

Graduated Fees

February 2011

Version	Last Date Amended	Reason
February 2011	10/3/2016	This version was amended to reflect that advocates can claim for confiscation proceedings according to the rates set out at paragraph 11, schedule 1 of the Criminal Defence Service (Funding) Order 2007, inserted by the Criminal Defence Service (Funding) (Amendment No. 2) Order 2009, No. 2086. The paragraphs stating that Special Preparation is payable for confiscation work has been removed (in accordance with Costs Judge decision R v Adeniran 2015, SCCO 50/15, 10 June 2015).

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Preface

History and Background

1. The Advocates Graduated Fee Scheme (AGFS) was introduced in 1997 under the Legal Aid in Criminal and Care Proceedings (Costs) (amendment) (No. 2) Regulations 1996. The scheme has been through a number of changes and further information can be found at <http://www.hmcourts-service.gov.uk/cms/781.htm>. However, the key updates and subsequent amendments to the guidance are listed below:
2. 30 April 2007 – The Criminal Defence Service (Funding) Order 2007 (SI1174) amended the AGFS and scheme 4 was introduced. Any text coloured red in this guidance is in relation to the changes made by the introduction of Scheme 4.
3. November 2008 – The guidance was updated and any text coloured green in this guidance is in relation to any changes made from this date.
4. 27 April 2010 – The Criminal Defence Service (Funding) (Amendment No. 2) Order 2010 (SI 1181) and The Criminal Defence Service (Funding) (Amendment No.3) Order 2010 (SI 1358) introduced AGFS Scheme 5 and reduced all Advocates Graduated Fees by 4.5%.
5. There will be further reductions in April 2011 and April 2012. Fees under this scheme will be paid by the NTT until the LSC assumes authority for all graduated fees in 2011. The new rates apply to cases with a representation order dated on or after 27 April 2010 (but before 1 April 2011). Disbursements such as travel and accommodation, where allowed, are not „fees“ and are therefore unaffected by the reduction.
6. February 2011 – AGFS guidance is updated before the Legal Services Commission (LSC) assumes responsibility. The LSC, NTT and MoJ agreed to only make minimal changes to the AGFS guidance to ease the transfer of the AGFS process to the LSC. References to the NTT or HMCS have therefore not been amended. However, where appropriate, the paragraphs that contain these terms will also apply to the LSC and/or determining officer.
7. A comprehensive revision of the AGFS and LGFS guidance is expected in October 2011.

AGFS transfer timetable

8. All AGFS claims with a representation order date on or after 1 January 2011 will be submitted to the LSC as follows:
 - a) From 7 February 2011 the LSC will process all claims relating to representation orders dated from 1 January 2011 and all claims in the Wales and South West court regions.
 - b) From 28 February 2011 the LSC will process all claims in the North and Midlands court regions.
 - c) From 18 April 2011 the LSC will process all claims, completing the transfer.

9. There are two types of guidance in the document that are distinguished by a different font:

A1 Guidance written in this font covers areas where there is very little or no discretion. It will include simpler definitions of the regulations and explanations of Masters"/Cost Judges" decisions⁵.

R – v – Bloggs (X1)

B1 Guidance in this font covers areas where the regulations are open to interpretation. The National Taxing Team, Legal Services Commission and Ministry of Justice will consider and recommend that this is the line to take.

10. The numbers in subscript throughout the guidance refer to the Table of Ancillary Fees in Chapter V.

11. The guidance will be updated at regular intervals with Masters"/Cost Judges" decisions and any other areas that have been identified as requiring clarification. The AGFS guidance supersedes any other guidance issued by MoJ/Court Service/LSC. To the extent that the principles relating to the AGFS and LGFS schemes are the same, for any issue that is not addressed in this guidance, please refer to the LGFS guidance (and vice versa).

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A Definitions I (cases on indictment)

- A1(1(1))** 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 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.
- A1A** Conversely where two or more indictments were committed/ sent separately and then subsequently joined, this should be treated as one case.
- A2(1(2))** The pages of evidence for payment are defined as the committal or served documents (or similar for transfer and sent up cases) including records of interview, photos or schedules of financial data plus any documents included in notices of additional evidence. **Material provided electronically e.g. on CD Roms, or by other means of electronic communication, does not count – only material served as a hard copy should be counted.**
Payment for electronic evidence served solely in electronic format should be claimed as Special Preparation in accordance with paragraph 14(1)(c) and 3 (c)
- R - v - Rigelsford (X42)**
- A3** Any documentation provided outside the committal bundle or without a written notice of additional evidence should not be included in the page count.
- R – v – Sturdy (X9)**

A3A A notice of additional evidence is not defined in the regulations. The CPS routinely serves additional evidence under a standard NAE but not all prosecuting authorities follow the same format. Therefore, in limited circumstances, a formal document from the prosecuting authority, identifying the new evidence as being used evidence and formally served as part of the prosecution case may be sufficient.

R – v – Sales 2010

A4 (1.2) When a transcript has been expanded, either by the prosecution or the defence, because the one provided by the prosecution was deemed to be insufficient to go before the jury, the fullest transcript produced should be included in the page count. The version that is in the committal bundle should also be counted.

R – v – Brazier (X5)

A4A Transcripts of video evidence asked for by the judge should be included in any page count.

A5 Any versions of a transcript that have been edited for the purpose of being put before the jury should not be counted.

A6 Title pages and separator pages should not be counted.

A7 Any page that is allowable is to be counted as one page regardless of the number of lines. No allowance should be made for either small or large typefaces.

R – v – El Treki (X26)

A8 The length of trial uplift is to be applied to the trial of the individual defendant represented and not to the length of trial of any codefendants

DCA - v - Stork (X46)

Additional PPE guidance was published in December 2009 and this can now be found in Annex 5.

B Definitions II (cases on indictment)

- B1 (3(1))** Every indictable offence falls within the scheme, and for the majority of commonly prosecuted indictable offences the class under which it is listed for remuneration purposes is in the Table of Offences in Part **6** of Schedule **1**. Unless the advocate successfully seeks a reclassification of the offence (see E.11) indictable offences not appearing in the Table of Offences shall be deemed to fall within class H.
- B2 (2(1))** All Legal Aid cases in the Crown Court that are not contracted by the Complex Crime Unit of the Legal Services Commission for whatever reason are paid under the Graduated Fee Scheme
- B3** Only applicable to pre 3 October 2005 Representation Orders.
- B4** Only applicable to pre 3 October 2005 Representation Orders.
- B5** Only applicable to pre 3 October 2005 Representation Orders
- B6** Only applicable to pre 29 October 2001 Representation Orders
- B7** The Basic Fee covers all preparation (including viewing or listening to evidence on tapes or discs), the S51 hearings, the first PCMH, the first three conferences or views and the first two days of trial. Any subsequent PCMH"s and breach of bail hearings, will, for remuneration purposes, be classified as a Standard Appearance Hearing. Only after a case has had a PCMH and four further Standard Appearance Hearings will a further Standard Appearance Fee be paid. There is no longer a separate fee for an unattended advocate attending court.
Standard appearances include those incurred both before and after the basic fee is paid. A Standard Appearance after the main hearing could therefore still count towards the four SAFs included within the basic fee.
- B7A** A Standard Appearance is classified as any of these following hearings:
- the second, and subsequent PCMH
 - a pre-trial review
 - the hearing of a case listed for plea which is adjourned for trial
 - any hearing (except a trial, PCMH, PTR 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
 - 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) of Part 1 of Schedule 1.
- B8** Where a trial continues in excess of two days, the third and subsequent days are paid

as daily attendance fees as appropriate to the offence for which the assisted person is tried and the category of the trial 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 second day of trial, two daily attendance fees will be paid in addition to the basic fee.

