison, suspended for between 6 months and two years. It includes the same requirements as those available for the 'community order.'

An alleged breach of an order can result in the individual being brought back before the court and potentially being sent to prison.

In addition, existing guidance – notably the Criminal Legal Aid Manual - draws attention to a range of court orders which can be made under the heading of 'prescribed proceedings'. These are often made, though not exclusively, following the defendant's conviction. This list includes: Anti-Social Behaviour Orders, Sexual Offences Prevention Orders, Restraining Orders, Serious Crime Prevention Orders, Violent Offender Orders, Drinking Banning Orders and Domestic Violence Prevention Orders.

3 Scope of legal aid to cover alleged breach cases

The Legal Aid, Sentencing, and Punishment of Offenders Act 2012 makes clear that the scope of the criminal legal aid scheme includes 'proceedings before a court for dealing with an individual convicted of an offence, including proceedings in respect of a sentence or order', - section 14(b) – and '(h)such other proceedings, before any court, tribunal or other person, as may be prescribed'. – section 14(h).

All alleged breaches of a court order, whether made by the magistrates' court or Crown Court will, therefore, fall within scope of criminal legal aid.

4 Applying for criminal legal aid in an alleged breach case

Regulations make clear that where an alleged breach of a court order has arisen, proceedings to deal with the alleged breach cannot be regarded as incidental to the main proceedings. For this reason, a new legal aid application is required.

See the Criminal Legal Aid (General) Regulations 2013/No.9:

> ***Representation for criminal proceedings: proceedings which are not to be regarded as incidental proceedings:***
>
> ***20. (1) The proceedings set out in paragraph (2) are not to be regarded as incidental to the criminal proceedings from which they arise.***
>
> ***(2) The proceedings are—***
>
> *(a) proceedings for applications for judicial review or habeas corpus in relation to criminal proceedings; and*
>
> ***(b) proceedings for dealing with an individual who is alleged to have failed to comply with an order of the magistrates' court or the Crown Court.***

5 Circumstances in which an alleged breach of a court order may arise and Representation Order requirements

These broadly fall into 1 of 3 groups:

(a) 'stand-alone' breach of a court order - e.g., breach of a community order (CCO) or suspended sentence order (SSO) which does not give rise to a new criminal offence but requires the individual to be brought back and dealt with by the relevant court. An example of this would be a failure to carry out unpaid work or failing to report to the probation officer.

In such cases, the alleged breach is prosecuted by the probation service. Most commonly, breach of a Crown Court order is dealt with by the Crown Court, although some Crown Court orders specify that an alleged breach may be dealt with by the magistrates' court

Representation Order Requirements

The application for legal aid should be submitted to the relevant magistrates' court; if the breach hearing is to be heard at the magistrates' court, the application is subject to the Interests of Justice test and the magistrates' court means test

If the breach hearing is to be heard in the Crown Court, the application is subject to Interests of Justice Test only - it is not means tested.

Therefore, it is the venue at which the breach hearing will take place that will determine whether the application is means tested, not the venue at which the original order was made.

Note: only in circumstances where the defendant is brought before the Crown Court and there is not time to instruct a litigator can the Crown Court exercise its power to grant a representation order in breach proceedings.

In such cases the representation order will cover the advocate for the work carried out at the initial hearing.

If, following that hearing, there is further work which require the services of a litigator e.g., the matter is adjourned for further hearings, or the defendant requires assistance with preparing an appeal, the representation order granted by the Crown Court will also cover the work carried out by the litigator. There is no requirement for the litigator to submit a fresh application to the relevant magistrates' court in these circumstances.

See the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013:

Determinations by the Crown Court

6. On the application of an individual, the Crown Court may make a determination under section 16 of the Act as to whether an individual qualifies for representation for the purposes of criminal proceedings before the Crown Court—

(a) which are described in section 14(g) of the Act (criminal proceedings);

(b) which arise out of an alleged failure to comply with an order of the Crown Court and it appears to the court that there is no time to instruct a provider; *or*

*(c) where the individual is brought before the court under section 81 of the Senior Courts Act 1981(**b**) in pursuance of a warrant issued by the Crown Court.*

(b) breach of a court order which automatically gives rise to a criminal offence – e.g., breach of an ASBO is a criminal offence;

In such cases a fresh criminal prosecution is brought by CPS.

Representation Order Requirements

The representation order granted for the trial of the new offence covers the sentencing hearing at which the breach of the order will be taken into account.

(c) a fresh criminal offence is alleged to have been committed by the defendant and this effectively puts the defendant in breach of an order previously made by the court following conviction for an earlier offence.

In such cases, the individual is first dealt with by the court in relation to the new offence; if this leads to a conviction, it is at the point of sentencing that breach of the court order will also be taken into account.

Representation Order Requirements

The representation order granted for trial involving the new offence covers the sentencing hearing; the representation order will therefore extend to cover consideration of breach of an earlier court order in relation to a previous criminal offence.

6 Submitting LGFS and AGFS Claims for Breaches of Crown Court Orders

Since the introduction of Crown Court Means Testing in 2010 and the revisions to the General Regulations, the LAA has received claims under both the AGFS and LGFS for Breach of Crown Court Order fixed fees supported by the original representation order (i.e., the representation order that was in place for the proceedings in which the Crown Court Order was made).

In the absence of clear guidance on the issue, the LAA has been paying these claims.

Now that the position has been clarified, the LAA will, **for Breach Proceedings submitted on or after 1 January 2013**, only process claims that are supported by either:

1. a new representation order, issued by the relevant magistrates' court specifically covering the Breach Proceedings; or
2. a representation order issued by the Crown Court.