- B9** For graduated fee purposes if a trial is aborted and another jury is sworn either the same day or the following working day, then the case is considered to be one trial. If there is a gap of more than one working day then it is considered to be a retrial.
R – v - Gussman (X14)

However, these parameters may be extended in certain circumstances

R – v – Khan (X14A)

- B10** A trial is deemed to have started when the jury is sworn and evidence is called. (see also F7)

R v Rahman (X21)

R v Baker and Fowler (X21A)

- B10A** Whenever a judge has directed that there be a preparatory hearing under Section 29 of the Criminal Procedure and Investigations Act 1996, the first preparatory hearing shall be deemed as the start of the trial. This, and any subsequent preparatory hearing, will therefore be included in the length of trial calculation irrespective of whether the preparatory hearing(s) is/are held immediately before the rest of the trial or at an interval of some months before. Consequently, no other fee should be paid for the attendance at the preparatory hearing(s).

R – v - Jones (X17)

- B11** Only applicable to pre 29 October 2001 Representation Orders

- B12** If the Court considered other matters for days or parts of days before a jury is sworn such as disclosure, admissibility abuse of process or PII hearings, then these whole days are not treated as part of the trial and are paid the appropriate rate for a separate hearing. **Such hearings do not count as Standard Appearance Hearings for the purpose of calculating the basic fee (See B7 ante).**

- B12A** Whenever an abuse⁸, disclosure⁹, admissibility⁵, PII or other pre-trial hearing takes place, the result of which leads to the hearing becoming the main hearing, i.e. acceptable pleas are entered or the prosecution offers no evidence, then no fixed fee is to be paid in addition to the graduated fee. If the hearing was before the jury were sworn and evidence called and resulted in a guilty plea or the prosecution offering no evidence (or otherwise disposed of) the hearing type must be a cracked trial (or guilty plea if no effective PDH/PCMH took place).

B13(2(6)) 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.

R – v – Gemeskel (X2)

B14 If the advocate was different for the Newton Hearing from the hearing that the guilty plea was taken, they are treated as if they had stood in for the original advocate.

B15 **Only applicable to pre 30 April 2007 Representation Orders**

B16 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 or cracked trial depending on when the plea was entered (see chapter F). The advocate at the non-effective hearing **may be paid a fixed fee subject to the number of such hearings (see B 7 ante).**

R – v - Riddell (X3 R – v – Hunter-Brown (X29 R – v – Ayres (X32)

B17 (18) If the Crown discontinues a case at the PDH/PCMH 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 (see also F3).**

B18 **Only applicable to pre 30 April 2007 Representation Orders**

B19 **Non sitting days cannot be included as a part of the trial.**

R –v - Nassir (X13)

B20 **(2(4))** 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**, he or she must be paid two Graduated Fees, **subject to paragraph F10A, i.e. the case has been re-fixed or re-warded for trial.** However payment for the new trial is calculated as follows:

- 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.**

- A claim for payment for a trial before the retrial has taken place can only be based on the full fee due to the fact that the percentage reduction will depend on whether or not the retrial proceeds to trial or cracks. If the advocate wishes the reduction to be made to the first trial. they will have to wait until the retrial has concluded before submitting a claim.
 - Fixed Fees are not affected. Retrials that exceed 40 days are reduced except for the daily attendance fee for days over 40.
 - Where there is a change of plea at or before the start of the second trial (or where the prosecution do 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% (subject to F10A)
 - Where there is a change of plea at or before the start of the second trial (or where the prosecution do 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% (subject to F10A).
- (7(4))
- Where a cracked trial fee is to be paid following the ordering of a retrial, it is calculated on the basis of a cracked trial in the final third.

B20A The same provisions apply where a retrial is ordered following a trial that was privately funded.

B21 (2(5)) 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 paragraph F10A, i.e. the case has been re-fixed or re-warned for trial.

B22 (26) If there is a hearing to decide whether a defendant is unfit to plead, or to stand trial (called a "fitness hearing"), the Graduated Fee is calculated as follows:

1. If a trial takes place at any time after the fitness hearing, the length of the fitness hearing is added to the length of the trial for calculating the Graduated Fee.

2. If, however, no trial takes place because the defendant is found to be unfit to plead or stand trial the advocate **should be paid**

- A trial Graduated fee (including the full Page & Witness allowance) based on the length of the fitness hearing and
- Any hearing under section 4A of the Criminal Procedure (Insanity) Act 1964; or
- A cracked trial fee, whichever the advocate elects.

3. If the defendant subsequently pleads guilty the advocate may choose either:

- A trial Graduated Fee (including the full Page & Witness allowance) based on the length of the fitness hearing or
- A guilty plea fee.

B23 (3(f)) If there is a fitness hearing, the advocate may choose whether the class of offence is:

- that charged on the indictment, or
- class D.

B24 Any case in which a Restriction Order is made under Section 41 of the Mental Health Act 1983 falls within Class A, regardless of the offence.

B25(25) If a trial lasts for more than 40 days, and the case has not been taken up under a Very High Cost Case contract (under the provisions of paragraph 2(2)(c) of Schedule 4 (see B2)) the advocate shall receive a fee for each day by which the trial exceeds 40 days, (and the trial advocate or substitute advocate actually attends) as set out in the Table following paragraph 25.

B26 (27) If an advocate is retained, solely for the purposes of cross-examining a vulnerable witness under sections 34 & 35 of the Youth Justice and Criminal Evidence Act 1999, he is paid a trial graduated fee (including the full page & witness allowance). However, the advocate calculates the daily attendance fee from the number of days of his attendance at court.

B27 (28) If an advocate is specifically assigned under a representation order solely for the purposes of providing written or oral advice, he shall 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***

B28 (29) Where an advocate is specifically assigned under a representation order to mitigate on the defendants behalf solely at a sentencing hearing, he shall be paid the appropriate fixed fee for that sentence hearing, together with such reasonable preparation at the prescribed hourly rate. *Preparation time is only paid, in addition to the sentence hearing fixed fee, where an advocate is assigned specifically under a representation order to appear at a sentence hearing either because the defendant was not represented earlier in the case or the original advocate was sacked or allowed to withdraw.*

B29 (20) The Instructed Advocate should be the advocate notified to the court in writing on or before the PCMH, and if that is not done, the advocate who appears at the PCMH will be deemed to be the Instructed Advocate. If the Instructed Advocate had been identified before the PCMH, they may withdraw if the date is fixed for trial on or before the PCMH and they are unavailable to conduct the trial because of other pre-existing commitments. 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.

B30 (20(9)) An instructed advocate must remain an instructed advocate at all times, except where;

- a date for trial is fixed at or before the PCMH and the instructed advocate is unable to conduct the trial due to his other pre-existing commitments
- he is dismissed by the assisted person or the litigator;
- he is required to withdraw because of his professional code of conduct.

Where this happens, a new Instructed Advocate must be nominated and notified to the court as soon as possible. The new Instructed Advocate will be responsible for claiming all fees in the case, including those of their predecessor(s), and for paying such fees to the appropriate advocates,

B31 (21(4)) In cases where more than one advocate is assigned, i.e. Queens Counsel and junior advocate or two junior advocates, there will be an Instructed 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.

B32 (21(5)) Advocates retained pursuant to paragraphs 27 (Cross-examination of vulnerable witnesses), 28 (Provision of written or oral advice) and 29 (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.

B33 Where the Instructed 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 Instructed 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.

B34 The fees of a Noting Junior should be claimed via the Instructed Advocate.

C Appeals and Committals and breaches of Crown

Court orders

- C1 (1)** A case is defined as a single notice of appeal, a single committal for sentence¹¹ whether on one or more charges, or a single breach of a Crown Court order. **The relevant fixed fee is payable for each day the case proceeds as part of the main hearing.**

R v Hines (X24)

D Exceptions

- D1** Any case that the first Legal Aid order for work to be done in the Crown Court was before 1st January 1997 should be claimed EPF.
- D2** Only applicable to pre 29 October 2001 Representation Orders
- D3** Only applicable to pre 29 October 2001 Representation Orders
- D4** Only applicable to pre 29 October 2001 Representation Orders
- D5** Only applicable to pre 29 October 2001 Representation Orders
- D6** Only applicable to pre 30 April 2007 representation Orders.

E Offences

- E1(3(1))** The majority of commonly prosecuted indictable offences are classified as shown in the Table of Offences. Any indictable offence which is not classified, is automatically classified as Class H. However See E11.
- E2** Where a case has more than one count on the indictment in differing classes, then the advocate must select one offence and the fee is based on that offence. The fee can only be based on an offence with which the defendant represented by the advocate is charged on the indictment. The advocate cannot claim for an offence that only codefendants are charged with
- R v Mira X54
- E3 (3(1)(b))** Conspiracy, incitement and attempts of offences are treated the same as the substantive offence would be.
- E4** New offences can only be categorised after the regulations have been amended.

E5 For a robbery to be treated as an armed robbery (offence group B), 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.

R –v - Stables (X12)

E6 Although the statutory provision of burglary - S9(1) is not on the list, statutory provision of the sentence - S9(3) is included, so burglary falls in class E

E6A A charge of burglary falls within class E, notwithstanding the fact that an allegation of inflicting GBH may have been made

R v Crabb

E7(3(1)(c)) It is for the advocate to provide evidence to support any valuation over £30,000 (or £100,000) that takes an offence into a higher class if the value is not specified on the indictment.

E8 Where a count is in the form of a specimen then only the value of the count should be included.

E9(3(1)(d)) 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.

E10 **TICs should not be taken into account when calculating the value.**

R–v – Knight (X35)

E11 (3(2)) Where an advocate is dissatisfied with the classification of class H of an offence not listed in the table of offences, he may apply to the Determining Officer to reclassify the offence.

E12 Where the advocate is dissatisfied with the Determining officer's classification of the offence, the advocate may seek a redetermination under article 29.

F Guilty Pleas and Cracked Trials

- F1** A cracked trial fee may be paid (see F10) for a hearing regardless of whether or not there has been a change of plea. Where a QC or leading junior had not previously been assigned when pleas were taken, they can still claim the appropriate graduated fee.
- F2** At any hearing where there is a change of plea that hearing becomes the main hearing for a cracked trial.
- F3 (18)** 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/cracked trial in the first third is paid, appropriate to the offence group and the category of advocate.
- F3A(i)** Where the case is discontinued or otherwise disposed of after the service of the prosecution case, either at the PCMH, or at any other time before a PCMH has taken place, the advocate shall receive a guilty fee/cracked trial fee in the first third. (See examples at Annexe 1)
- F3A(ii)** Where there is an application to dismiss, the fee payable will depend on the outcome and the length of the hearing. (see examples at Annexe 1).
- F3B** 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 (see also B11).
- F4(1(1))** Any case in which no PDH/PCMH took place, but the case was listed for trial and did not get to trial or Newton Hearing, is deemed to be a cracked trial.
- F5** Any case that has a paper PDH/PCMH is deemed to have had a PDH/PCMH for determining the type of case.
- F6** Change of plea from not guilty between PDH/PCMH hearings need not attract a cracked trial graduated fee.
- The Lord Chancellor v Taylor (R v Beecham) (X11) (see also F10)
- F6A** Following a PDH/PCMH 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.
- R v Baxter (X22)
- F7** Once a trial has started with the jury being sworn and evidence called a case cannot attract a cracked trial fee in any circumstances (see also B8). R – v - Maynard (X19), R – v - Karra (X19A).

F8 There is no provision in the regulations which govern graduated fees that a cracked trial fee should be paid on the grounds that the indictment was amended before pleas were taken.

R v Minister (X23)

F9 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 to which they would have been entitled had they selected a different offence or principal case

F10 (1(1)) The essence of a cracked trial is that after the conclusion of the Plea and Direction/PCMH hearing or hearings, 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 plea and directions hearing to allow the prosecution time to decide whether or not to proceed would not qualify for a cracked trial fee.

R –v – Mohammed (X27)

F10A 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.

R-v- Pelepenko (X27A) This follows the line taken in **R v Mohammed (X27)** and the definition of a cracked trial contained therein (see **F10**)

F.11 It is now 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. (See Court Business Binder Item A1.2). 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 (see definition) in such circumstances so long as the criteria in guidance **F10** above are met.

F12 (7(3)) There is a new concept of cracked trials in the first, second and final third. A cracked trial in the first third is paid at the same rate as a guilty plea. The payment that an advocate will receive will depend on in which third the crack occurred. Where the period between the date after a case is either fixed or placed into a warned list and the date before the fixed date or the beginning of the warned list is not divisible into three equal periods, then any additional days are added to the final third. This calculation only applies to the first placing in a warned list

or the first fixture given. The placing in any subsequent warned list, or the breaking of a fixture to a later date beyond the end of the first warned list or first fixture will result in payment being made in the final third.