Appendix H

Remuneration for Breach Proceedings for Litigators

Type of Work	Work Carried Out	Funding Available	Fixed Fee Amount (excl. VAT)
Crown Court Order	Hearing for a Breach of a Crown Court Order (Community Sentence Order) with a representation order. dated between 17 September 2020 and 29th September 2022 **and** with a main hearing on or after 31st October 2022	Fixed Fee under LGFS for original or new litigators.	£89.31
Crown Court Order	Hearing for a Breach of a Crown Court Order (Community Sentence Order) with a representation order. dated on or after 20 1 July 2015.	Fixed Fee under LGFS for original or new litigators.	£77.66
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	£85.11
Crown Court Order	Hearing for a breach of a Crown Court order (Community Sentence Order) with a representation order dated before 3 August 2009.	Where the substantive proceedings have a representation order dated before 14 January 2008, 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 facto scheme). Where the substantive proceedings have a representation order dated on or after 14 January 2008, and the original litigator represents the client	£85.11 N/A

		named on the representation order, a fee cannot be claimed. 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.	£85.11
Crown Court Order	Vary/discharge an order made under S155 of the Powers of Criminal (alteration of Crown Court sentence).	Fixed Fee hearing subsequent to sentence under LGFS where an application is made within 56 days of the original representation order.	£178.62
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.	£178.62
Crown Court Order	Vary/discharge of a Crown Court Order (Community Sentence Order). Excluding those under S.155 or S.74	No funding under LGFS. This is covered within the original representation order and there is no separate fee available. If a new firm undertake 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

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 s5 of the Harassment Act 1997.	No funding available under the LGFS but would fall within the scope of 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: - Anti-Social Behaviour Orders - Closure orders - Football banning orders - Parenting orders	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	N/A

	- Sex offender prevention orders - Any other order made in proceedings listed under reg 9 Criminal Legal Aid (General) Regulations 2013.	order may be granted. Litigators claim for the work carried out as normal e.g., guilty plea, committal for sentence etc.	
ASBO	Appeal against an ASBO.	No funding under LGFS but is fundable under Advocacy Assistance limit. £1,574.06.	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.	£178.62
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 £1,574.06	N/A

Appendix I

Case Type Scenarios

Please refer to the table below for a list of the case types you can claim 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 first hearing at which pleas are entered)	Refer to paragraph 21, Schedule 2 of the Remuneration Regulations.
Guilty Plea	Refer to Part 2, Schedule 2 of the Remuneration Regulations.
Cracked Trial	Refer to Part 2, Schedule 2 of the Remuneration Regulations.
Trial	Refer to Part 2, Schedule 2 of the Remuneration Regulations.
Appeal against Conviction from the Magistrates' Court	Refer to paragraph 15, Schedule 2 of the Remuneration Regulations
Appeal against Sentence from the magistrates' court	Refer to paragraph 15, Schedule 2 of the Remuneration Regulations
Committal for Sentence	Refer to paragraph 15, Schedule 2 of the Remuneration Regulations
Hearing Subsequent to Sentence	Refer to paragraph 16, Schedule 2 of the Remuneration Regulations
Contempt	Refer to paragraph 17, Schedule 2 of the Remuneration Regulations
Alleged Breach of Crown Court Order	Refer to paragraph 18, Schedule 2 of the Remuneration Regulations
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 retrial has taken place.
Up to and including the first hearing at which pleas are entered (PTPH or FCMH) transfer (org)	What the *original* solicitor is paid where the defendant transfers to a *new* solicitor up to and including the PCMH.
Up to and including the first hearing at which pleas are entered (PTPH or FCMH) transfer (new) - Guilty Plea.	What the *new* solicitor is paid where the defendant transfers to them from an original solicitor and the case is a guilty plea.
Up to and including the first hearing at which pleas are entered (PTPH or FCMH) transfer (new) – cracked.	What the new solicitor is paid where the defendant transfers to them from an original solicitor and a case is a cracked trial.
Up to and including first hearing at which pleas are entered (PTPH or FCMH) transfer (new) - Cracked	What the *new* solicitor is paid where the defendant transfers to them from an *original solicitor* and the case is a trial.
Up to and including first hearing at which pleas are entered (PTPH or FCMH) transfer (new) - Trial	What the *new* solicitor is paid where the defendant transfers to them from an original solicitor and the case is a trial.
Before trial transfer (org)	What the *original* solicitor is paid where the defendant transfers to a new solicitor after the first hearing at which pleas are entered (PTPH or FCMH) and before a trial has commenced.
Before trial transfer (new) - Cracked	What the *new* solicitor is paid where the defendant transfers to them from the original solicitor and the case is a cracked trial.
Before trial transfer (new) - Trial	What the *new* solicitor is paid where the defendant transfers to them from the *original* solicitor and the case is a trial
During trial transfer (org) - Trial	What the *original* solicitor is paid up to the day before the transfer of the defendant to the *new* solicitor, during —trial.
During trial transfer (new) - Trial	What the new solicitor is paid after s/he has taken over the case from the *original* solicitor and has claimed for the full trial.
Transfer after trial or guilty plea and before sentencing hearing (original)	What the original litigator is paid where the transfer takes place after the trial or guilty plea but before the sentence hearing

Transfer after trial or guilty plea 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 original solicitor is paid where the re-trial turns out to be a retrial or a cracked retrial.
Transfer before retrial (new) - Cracked Retrial	What the *new* solicitor is paid where there is a —cracked re-trial.
Transfer before retrial (new) - Retrial	Where the *new* solicitor has taken over the Case from the *original* solicitor between the —trial and —re-trial and there subsequently is a re-trial.
Transfer during retrial (org) - Retrial	What the *original* solicitor is paid where the transfer takes place during the —re-trial
Transfer during retrial (new) – Retrial	Where the *new* solicitor has taken over the case from the *original* solicitor during the —re-trial.
Transfer after retrial or cracked 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 or cracked retrial and before sentence hearing (new)	What the new litigator is paid where the transfer takes place after the retrial but before the sentencing hearing.