F13 **Where there is a change of plea after a re-trial is ordered, see B20 ante.**

G PDHs, PCMHs and PTRs

- G1** Only applicable to pre 29 October 2001 Representation Orders
- G2** Only applicable to pre 29 October 2001 Representation Orders
- G3** Only applicable to pre 29 October 2001 Representation Orders
- G4** Only applicable to pre 29 October 2001 Representation Orders
- G5** Only applicable to pre 30 April 2007 Representation Orders
- G6 (9(3))** Where a paper PDH/PCMH takes place, a fixed fee of £30₂ may be claimed. This fee is not reclaimed from the subsequent graduated fee.
- G7 (9(1))** The fee for attending the first PCMH is incorporated into the basic fee.
- G8 (9(1))** Any subsequent PCMH will, for remuneration purposes, be classified as a Standard Appearance. Only after a case has had a total of five Standard Appearance Hearings will a Standard Appearance fee₁ be paid.

H Bench Warrants and Trials Stood Out

- H1 Only applicable to pre 30 April 2007 Representation Orders.
- H2 Only applicable to pre 30 April 2007 Representation Orders.
- H3 A cracked trial or guilty plea fee **is not** paid as a result of the issuing of a warrant.
- H4 Only applicable to pre 30 April 2007 Representation Orders
- H5 Both warrants backed and not backed for bail are included.
- H6 The fee paid to the advocate who attended when the warrant was executed will depend on what happened at that hearing. See H11 below
- H7 Only applicable to pre 30 April 2007 Representation **Orders**
- H8 (13) A fixed fee is payable whenever a trial does not proceed because of an adjournment for any reason.³
- H9 Only applicable to pre 30 April 2007 Representation Orders
- H10 Only applicable to pre 30 April 2007 Representation Orders
- H11 Hearings at which Bench Warrants are executed, or other hearings dealing with breach of bail are to be treated as any other ancillary hearing, and the same conditions shall apply i.e. there must be five hearings attracting a standard appearance fee before any separate fee is payable.
- H12 As long as a bench warrant remains outstanding, no fee can be paid. However, if the trial proceeds in the absence of the defendant, or the proceedings are otherwise disposed of, the appropriate fee can be paid after the conclusion of the proceedings.

I Abuse/ Disclosure/ PII Hearings/Admissibility as Evidence (half day/ day fee)

- I1 (10(1)) Any hearing 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 relating to the question of the admissibility as evidence of any material, (including bad character evidence) should (subject to I2 below) attract either a half day⁴ or a full day fixed fee⁵.
- I2 (10(2)) If the hearing is on the same day as the main hearing then no separate fee is paid but the hearing is included in length of the main hearing.

- I3 A hearing relating to the failure to disclose material e.g. the prosecution not complying with a previous order, then the half-day/ full day fee does not apply and the standard appearance fee₈ should be claimed **subject to the requirements of B7_ante.**
- R-v-Russell (X31)
- I4 For the full day's fee₄ to apply, the hearing must have **started before lunch** and continue **after lunch.**
- I5 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.
- I6 (10(1)(e)) 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.
- I7(18(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.

J Confiscation Hearings (half day/ day fee)

- J1 (11(1) & 11(2)) A Drug Trafficking Act 1994 or Criminal Justice Act 1988 or Proceeds of Crime Act 2002 confiscation hearing attracts a half day₄/ day fee₄ in addition to any other fee for work done that day. i.e. if there is an effective DTA hearing at the same time as a sentence, then both the sentence fee₆ and the confiscation fee₄ are allowed.
- J2 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.
- J3 (11(2)(a)) For the full day's fee₄ to apply, the hearing must have **started before lunch** and continue **after lunch.**
- J4 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.
- J5 For a confiscation hearing to have proceeded, evidence must have been considered even if no order is subsequently made. If the prosecution decide not to apply for an order, then no fee is allowed and either a sentence fee₇ or standard appearance fee₈ is allowed **subject to the requirements of B7 ante.**

An advocate who represents a defendant at confiscation proceedings may claim fees in accordance with the rates set out at paragraph 11, schedule 1 of

J6 the Criminal Defence Service (Funding) Order 2007, inserted by the Criminal Defence Service (Funding) (Amendment No. 2) Order 2009, No. 2086.

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 NTT. The form to use can be accessed at: <https://www.gov.uk/claim-back-costs-from-cases-in-the-criminal-courts> . Confiscation Proceeding claims involving fewer than 50 PPE must be submitted to the LAA.

K Sentences

K1 (12(1)) A sentence hearing that lasts more than one day receives the sentence fee₇ for each day.

K2 A sentence hearing that takes place at the same time as a confiscation hearing attracts **both** the sentence fee₇ and the half day₄ or full day₄ confiscation fee.

K3 If a sentence is deferred at a hearing listed for sentence, then the advocate is entitled to the standard sentence fee₇ for that hearing and the deferred sentence fee₆ when the case comes back to Court after the period of deferral.

K4 Sentence fees should not be claimed when part of the main hearing.

K5 (29) Where an advocate is specifically assigned under a representation order to mitigate on the defendants behalf solely at a sentencing hearing, he shall be paid the appropriate fixed fee for that sentence hearing, together with such reasonable preparation at the prescribed hourly rate. Preparation time is only paid, in addition to the sentence hearing fixed fee, where an advocate is assigned specifically under a representation order to appear at a sentence hearing, **either because the defendant was not represented earlier in the proceedings, or the original advocate was sacked or allowed to withdraw.**

K6 The making of an anti-social behaviour order at the time of sentencing is remunerated as part of the sentence fixed fee only whether the application is contested or not.
R-v-Brinksworth(X44)

L Standard and Other Appearance Fee

L1 This fee₈ 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 B7 ante.**₁

L2 Only applicable to pre 29 October 2001 Representation Orders

L3 Only applicable to pre 29 October 2001 Representation Orders

- L4** The fee₈ 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 B7 ante.**
- R v Bailey (X16)**
- L4A** 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 B7 ante. See also H11 ante.**
- R v Bailey (X16)**
- L5** The fee₈ should be paid for any applications not specifically covered in paras **10, and 11** of the graduated fee regulations regardless of the length of time of the hearing (see chapters I and J) **subject to the conditions set out in paragraph B7 ante.**
- L6 (13)** The fee₃ is paid when a trial is stood out **for any reason.**
- L7** [The fee₁ is paid under Paragraph 17\(2\) of Schedule 1 when an appeal, committal or breach is ineffective. \(See chapter C\).0](#)
- L8** **Only applicable to pre 30 April 2007 Representation Orders**
- L9 (18(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.