Appendix J

Examples of Claiming for Dismissal Applications

The following table contains scenarios and the corresponding fee payable. Also, refer to the paragraph 22 (6) and (7), Schedule 1 of the Remuneration Regulations.

	Scenario	**Fee**
1	1 – 2-day dismissal application Wholly successful. Case dismissed DAY ONE (DA) DAY TWO (DA)	 Guilty Plea GF (main hearing) Full/half Day fixed fee
2	2- day dismissal application Unsuccessful. PTPH follows straight on. Accused pleads NG. Stood out for trial. DAY ONE (DA) DAY TWO (DA+PCMH)	Full/Half-Day fixed fee PTPH added to standard appearance count
3	As in 2 above, except accused pleads G at PTPH DAY ONE (DA) DAY TWO (DA+G PLEA at PCMH)	Full/Half-Day fixed fee Guilty plea GF (PTPH is main hearing)
4	2-day dismissal application Unsuccessful. PTPH does not follow straight on but is adjourned to later date. At PCMH, accused pleads NG. Stood out for trial. DAY ONE (DA) DAY TWO (DA)	 Full/Half-Day fixed fee Full/Half-Day fixed fee
5	DAY THREE (PCMH)	PTPH added to standard appearance count
6	As in 4 above except accused pleads guilty at the adjourned PCMH. DAY ONE (DA) DAY TWO (DA)	Full/Half-Day fixed fee Full/Half-Day fixed fee Guilty plea GF (PTPH is main hearing)

	DAY THREE (G Plea at PTPH)	

Appendix K

Costs and High Court Judge Decisions

Costs (or High Court) Judge Decision	Summary of Decision
R v Kemp (1999)	The graduated fee scheme is a comprehensive scheme which must be applied in accordance with its explicit words.
R v Davis (2012)	Where an indictment does not specify whether there was an attempt to commit a s.18 or s.20 offence and simply refers to grievous bodily harm the litigator is entitled to opt for class B offence as it is not necessary to go behind the indictment to ascertain whether it is a class B or C offence.
R v Slessor (1984)	Principles to be applied when allowing travel expenses: - The amount payable is the expense incurred in making the journey by public transport, provided the public transport is available and reasonably convenient - Litigators cannot claim for the cost incurred travelling from his/her home, but from the office, unless home is nearer to the court - Costs are payable for the journey between the office and the railway station, and between the railway station and court - If travel is done by car when public transport is available, then the amount payable is the public transport rates. If public transport was not reasonably convenient or available, then the standard mileage rate will be used. - Determining officers should use their discretion when decide what is reasonably convenient. - The principles apply to both litigators and, when costs are payable, to advocates.

R v Eddowes, Perry, and Osbourne Ltd (2011).	In cases involving multiple defendants represented by the same solicitor one claim should be submitted with the appropriate uplift for the relevant number of defendants.
R. v. Charlery and Small (2010)	Where the solicitor does not request a redetermination under article 29(1) of the funding order or no redetermination under article 29(7) there is no right of appeal for recovery of payments under 26(2). (Note: under the 2013 Remuneration Regulations the section references are 28(1), 28(7), and 26(2) respectively).
R v Henery (2011)	In determining whether a trial has begun it must be considered whether there has been a trial in any meaningful sense, whether the jury has been sworn is only one of the relevant factors to be considered.
R v Jones (2000)	A preparatory hearing heard under s.29 of the Criminal Procedure and Investigations Act is deemed to be the start of a trial irrespective of whether the preparatory hearing is heard immediately before the trial or at an interval of some months before.
R v Mohammed (2001)	Adjourning a PDH to allow the prosecution time to decide whether or not to proceed with the case will not qualify for a cracked trial fee. For a cracked trial fee to be payable there would need to be a real possibility of a trial marked by either the judge fixing a date or ordering it be placed in a warned list.
R v Pelepenko (2002)	A cracked trial fee can only be paid after an abortive trial, where the prosecution has confirmed that they are proceeding to another trial, and the case subsequently cracks.
R. v. Nettleton (2012)	Despite there being a gap of more than one day after the first jury was discharged, this case should be paid as one trial because it was all part of the same trial process and no further preparatory work was required before the case recommenced.