M Special Preparation

- M1(14)** An hourly rate fee₁₀ is paid for special preparation in any case on indictment when work is necessarily done that is **substantially** greater than the normal amount for cases of the same type and the extra work is done because of a **very** unusual or novel point of law or a **very** unusual or novel fact.
- R –v – Johnson (X34)**
- M1A(14(1)(b))** An hourly rate fee may be paid for special preparation where the prosecution pages of evidence exceeds 10,000 and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee.
- M2(14(3)(b))** [Payment should be made for the number of hours considered reasonable to read the pages in excess of 10,000.](#)

- M3** Only the following work is deemed to be preparation and eligible for payment: reading the papers, conferences with the defendant, written or oral advice on plea or appeal, written advice on evidence, contacts with the prosecution, viewing the scene of the crime or evidence at police stations, researching the law, preparing for examining witnesses, preparing submissions or any documents for the use at main hearing.
- M4** The following should not be included in the time allowed for special preparation: any travelling or waiting time, any submissions or documents that were not for the main hearing, any conferences not with the defendant or any oral advice on evidence.
- M5(14(5))** 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. The determining 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.
- M6** Any claim for special preparation should initially be considered by a determining officer at Court. If it is considered that the claim does not satisfy the criteria or has insufficient supporting documentation then the claim should be rejected. Courts should forward any claim that they think might qualify to the National Taxing Team for consideration. Without waiting for a decision, Courts should pay the remainder of the claim and pay any Special Preparation allowed as an additional claim later. *The advocate should be informed using the payment advice comment facility (F11) of any decision not to pay, any request for more details or notification that the claim has been passed to the NTT.*
- M6A** Following any request for redetermination from the advocate, the claim should be resubmitted to the NTT for consideration of the further representations made. Should the matter thereafter proceed to written reasons these will be provided by the NTT.
- R v Briers (X40)**
- M7** Each case should be treated on its own merits when considering what satisfies the criteria.
- M8** Special preparation cannot be claimed to make up a perceived shortfall in graduated fees due to a trial going short.
Meeke & Taylor v DCA (X47).
- M10(14(1)(c) and 14(3)(c))** Special preparation can be paid where any or all of the prosecution evidence is served in electronic form only, and the determining officer considers it reasonable to make a payment in addition to the graduated fee payable in the case. The special preparation fee is calculated from the number of hours considered reasonable to view the prosecution evidence.

For more information on special preparation, please refer to the Special preparation guidance in Annexe 4 and the relevant paragraphs in the PPE guidance in Annexe 5.

N Wasted Preparation

- N1(15(3))** An hourly rate fee¹⁰ for Wasted Preparation is only paid when there has been at least 8 hours of reasonable and eligible preparation.
- N2(15(2))** The hourly rate fee for Wasted Preparation is only paid when either of the following conditions is met:
- A trial lasting 5 days or more or
 - A cracked trial case that has more than 150 pages.
- N3(15(2))** Wasted Preparation is never paid in guilty pleas, appeals or committals for sentence.
- N4** In addition the advocate must satisfy at least one of the following circumstances to be eligible:
- (15(1)(a))** • The advocate is instructed to appear in other proceedings at the same time as the main hearing in the case and has been unable to secure a change of date on either hearing or;
- (15(1)(b))** • The fixed date of the main hearing is changed and there is an objection to the change on the grounds that the advocate is otherwise engaged or;
- (15(1)(c&d))** • The advocate is unable to attend due to public or judicial office.
- (15(1)(e))** The advocate is unable to attend due to public or judicial office. R v Shultz (X10).
- N5** Only the following work that is reasonably done is deemed to be wasted preparation and eligible for payment: reading the papers, conferences with the defendant, written or oral advice on plea or appeal, written advice on evidence, contacts with the prosecution, viewing the scene of the crime or evidence at police stations, researching the law, preparing for examining witnesses, preparing submissions and any documents for use at the main hearing.
- N6** The following should not be included in the time allowed for wasted preparation: any travelling or waiting time, any submissions or documents that were not for the main hearing, any conferences not with the defendant or oral advice on evidence.
- N7(15(5))** Evidence of the circumstance that applies and details of the reasonable preparation claimed must be submitted with the claim. In addition advocates must supply details of all the work that was carried out. The determining officer must be able to be satisfied that all the work claimed is eligible and reasonable preparation.

N8 The National Taxing Team should be consulted if Court Staff require guidance on what is reasonable preparation. In cases where advice has been given by the NTT and the matter thereafter proceeds to written reasons, these will be provided by the NTT.

N10 Claims under this heading should be incorporated within the claim of the final Instructed Advocate. Separate claims from individual claimants should not be accepted.

O Conferences, Views, Travelling to Defendants and Taped Evidence

- O1 (16)** An hourly rate fee₁₂ is allowed for time reasonably spent with a prospective or actual expert witness **subject to certain criteria.**
- O2(16(1)(a))** Pre-Trial conferences not at court are subject to meeting the criteria and must be reasonable.
- O3(16(2))** **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. Further conferences and views are payable subject to the time limits in paragraph O9. 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. Travel time for conferences is only payable if the advocate satisfies the determining 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.**
- O4(16(1))** Travel time and travel expenses are allowed for views of the scene of the alleged offence, conferences with non-expert witnesses or visits to see prosecution evidence, provided they are reasonably incurred.
- O5** Only applicable to pre 30 April 2007 Representation Orders
- O6** Only applicable to pre 30 April 2007 Representation Orders
- O7** Only applicable to pre 30 April 2007 Representation Orders
- O8** Only applicable to pre 30 April 2007 Representation Orders
- O9** Conferences where held, will be paid as follows:
- (16(3)(a))** 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 plea and case management 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.
- (16(3)(b))** 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 plea and case management hearing 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.

(16(3)(c)) For trials lasting not less than 36 days, and cracked trials where it was accepted by the court at the plea and case management hearing that the trial would last not less than 36 days – 3 additional conferences or views, each not exceeding 2 hours.

Unless the Determining 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. They will also be rounded up to the nearest 15 minutes.

O10 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 Instructed Advocate. However, paragraph 16(2) of Schedule1 requires that the appropriate officer is satisfied that the work was reasonably necessary.

R – v – Bedford (X36)

O11 Only applicable to pre 30 April 2007 Representation Orders

O12 Only applicable to pre 30 April 2007 Representation Orders

P Unattended Advocates

P1 Only applicable to pre 30 April 2007 Representation Orders.

P2 Only applicable to pre 30 April 2007 Representation Orders.

P3 Only applicable to pre 30 April 2007 Representation Orders.

P4 Only applicable to pre 30 April 2007 Representation Orders

Q Noting Brief and Stand-Ins

- Q1 (19)** A daily fee is payable for advocates that take a note of the proceedings where the defendant's case falls within the graduated fee scheme¹³ and legal aid has been extended for this purpose. **These noting brief fees should be claimed by the Instructed Advocate.**
- Q2** Where a trial advocate fails to 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.

R Uplifts

Main Hearings Only

- R1 (22) 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.
- R2 (22(2)) For two cases to be heard concurrently, the main hearing in each case will have been heard at the same time.
- R – v – Fletcher (X6)
R – v – Fairhurst (X6A)
- R3 (22(2)(b)) Only the pages and witnesses for the principal case are counted when there is more than one case.

Ancillary Hearings

- R4 (22(3)) For the following ancillary hearings, **(where a separate fee is payable)** an uplift of 20% of the hearing fee is allowed for each additional defendant that the advocate represents at that hearing:
Pleas and Directions/ Pre-Trial Reviews¹ /PCMH;
Ineffective trials;
Work for which a daily or half-daily fee is allowed (PII, DTA etc)^{13,14};
Sentence and Deferred Sentences^{6,7};
Any non-effective hearings that were not listed for trial⁸.
- R5 Uplifts are never allowed for ancillary hearings for additional cases, or for additional defendants at hearings not on the list in R4.

S QCs and Leaders

- S1 (23) **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**
- S2 **Only applicable to pre 30 April 2007 Representation Orders**
- S2A A led junior is paid the prescribed fixed fees for a junior or sole advocate (other than a Queen's Counsel) set out in the Table following paragraph 18 and not half the QC's fixed fee.

S3 [Only applicable to representation orders granted from 30 April 2007 to January 13 2008.](#)

Where the assisted person is represented by a single trial advocate, and another person is charged on the same indictment with an offence falling within the same class, and is represented by two trial advocates, the single trial advocate shall receive the same graduated fee as if he were appearing as junior to another trial advocate. This provision does not apply if the single advocate is claiming for an offence within class A. There is no increase in any fees for ancillary hearings.

S4 Only applicable to pre 30 April 2007 Representation Orders

S5 Only applicable to pre 30 April 2007 Representation Orders

I **Travel to Court**

T1 The regulations and practices for paying travel expenses for attendance are the same as for **the previous Graduated Fee scheme.**

T2 (24) Travel expenses to Court are **not allowed** to any advocate that has an office within 40km of the Court.

T3 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 of a case, an advocate may be allowed travel from outside the nearest bar. Examples of possible circumstances are:

- 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).

T4 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.

T5 **Travel and other expenses are disbursements not allowances. [Rail tickets or other written proof must be provided for all disbursements over £20.](#)**

T6 Where travel has been authorised, the LSC will use the following guide rates (excluding VAT) when assessing travel and accommodation expense claims:

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

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

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

T7 The LSC will apply all travel rules and guidance consistently and will not uphold any previous local arrangements.

U **Miscellaneous**

- U1 All advocacy in the Crown Court is paid either under the 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.
- U2 All claims must be signed by the advocate in person.
- U3 (Article5(6)) Graduated fee claims should only be paid when a case has been closed. However ancillary hearings, which attract fixed fees, i.e confiscation and [deferred sentences](#) may be claimed separately where the fixed fee hearing is to be held more than 28 days after the conclusion of the main hearing. [See para B20 \(ante\) for payment for re-trials.](#)
- U4 **Only applicable to pre 30 April 2007 Representation Orders**
- U5 Where an advocate is instructed only to do work for which a fixed fee is payable (e.g. a sentence hearing or to attend a mention hearing) then that 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 Instructed Advocate.**
- U6 Any advocate can have their fee paid to a solicitor“s firm when submitting a claim (*the advocate must be set up as a solicitor advocate on CREST*) **provided they are the Instructed Advocate.**
- U7 A percentage reduction in a fee can be imposed if a claim is submitted late without good reason. Advice should be sought from the National Taxing Team whenever a fee is to be reduced. *The reduction should be entered on the ‘Reduce Fee’ on page 2 of the defendants hearing details module of RRTR.*
- U8 **Only applicable to pre 30 April 2007 Representation Orders**
- U9 As the graduated fee scheme is a comprehensive scheme a determining officer must apply it in accordance with its explicit words.
- R – v – Kemp (X15)
- U10 The guidance contained in this document is only the recommended line to take and does not take away the responsibility of the appropriate authority (i.e. Court staff) to determine claims as they see fit.
- U11 [An advocate can apply for a staged payment where the claim relates to](#)

preparation of 100 hours or more, and the period from committal, transfer or sending for trial to the conclusion of the Crown Court proceedings is likely to exceed twelve months. All such applications should, in the first instance be referred to the NTT for consideration (see e-News20/08)

U12 Where an advocate has been instructed in proceedings in the Crown Court for more than six months, and is unlikely to receive a final payment within three months of applying for a hardship payment, and the advocate can demonstrate that financial hardship will result, a hardship payment can be made subject to the full requirements of article 21 being met. Where such a payment is allowed to someone other than the instructed advocate, the payment must be made to the instructed advocate who must then forward the payment to the appropriate advocate. A separate note of the payment should be sent directly to the advocate making the application. All such applications should, in the first instance, be referred to the NTT for consideration.

U12A Where an 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 for 40% of the total claim. All such applications should, in the first instance be referred to the NTT for consideration.

U13 When determining a claim from an instructed advocate 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 instructed advocate should be asked to repay the amount in question. If this is not forthcoming, recovery can be made from any other amounts due to the advocate.

U 14 Where the Instructed 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 Instructed 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 [www.BarCouncil.org.uk/guidance/GraduatedFee Payment Protocol](http://www.BarCouncil.org.uk/guidance/GraduatedFeePaymentProtocol)

U 15 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 paragraph 17A of Schedule 1 of the regulations. The fee should be claimed as a fixed fee from the crown court.

V Table of Ancillary Fees

V1 **Table of ancillary fees with the subscript number from this guidance, the reference to the graduated fee regulations, the code entered on the Court Service computer (CDMIS) and the fees payable (as at 30 April 2007).**

No	Fee	Para of Regs.	CD MIS Code	QC	Leading Junior	Junior
1	Standard Appearance	(9)(2)		200 per day	150 per day	100.00 per day
2	Paper plea and case management hearing	(9)(3)		£30 per case	£30 per case	£30 per case
3	Ineffective trial hearing	(13)		£325 per day	£225 per day	£150 per day
4	Confiscation hearings Full day Half day	(11)		£575 £300	£400 £225	£275 £150
5	Hearings relating to admissibility of evidence Full day Half day	(10)		£575 £300	£400 £225	£275 £150
6	Deferred Sentence	(12)(1)(a)	DS E	£375 per day	£275 per day	£200 per day
7	„Ordinary“ Sentence on Indictment	(12)(1)(b)	SH R	£300 per day	£200 per day	£125 per day
8	Abuse of process hearings. Full day Half day	(10)		£575 £300	£400 £225	£275 £150
9	Hearings relating to disclosure Full day Half day	(10)(3)		£575 £300	£400 £225	£275 £150
10	Special			£85 per	£65	£45 per hour

	preparation	(14)		hour	per hour	
11	Wasted preparation	(15)		£85 per hour	£65 per hour	£45 per hour
12	Appeal against Conviction	(17)		£300 per day	£225 per day	£150 per day
13	Appeal against Sentence, and Breaches	(17)		£250 per day	£175 per day	£125 per day
14	Committals for Sentence	(17)		£300 per day	£225 per day	£150 per day
15	Conferences and views	(16)		£85 per hour	£65 per hour	£45 per hour
16	Noting Brief	(18)				£125 per day

W Redeterminations and Appeals

Redetermination

- W1 Where an advocate is dissatisfied with the calculation of the fees, the advocate may seek a redetermination under article 29.
- W2 The advocate has 21 days, from the date of the decision, to ask the LSC to review the decision. The advocate should complete the “AF2” form and submit this together with a copy of the AF1.
- W3 A redetermination involves the LSC checking the information, including any additional information, supplied by the advocate against actual court case file information or prosecution information.
- W4 The LSC will then determine whether any amendments need to be made to the payment and amend the payment accordingly.
- W5 The LSC will subsequently notify the advocate of the redetermination decision by email or by post. In practice, the LSC will provide written reasons for the decision.
- W6 If no written reasons have been provided, or the advocate seeks more information, the advocate may request written reasons from the LSC within 21 days of the review decision.
- W7 If the advocate is still unhappy with the written reasons given by the LSC, then the advocate has a right to appeal to the Costs Judge.