R. v Cato (2012)	The length of the delay does not necessarily mean there has been a retrial. For a retrial to take place the trial must have run its course and an order for retrial must be made.
R. v Forsyth (2010).	In order for a trial to be considered a retrial there must be an order for a new trial or the trial must have run its course without the jury reaching its verdict.
R. v Hackett and Kavaliauskas (2010).	1.PPE: Where electronic evidence is subsequently served on the court as paper evidence this will fall within the definition of PPE. 2. Multiple defendants: Where there is a case involving multiple defendants, which involves only one indictment there is only one case and the correct fee to be paid is the appropriate fee for the trial plus an uplift for further defendants represented.
The Lord Chancellor v McLarty and Co. (2011).	A special preparation fee is not payable for listening to audio-visual tapes as these are specifically excluded from the 2007 funding order. The payment for this work is included within the initial fee.
R. v. Gemeskel (1998).	The first day of the main hearing is the date at which the guilty plea was entered.
R. v. Holden (2010).	Paragraph 2(4) of the regulations only applies where a Newton hearing takes place following a case on indictment. Where there is no indictment the paragraph cannot apply and there is no other provision in the schedule that would allow for the payment of a graduated fee, accordingly only a fixed fee is payable in such a situation.
The Lord Chancellor v Taylor (R v Beecham) (1999).	A change of plea from not guilty to guilty between PDHs need not attract a cracked trial fee.
R. v. Baxter (2000).	A cracked trial fee is only payable if the cracked trial takes place at a later date than the PDH and not on the same day. If a change of plea takes place on the same day only a guilty plea can be paid.
R. v. Maynard (1999)	A claim cannot be made for a cracked trial fee once a jury is sworn even where a change of plea to guilty is made after prosecution has opened on the first day.

R. v. Karra (2000).	Where a trial has commenced, and the prosecution decide to offer no evidence or no further evidence shortly thereafter only a trial and not a cracked trial graduated fee can be paid.
R. v. Mira (2007)	Counsel is not entitled to choose an offence class for which a co-defendant, but not his client, has been charged.
R. v. Martini (2011).	A litigator can only claim a fee for the class with which their defendant has been charged, they cannot claim for an offence with which only the co-defendant has been charged.
R. v. Stables (1999).	A robbery where a defendant or co-defendant was armed with a firearm or the victim thought that they were so armed or where the defendant or co-defendant was in possession of an offensive weapon, made or adapted for causing injury or incapacitation, should be classified as an armed robbery.
R. v. Crabb (2010).	Under the Table of Offences in part 6 of the Criminal Defence Service (Funding) Order 2007, aggravated burglary is shown as a Class B offence. Burglary is shown as a Class E offence. The Defendant was indicted on a charge of burglary and not aggravated burglary. It is irrelevant that part of the statutory definition of the offence of burglary includes the inflicting or the attempt to inflict on any person any grievous bodily harm. Payment under the Litigator Fee Scheme is dependent upon the type of offence set out in the Table of Offences. The Defendant was charged with burglary. Burglary is a Class E offence. Had the Defendant been charged with aggravated burglary then that would have been a Class B offence.
R.v. Knight (2003).	TICs (offences taken into consideration) should not be taken into account when calculating the value of an offence.
R. v. Parveen Khan (2012)	A case can only be classified as a class J offence if it is a serious sexual offence.
R. v. Nassir (1999).	Where the parties are made aware in advance that a part heard trial is not listed on a particular day, only the actual number of days or part days on which the advocate appeared at court can be taken

	into account when calculating the graduated fee.
R. v. Bailey (1999).	Once proceedings have been committed to the Crown Court any hearings regardless of venue in relation to an application for bail following breach of Crown Court bail conditions are still proceedings in the Crown Court.
R. v. Russell (2001).	Hearing to be treated as a standard appearance where prosecution have failed to disclose evidence.
R. v. Brinkworth (2005).	When an ASBO (whether contested or not) is made at the time of sentencing it still attracts the fixed fee for the sentence hearing.
Meeke & Taylor v DCA (2005).	Special preparation cannot be claimed to make up a perceived shortfall in graduated fees due to a trial going short.
The Lord Chancellor v. Michael J Reed Ltd (2009).	DVDs should not be included in the page count as they do not equate to documents or pages of evidence. Payment for viewing these is included within the initial fee.
R. v. Bedford (2003).	The limit to pay for only one conference per trial where a trial lasts 1-10 days should be construed as per advocate (where conferences are attended separately) and not per case.
R. v. Fletcher (1998)	Cases where the main hearings are held on different days are not heard concurrently, therefore counsel is entitled to separate fees for each case.
R. v. Fairhurst (1999).	A case is not heard concurrently where the pleas for the different indictments are entered on separate occasions, therefore the advocate should be paid separate fees.
R. v Greenwood (2010).	The correct fee to be paid to the original litigator is the number of pages served up the point of transfer.
R. v Brandon (2011)	For the purpose of determining a special preparation fee it is not appropriate to use a "time per page" calculation. Instead, the amount of time considered reasonable to consider the evidence should be allowed. Enhanced rates do not apply to special preparation.

R. v. Muoka (2013)	Where the representation order has been withdrawn part way through a case, the advocate may claim a standard appearance fee for each day at court that the representation order was in operation.
R. v. Moses (2013)	For the purposes of payment in relation to a section 16 determination, under the LGFS the conclusion of the case is defined as from the acquittal, sentencing, or where advice on appeal is sought, when that advice is given, or, if relevant, when the appeal is lodged. In such circumstances, it is for the claimant to provide evidence that this circumstance applies and of the relevant dates.
R. v. Ali (Keir Monteith) (2013)	A confiscation hearing (so called by the court) must take place. There is no requirement for evidence to be called or for a confiscation order to be made.
R v Connors (2014)	Where there is a trial followed by a new trial, the advocate can submit a claim for payment before the second trial and can elect for the trial to have the percentage reduction.
R v Gravette (2016)	A mitigation of sentence fee is payable in the rare circumstance where a judge orders that a KC or leading counsel be added to the representation order, after the trial but before the mitigation of sentence hearing, and they provide advocacy only for that hearing.
R v Nazir (2013) and R v Starynskyj (2017)	It was held that the Special Preparation provision contained in paragraph 17(3)(b) of Schedule 1 (payment for reading pages in excess of 10,000) does not include time taken in compiling schedules, chronologies, etc.
R v Adeniran (2015) and R v Elnmendorp (2016)	Special Preparation can only be claimed when a graduated fee is payable as stated under Part 2 or Part 3 of the Remuneration Regulations. Remuneration for confiscation proceedings is set out in Part 4, and therefore, Special Preparation cannot be paid for confiscation proceedings.
R v Sarfraz (SCCO ref. 122/16)	A daily attendance fee (rather than an ineffective trial fee) is payable where the parties attend on a day that the trial is listed, the jury is sworn, but the judge adjourns the trial to the following day.
R v Majeed (SCCO Ref. 19/17 – 2019)	A single advocate cannot make a claim for wasted preparation in a case where s/he is