Appeal to Costs Judge

- W8 Advocates can only appeal to a Costs Judge after they have sought a redetermination and received the written reasons from the LSC.
- W9 Advocates must appeal within 21 days of the receipt of the redetermination written reasons, by giving notice in writing to the Senior Costs Judge.
- W10 Advocates must inform the LSC of their decision to appeal so the LSC can also provide appropriate information to the Costs Judge. The LSC will send all necessary information to the Costs Judge (for example, information supplied to the LSC by the Courts, the redetermination decision including court case files and written reasons) to help them judge the costs in the case.
- W11 At the close of the appeal process, the LSC will amend the payment as appropriate and inform the advocate.

Limited Right of Appeal to the High Court

- W12 A further limited right of appeal to the High Court also exists for providers and is detailed in the Funding Order at Article 31.

Recovery of overpayments

W13 Article 26 of the Funding Order gives the LSC the authority to recover any overpayment that may have been made for whatever reason.

X Masters"/ Costs Judges" and Divisional Court Decisions

- X1 **Only applicable to pre 30 April 2007 Representation Orders**
- X2 R -v- Gemeskel - Southwark Crown Court - T971510
- "main hearing" when there is a Newton Trial.
- X3 R -v- Riddell - Manchester Crown Court - T971572
- a case listed for a Newton Hearing but which did not take place as the basis of pleas entered were subsequently accepted.
- X4 **Only applicable to pre 30 April 2007 Representation Orders**
- X5 R -v- Brazier - Ipswich Crown Court - T970258
- interviews transcribed by the defence going towards page count - see also R -v- Sturdy (below).
- X6 R -v- Fletcher - Norwich Crown Court - T970308
- uplift for cases "heard concurrently".
- X6A R -v- Fairhurst - Leeds Crown Court - T972733/34
- the point of principle when two or more cases involving the same advocate may be said to be heard concurrently for the purpose of calculating remuneration.
- X7 **Only applicable to pre 30 April 2007 Representation Orders**
- X8 R -v- Powell - Liverpool Crown Court - T971329
- where two advocates have been assigned to the same defendant in the same case their respective claims must both either fall within or outside graduated fees.
- X9 R -v- Sturdy - Nottingham Crown Court - T971763
- only pages forming part of the committal documents or a notice of additional evidence can go towards the page count - see also R -v- Brazier (above).

X10 R -v- Schultz - Manchester Crown Court - T972606

- where legal aid is amended from junior counsel alone to QC alone before the main hearing - and the case falls within graduated fees - there is no provision to pay junior counsel any fees other than any fixed fees to which he is entitled e.g. listening to tapes; conference with an expert; costs of travelling to a conference; and attending any preliminary hearings. Wasted preparation can only be paid where all the criteria are met.

X11 The Lord Chancellor and Taylor (R v Beecham)

- a change of plea from not guilty to guilty between Plea and Directions hearings need not attract a cracked trial graduated fee.

X12 R -v- Stables – Leeds Crown Court - T981397

- a robbery where a defendant or co-defendant was armed with a firearm or imitation 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.

13	R -v- Nassir – Bradford Crown Court- T971263 - where, with the advanced knowledge of the parties, a part heard trial is not listed on a particular day, only the actual number of days or parts of days on which an advocate appeared at court for trial can be taken into account in calculating the graduated fee to be allowed.
X14	R -v- Gussman – Leicester Crown Court- T980034- where a jury is sworn but then discharged the same day, for some reason other than the private or professional convenience of counsel, with a new jury being sworn the following day, there is sufficient continuity to conclude that the trial did in fact proceed.

X14A R – v – Khan – Isleworth Crown Court; T20020055

- it may be appropriate to extend the parameters in X14 above in certain circumstances.

X15 R – v- Kemp – Cardiff Crown Court: T970981

- the graduated fee scheme is a comprehensive scheme that must be applied in accordance with its explicit words.

X16 R – v - Bailey - T980374 Sheffield Crown Court:

- 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.

X17 R v Jones – T980360 Chichester Crown Court: -

- a preparatory hearing under Section 29 of the Criminal Procedure and Investigations Act is deemed to be the start of the trial irrespective of whether the preparatory hearing is held immediately before the rest of the trial or at an interval of some months before.

X18 Only applicable to pre 29 October 2001 Representation Orders

X19 R - v - Maynard – T980640 Lewes Crown Court -

- 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 opening on the first day.

X19A R v Karra – Wolverhampton Crown Court T981440 -

- where a trial has commenced and the prosecution decide to offer no evidence or further evidence shortly thereafter only a trial and not a cracked trial graduated fee can be paid.

X20 Only applicable to pre 30 April 2007 Representation Orders

X21 R –v- Rahman – Southwark Crown Court -
T990766

- a jury trial is deemed to have started when a jury is sworn.

X21A R V Baker and Fowler – Peterborough Crown Court - T20027205

- where evidence is called (whatever the extent) the trial is deemed to have started

X22 R –v-Baxter – Hull Crown Court -
T00445/8

- following a PDH 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.

- X23 R –v- Minister – Ipswich Crown Court - T990222**
- there is no provision in the regulations which govern graduated fees that a cracked trial fee should be paid on the grounds that the indictment was amended before pleas were taken.
- X24 R –v- Hines – Teesside Crown Court - T000122**
- a case is defined as a single notice of appeal, a single committal for sentence, or a single breach of a Crown Court order regardless of the number of charges.
- X25 Only applicable to pre 30 April 2007 Representation Orders**
- X26 R-v- El Treki – T990513 Ipswich Crown Court -**
- Title pages and separator pages should not be counted.
- X27 R-v- Mohammed – T990722Manchester Crown Court**
- Cracked trial can only be paid after the conclusion of the Plea and Directions hearing or hearings, where there are still counts on which the prosecution and defence are not agreed, marked by the court standing the case out for trial.
- X27A R-v- Pelepenko - T20010691 Isleworth Crown Court**
- Cracked trial can only be paid after an aborted hearing, where there are still counts on which the prosecution and defence are not agreed, marked by the court standing the case out for retrial.
- X28 R v Olayinka – Southwark Crown Court – T20001445**
- Where it is clear from the outset that the defendant was always going to plead guilty, it is premature for counsel to listen to tapes.
- X29 R – v – Hunter-Brown – Winchester Crown Court T20000491**
- A Newton hearing can only apply where evidence has been called
- X30 Lord Chancellor v Balbir Singh-**
- Fixed fees paid to a led junior.
- X31 R v Russell – Winchester Crown Court - T20000291**
- Fixed Fee to be paid on hearing for failure to disclose.
- X32 R v Ayres – Cambridge Crown Court - T20010118:**
- Application to adjourn Newton Hearing refused and basis of plea is accepted.
- X33 Only applicable to pre 3 October 2005 Representation Orders**
- X34 R v Johnson – Lewes Crown Court - T20020803:**
- Points to consider when determining a claim for special preparation.