	entitled to claim the graduated fee, in whole or in part, for representation of the same defendant in the same case. Entitlement to claim wasted preparation is triggered only when an advocate is prevented from attending the whole of the main hearing.
R v Atkinson & Khan (SCCO Ref: 2019-CRI-000063 and 2019-CRI-000135 – 2019)	The AGFS banding document makes a clear distinction between murder and attempted murder and is within the scope of the discretion afforded to the Lord Chancellor under section 2 of LASPO. LASPO is the primary legislation governing the Remuneration Regulations and permits the Banding Document to differentiate between a murder and an attempt.
R v Bowden, R v Barnes, R v Williamson	The use of the word "substantial" in the Henery guidance must mean more than the expected pre-trial preparation regarding bundles and evidence. An application to adjourn is not sufficient to amount to a substantial case management issue. Critiquing the Prosecution case in the course of negotiating a basis of plea does not meet the definition.
R v Moore (SCCO Ref: SC-2022-CRI-000002 – 2022), also R v Wharton (SCCO Ref: SC-2020-CRI-000195 – 2021) and R v Hall (SCCO Ref: SC-2020-CRI-000225 – 2021)	A quashed or stayed indictment is not of itself an indication that the subsequent indictment is a second or new case. Where the second indictment is merely an amendment of the original indictment a litigator or advocate is only entitled to one fee. Uploading two separate documents on the DCS instead of amending the original indictment is a reflection of modern technological practice. While there may be two indictments in fact, in law the defendant can only be tried on one, therefore only one case fee is payable.

Appendix L

Claiming the Evidence Provision Fee

1. Purpose and Background

The Evidence Provision Fee (EPF) was introduced as part of the implementation of Crown Court Means Testing (CCMT) scheme. Information on the scheme and how it works can be found in the Criminal Legal Aid Manual. For an explanation of the EPF and when it can be claimed, please also see Annex 1 of the Manual.

This guidance explains how to claim the EPF on:

- Form LF1
- CCLF.

These claiming mechanisms merely provide the functionality for making the claim. Any EPF should still be treated as taxable income. Third party charges can be claimed in addition.

2. Claiming the EPF on Form LF1

To claim the EPF on form LF1, mark the relevant tick box in Section 1 under the defendant's details field.

3. Claiming the EPF on CCLF

- Search for, or create a new case and simply select the EPF entry in the dropdown list.
- The total EFP amount should be included in the total fee payable in Section 7.

4. How will the EPF claim be validated?

The LAA will use the evidence recorded on the MAAT system to validate the claim.

5. Querying the EPF

- You may seek a redetermination of the assessment using form LF2 (Litigator Fee Review Form)
- Section 2, Items for Dispute, and Section 3, Reason for Redetermination, will need to be completed.

6. Further Queries

For further information contact the Litigator Fee Team (see **Appendix C**).

Appendix M

Note on evidence requirements for the banding of offences under the AGFS

Evidence requirements for certain offences

The best evidence for the value, weight, or seriousness of the offence is the indictment itself – a count of handling stolen goods to the value of £35,000 is, for example, evidence of an offence banding 6.4 offence. Clearly any value specified in the indictment must relate to the relevant counts for the defendant represented.

However, the indictment rarely contains details of the facts required to support the offence banding in question. In this case, the prosecution case summary or opening statement for the trial is the next best source of evidence, then a police/expert witness statement and finally a non-professional witness's witness statement (e.g., victim's statement saying the goods had been bought a couple of months earlier for £10,000). The non-expert witness statement is the least persuasive evidence of value simply because the witness is not an expert and will often only be able to say what the value of the item was at the time it was acquired, which may well have been many years previously and makes no allowance for depreciation, etc.

In any case where the actual offence on the indictment is not listed in the Table of Offences, so that the offence falls into offence banding 17.1 by default, re-banding must be specifically requested (with details of the basis for this request) if the advocate seeks payment of anything other than a banding 17.1 fee. Just putting the offence banding sought in the offence banding box in the claim is not enough and is likely to result in an assessment to band 17.1 and then the need for you to request a re-determination. Making a specific request, with justification, in the first instance will speed up the process and help to avoid un-necessary re-determination requests. Please note that if the offence banding is not one that falls into banding 17.1 by default (i.e., the offence is one listed in the Table of Offences), then there is no right to request a re-banding.

Appendix N

Remuneration for Prescribed Proceedings in the Crown Court

This appendix provides information on the remuneration payable for prescribed proceedings in the Crown Court.

The LAA's 2022 Standard Crime Contract Specification defines 'Prescribed Proceedings' as: *proceedings which have been prescribed by Regulations as criminal for the purposes of Legal Aid by virtue of section 14(h) of the Act and are listed under Regulation 9 of the Criminal Legal Aid (General) Regulations 2013.*

Annex A of the Criminal Bills Assessment Manual contains a list of different prescribed proceedings in the Crown Court and the method of funding. Note that the hourly rates for advocacy cannot exceed the rates payable to solicitors undertaking advocacy for these proceedings – refer to Paragraph 10.144-144 of the 2022 Crime Contract Specification.

Paragraph 7 and 10, Schedule 4 of the Remuneration Regulations sets out the hourly rates payable for prescribed proceedings heard in the Crown Court and the maximum total amount payable per proceeding (this includes profit costs, disbursements, and counsels' fees but excludes VAT)

Appendix O

Trial / New Trial

The decision about whether there is a single trial, or a trial followed by a new trial in any case will depend entirely on the facts of that particular case. There are many different variables that must be considered when reaching a decision. Given this, providing absolute clarity is difficult. The purpose of this section of the guidance is to set out the variables that must be taken into account when making a determination in this area. This guidance applies to both litigator and advocate fee claims.

The single most important factor is whether or not the trial judge makes an order for a new trial (as opposed to an order that the trial re-start or be re-listed).

Where an Order is Made for a New Trial

Advocates:

If there is an order for a new trial and the same advocate represents the defendant in both the first trial and new trial then the fee payable is a graduated fee for the first trial (or new trial if the advocate elects) and a reduced rate for the new (or first) trial depending on when the new trial commenced (Paragraph 2(2) and (3), Schedule 1, of the Criminal Legal Aid (Remuneration) Regulations 2013).

If there is an order by the judge for a new trial and a different advocate represents the defendant then paragraph 2 (5) and (6), Schedule 1, of the Criminal Legal Aid (Remuneration) Regulations 2013 applies and a graduated fee is payable to each advocate.

Litigators:

Where an order is made for a retrial and the same litigator acts for the defendant at both trials the fee payable to that litigator is a graduated fee for the trial and 25% of the fee as appropriate to the circumstances of the retrial.

If there is an order for a retrial and the case is transferred to a new litigator then each litigator is paid a proportion of the graduated fee.

Where an Order is Not Made for a New Trial

It is acknowledged by all stakeholders that an order for a new trial is rarely made, and all other relevant factors must be taken into account when making a determination. In cases where there is no order made by the judge, then the LAA will apply the reasoning in Costs Judge decision: **R. v. Nettleton (Mr Doran) (2012).** In this case, Master Gordon-Saker held that if there is no order by the judge that there will be a new trial and the second leg of the case is deemed to be part of the 'same temporal and procedural matrix', then the fee payable is for one trial only. In Nettleton, despite the fact that there was a gap of two working days after the first jury was discharged, Master Gordon-Saker ruled that the case should be paid as one trial because it was part of the same trial process.

In determining whether a case forms part of the same "procedural and temporal matrix", the LAA will consider the factors set out below:

- The length of time between the first leg and the second leg of the case. A gap of just a few days may, for example, indicate a single trial, whereas a gap of several months may indicate a trial followed by a new trial. Although the LAA will consider the length of gap in light of Costs Judge decision **R. v Cato (2012)** which held that where there is no order for a new trial the length of the delay does not necessarily mean there has been a new trial. The trial must have run its course (i.e., the jury must have gone out to consider its verdict) and an order for retrial must be made.

- The stage at which the first leg concluded. If the trial concludes and the jury is unable to reach a verdict, any further trial will be considered as a new trial. Conversely, if the jury is discharged before all evidence has been heard, and the proceedings continue, it is more likely that this will be considered a single trial. **R. v Forsyth (2010)** held that in order for a trial to be considered a trial and new trial, the trial must have run its course (i.e., jury failed to reach a verdict) and there must be an order for a new trial and not merely a break (whether or not a second jury was empanelled).

- The relative length of the first and second legs. A very short first leg followed by a much longer second leg may indicate that this was one trial.

- A change of advocate between the first and second legs may be an indicator that there has been a trial followed by a new trial, depending on the reason for the same advocate not attending both legs.

- A change of judge between the first leg and the second leg may be an indicator that there has been a trial followed by a new trial. Where the first judge has heard substantial legal argument which needs to be argued again before a second judge, it may indicate a trial followed by a new trial, whereas a change in judge early in the trial, for example because of illness or for administrative convenience, is more likely to indicate a continuing process.

- A change in the case between first and second trial (e.g., a change in indictment, a change in way case is presented, etc.). A substantial change in the nature of the case may lead to a determination that there was a trial followed by a new trial.

- Any comments by the trial judge in either the first or second trial to indicate there was a new trial.

Appendix P

List of Offensive Weapons

Prevention of Crime Act 1953

Section 1(4):

" offensive weapon " means any article made or adapted for use for causing injury to the person or intended by the person having it with him for such use by him.

Restriction of Offensive Weapons Act 1959 (Banned flick knives)

Section 1(1):

(a)any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a “flick knife” or “flick gun”; or

(b)any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever, or other device, sometimes known as a “gravity knife”,

Criminal Justice Act 1988 (banned knives in public places)

Section 139:

(2) Subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed except a folding pocketknife.

(3) This section applies to a folding pocketknife if the cutting edge of its blade exceeds 3 inches.

Section 141A:

(2) Subject to subsection (3) below, this section applies to—

(a)any knife, knife blade or razor blade,

(b)any axe, and

(c)any other article which has a blade, or which is sharply pointed, and which is made or adapted for use for causing injury to the person.

Offensive Weapons Act 1988 (Offensive Weapons) Order

1. Section 141 of the Criminal Justice Act 1988 (offensive weapons) shall apply to the following descriptions of weapons, other than weapons of those descriptions which are antiques for the purposes of this Schedule:

(a)a knuckleduster, that is, a band of metal or other hard material worn on one or more fingers, and designed to cause injury, and any weapon incorporating a knuckleduster;

(b)a swordstick, that is, a hollow walking-stick or cane containing a blade which may be used as a sword;

(c)the weapon sometimes known as a “handclaw”, being a band of metal or other hard material from which a number of sharp spikes protrude, and worn around the hand;

(d)the weapon sometimes known as a “belt buckle knife”, being a buckle which incorporates or conceals a knife;

(e)the weapon sometimes known as a “push dagger”, being a knife the handle of which fits within a clenched fist and the blade of which protrudes from between two fingers;

(f)the weapon sometimes known as a “hollow kubotan”, being a cylindrical container containing a number of sharp spikes;

(g)the weapon sometimes known as a “footclaw”, being a bar of metal or other hard material from which a number of sharp spikes protrude, and worn strapped to the foot;

(h)the weapon sometimes known as a “shuriken”, “shaken” or “death star”, being a hard non-flexible plate having three or more sharp radiating points and designed to be thrown;

(i)the weapon sometimes known as a “balisong” or “butterfly knife”, being a blade enclosed by its handle, which is designed to split down the middle, without the operation of a spring or other mechanical means, to reveal the blade;

(j)the weapon sometimes known as a “telescopic truncheon”, being a truncheon which extends automatically by hand pressure applied to a button, spring or other device in or attached to its handle;

(k)the weapon sometimes known as a “blowpipe” or “blow gun”, being a hollow tube out of which hard pellets or darts are shot by the use of breath;

(l)the weapon sometimes known as a “kusari gama”, being a length of rope, cord, wire or chain fastened at one end to a sickle;

(m)the weapon sometimes known as a “kyoketsu shoge”, being a length of rope, cord, wire or chain fastened at one end to a hooked knife;

(n)the weapon sometimes known as a “manrikigusari” or “kusari”, being a length of rope, cord, wire or chain fastened at each end to a hard weight or hand grip;

o) a disguised knife, that is any knife which has a concealed blade or concealed sharp point and is designed to appear to be an everyday object of a kind commonly carried on the person or in a handbag, briefcase, or other hand luggage (such as a comb, brush, writing instrument, cigarette lighter, key, lipstick or telephone);

p) a stealth knife, that is a knife or spike, which has a blade, or sharp point, made from a material that is not readily detectable by apparatus used for detecting metal and which is not designed for domestic use or for use in the processing, preparation or consumption of food or as a toy;

q) a straight, side-handled or friction-lock truncheon (sometimes known as a baton);

r) a sword with a curved blade of 50 centimetres or over in length; and for the purposes of this sub-paragraph, the length of the blade
shall be the straight-line distance from the top of the handle to the tip of the blade.

Appendix Q

Legal Aid funding for Confiscation Proceedings

This appendix explains the funding for *post-conviction* Proceeds of Crime work including confiscation orders, the associated enforcement proceedings, relevant jurisdiction and submission of claims.

Confiscation pursued under either The Criminal Justice Act 1988 (CJA) and The Drugs Trafficking Act 1994 (DTA)

Where the prosecution commence confiscation proceedings under either the CJA or DTA as a result of the case involving criminal conduct predating 23rd March 2003, the proceedings may span **both** the Crown and High Court jurisdiction and as such two separate representation orders may be required.

Following commencement of confiscation proceedings and provided the instructed defence team hold a valid Crown Court representation order, all work up to and including the making of the confiscation order will be covered under that representation order provided they are heard within the jurisdiction of the Crown Court. This includes any work associated with varying a restraint order for a defendant.

Post the making of a confiscation order and where it becomes apparent the defendant will need to apply for a Certificate of Inadequacy (CIA), or the prosecution make any other confiscation related application(s) to the High Court, the defence team will need to submit an application directly to the High Court for a representation order to be paid for any work connected to those proceedings.

The Crown Court representation order will only cover a defence team up to the lodging of the application with the High Court. All work post-lodging should be recorded and billed to the Senior Courts Costs Office at the Royal Courts of Justice.

Once the High Court has determined the outcome of the CIA or Prosecution application as appropriate, and the proceedings have subsequently been returned to the Crown Court jurisdiction, all work will revert to being covered and remunerated under the original representation order for the Crown Court.

Defence teams should note the following:

- where a post-confiscation order transfer takes place, the incoming team should ensure that they apply for and hold a valid Crown Court representation order, and where appropriate a High Court representation order, in order to claim payment. Failure to obtain both may result in work being disallowed in part or in full.

- any worked claimed in relation to post-conviction positive advice on appeal will be disallowed on assessment as it should be claimed elsewhere.

- the LAA's Crown Court means teams must be supplied with copies of all restraint orders, including variations, as well as copies of the confiscation order and associated schedule of assets.

  They should be emailed to poca@justice.gov.uk with the defendant(s) name and MAAT number in the heading

The payment process for advocates and litigators crown court work is outlined at the end of this appendix.

Confiscation pursued under The Proceeds of Crime Act 2002 (POCA)

As all aspects of the proceedings are heard within the jurisdiction of the Crown Court, provided the defence team holds a valid representation order a claim may be submitted for assessment as outlined below.

Submission of Claims for Crown Court Work

All claims relating to Crown Court work should be submitted for assessment to the Criminal Cases Unit (CCU) (which incorporates the National Taxing Team). They should be submitted with the supporting evidence as follows:

- Advocates should submit a PA1 form to advocatespoca@justice.gov.uk
- Litigators should submit as follows:
  -Profit costs below £2,000 – PL1 submitted to pocafastrak@justice.gov.uk
  -Profit costs of £2,000 or above – PL2 to poca@justice.gov.uk
- VHCC cases should use the VHCC electronic claim form.

Forms and guidance are located at: https://www.gov.uk/guidance/claims-paid-out-of-the-legal-aid-fund

Enforcement Proceedings in the Magistrates' Court

As these are a fresh set of proceedings instigated by the Prosecution all defence teams **must** apply for a fresh representation order, irrespective of whether they have previously represented the defendant(s) in the Crown Court and High Court if appropriate.

Where the case requires additional work outside of the Magistrates Court, e.g., variation of a restraint order or CIA application, the defence **must ensure** they also hold a representation for the appropriate court, applying for a transfer of representation if they did not represent the defendant in that court.

Submission of Claims for Magistrates Work

Enforcement Proceedings are automatically non-standard fixed fees and should be submitted as follows:

CRM 7– Litigator only cases
CRM8 – Litigators and assigned counsel cases

Where counsel have been instructed, they should submit their claim via the instructed litigator, who should include counsel's supporting evidence as part of their claim.

Appendix R

Video recorded cross-examination under Section 28, Youth Justice and Criminal Evidence Act 1999

Section 28 of the Youth Justice and Criminal Evidence Act (YJCEA) 1999 allows for a vulnerable or intimidated witness to pre-record their cross-examination before the trial. Both their recorded evidence and the recorded cross-examination is played at trial, so the witness does not necessarily need to be present.

The YJCEA introduced a range of special measures to support victims and witnesses to give their best evidence and help reduce the anxiety associated with attending court. The measures include but are not limited to, giving evidence by TV live link (section 24) or being screened from the defendant in court (section 23); video-recorded evidence submitted by the Police as evidence in chief (section 27); the removal of wigs and gowns (section 26); clearing the public gallery in certain cases (section 25); aids to communication (section 30); and the use of an intermediary (section 29).

Vulnerable Witness Provision

Vulnerable witnesses are those who:
- had received a s.27 direction (i.e., had their evidence in chief pre-recorded before the trial), and;
- were under the age of 18 at the time of the special measures hearing, or
- suffered from a mental disorder within the meaning of the Mental Health Act 1983 or had a significant impairment of intelligence and social functioning, or have a physical disability or a physical disorder, and the quality of their evidence is likely to be diminished as a consequence.

Section 28 provision for child and vulnerable adult witnesses is available across all Crown Courts.

S.28 provision for intimidated witnesses (namely adult complainants in sexual offences and Modern Slavery Act offences) is currently being piloted in Wood Green, Isleworth, Harrow, Durham, Leeds, Liverpool and Kingston-upon-Thames.

Legal Aid Arrangements

Litigators and advocates who are instructed in cases where pre-recorded cross-examination hearings take place should claim those hearings as days of trial under the Litigators' Graduated Fee Scheme (LGFS) and the Advocates' Graduated Fee Scheme (AGFS) respectively. If a case does not proceed to trial following a pre-recorded cross-examination hearing, the litigator and advocate should claim graduated fees for a trial. In these circumstances, the duration of the trial will be the number of days of pre-recorded cross-examination.

Litigators should claim through the CCD online billing system and use the date of the first pre-recorded cross-examination hearing as the start of the trial. Advocates should include attendance at pre-recorded cross-examination hearings in the Daily Attendance Fee section of CCD system, including the dates attended. Both litigators and advocates MUST make clear on the 'Additional Information' sections that the claim relates to a Section 28 case.

Glossary

CBAM	The LAA's Criminal Bills Assessment Manual, for guidance on legal aid at the police station and magistrates' court.
CCCD	Claim for Crown Court Defence, the billing platform which enables providers to submit claims for payment
CCLF	The LAA's litigator fee tool
CCR	The LAA's advocate fee tool
CCU	The LAA's Criminal Cases Unit.
Common Platform	A digital case management system which allows all parties secure access to case information in one place
CWA	Contracted Work and Administration, a digital billing service for Crime Lower work, contracts and schedules
DCS	Digital Case System, used to access, present and prepare information on a case
Determining / Appropriate Officer	The LAA officer who determines the amount payable for an LGFS or AGFS claim and pays accordingly.
Egress	A secure file sharing platform used by the CPS and police to upload multimedia evidence and large files
EPF	Evidence Provision Fee.
FCMH	Further Case Management Hearing.
HMCTS	His Majesty's Courts and Tribunals Service.
LASPO	The Legal Aid, Sentencing and Punishment of Offenders Act 2012.
LF1	The form for claiming for payment under the LGFS.
LAA	Legal Aid Agency.
PII hearing	Public Interest Immunity hearing.
PPE	Pages of prosecution evidence.
Remuneration Regulations	The Criminal Legal Aid (Remuneration) Regulations 2013, as amended.
Representative	An advocate or litigator.
PTPH	Plea and Trial Preparation Hearing. The hearing at which the defendant may enter a plea.

Trial Advocate	As of 5 May 2015, this is the advocate who can claim for advocacy fees in a Crown Court case.
VHCC	Very High Cost Case.