- X35 R v Knight – Bristol Crown Court - T20027092
- TICs should not be taken into account when calculating the value of an offence.
- X36 R v Bedford – Leeds Crown Court - T20020395
- Attending a conference by someone other than the advocate who attended the “main hearing.”
- X37 Only applicable to pre 30 April 2007 Representation Orders
- X38 Only applicable to pre 30 April 2007 Representation orders.
- X39 Only applicable to pre 30 April 2007 Representation Orders.
- X40 R v Briers – Winchester Crown Court - T20027135
- Procedure for NTT to deal with requests for redetermination of a claim for special preparation.
- X41 Only applicable to pre 30 April 2007 Representation Orders
- X42 R v Riclesford - Blackfriars Crown Court - T20030173
- Where prosecution relies on a sample of the evidence available, payment can only be made for that which is formally admitted.
- X43 Only applicable to pre 30 April 2007 Representation Orders
- X44 R v Brinkworth - Birmingham Crown Court - T20032120
- When an ASBO (whether contested or not) is made at the time of sentencing it still attracts the fixed fee for the sentence hearing.
- X45 R v Beckford - Leeds Crown Court - T20037090
- Defence advocates cannot be paid leading junior rate simply because prosecution instructed leading junior.
- X46 Stork -v- DCA
- Length of trial uplift only applies to actual length of trial of defendant represented and is unaffected by length of trial of co-defendants.
- X47 Meeke & Taylor v DCA

- Special preparation cannot be claimed to make up a perceived shortfall in graduated fees due to a trial going short.

X48 R v Solomka – Kings Lynn Crown Court - T20047061

- Travel should also be allowed where special preparation is allowed for inspection of documents.

X49 R v Matthews & others – Bournemouth Crown Court T20057039

Pages relating to Confiscation evidence should not be included in page count unless formally admitted as additional evidence

X50 Lord Chancellor v Nicholas Haggan QC and others (R v Matthews & others)
Use of formula where case extends beyond 40 days

X51 Goodman & Farr and The Secretary of State for Constitutional Affairs

- Trading Standards case involving approx 400,000 DVDs. Counsel tried to claim for examining individual DVD inlays. Confirms that unless specifically included in prosecution bundle, should not be included in page count.

X52 R v Coutts – Lewes Crown Court - T20037130

- Prosecution served 40,000 pages of evidence on 13 CD ROMs. They do not constitute pages of evidence. Counsel could have claimed Special preparation for examining the CD ROMs

X53 Lord Chancellor v Frieze (R v Larkin)

- Case is given provisional trial date at preliminary hearing prior to PCMH. The day before the PCMH, defendant enters acceptable pleas to an alternative count, and prosecution do not proceed with other counts on indictment. Should be paid as a guilty plea and NOT a cracked trial

X54 R v Mira – Chester Crown Court - T20060608

- Counsel can only claim for offences with which the defendant is charged on the indictment and cannot claim on the basis that other defendants on the same indictment were charged with different offences.

ANNEX 1

Dismissal Applications – Examples

Scenario	Fee	Paragraph in Funding Order
1. Two day dismissal application. Wholly successful. Case dismissed.	Day 1 - Guilty Plea GF (main hearing). Day 2 - Full/half Day fixed fee.	18(6)
2. Two day dismissal application Unsuccessful. PCMH follows straight on. Accused pleads NG. Stood out for trial.	Day 1 - Full/Half-Day fixed fee. Day 2 - PCMH added to standard appearance count.	18(5)
3. As in 2 above, except accused pleads G at PCMH.	Day 1 - Full/Half-Day fixed fee. Day 2 - Guilty plea GF. (PCMH is main hearing)	18(5)
4. Two day dismissal application Unsuccessful. PCMH does not follow straight on but is adjourned to later date. At PCMH, accused pleads NG. Stood out for trial.	Day 1 - Full/Half-Day fixed fee. Day 2 - Full/Half-Day fixed fee. Day 3 – PCMH added to standard appearance count.	18(5)
5. As in 4 above except accused pleads G at the adjourned PCMH.	Day 1 – Full/Half-Day fixed fee. Day 2 – Full/Half-Day fixed fee. Day 3 - Guilty plea GF. (PCMH is main hearing)	18(5) & (6)

ANNEX 2 Alphabetical List of Offences

Classes

Class A: Homicide and related grave offences
Class B: Offences involving serious violence or damage, and serious drugs offences
Class C: Lesser offences involving violence or damage, and less serious drugs offences
Class D: Sexual offences and offences against children
Class E: Burglary etc
Classes F, G and K: Other offences of dishonesty
NOTE:
<p>Within the F class there are specific offences that will always be F (these are shown as F on the list). However, on the list you will see that there are offences whose class is listed as F**. This is because the offence will be in Class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise. A note has been inserted beneath each of the F** entries on the list.</p>
Class H: miscellaneous other offences
Class I: Offences against public justice and similar offences
Class J: Serious Sexual Offences
Class K offences are listed under Class F and G.
Class K: Other offences of dishonesty (high value)

Offences listed in alphabetical order:

Offence	Contrary to	Class
Abandonment of children under two	Offences against the Person Act 1861 s.27	C
Abduction of defective from parent	Sexual Offences Act 1956 s.21	D
Abduction of unmarried girl under 16 from parent	Sexual Offences Act 1956 s.20	J
Abduction of unmarried girl under 18 from parent	Sexual Offences Act 1956 s.19	D
Abduction of woman by force	Sexual Offences Act 1956 s.17	J
Abstraction of electricity	Theft Act 1968 s.13	F**
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Abuse of position of trust	Sexual Offences (Amendment) Act 2000 s.3	D
Abuse of position of trust: causing a child to engage in sexual activity	Sexual Offences Act 2003 s. 17	D
Abuse of position of trust: causing a child to watch sexual activity	Sexual Offences Act 2003 s. 19	D

Abuse of trust: sexual activity in the presence of a child	Sexual Offences Act 2003 s. 18	D
Abuse of trust: sexual activity with a child	Sexual Offences Act 2003 s. 16	D
Acquisition by or supply of firearms to person denied them	Firearms Act 1968 s.21(5)	C
Acquisition, use or possession of criminal property	Proceeds of Crime Act 2002 s.329	B
Activities relating to opium	Misuse of Drugs Act 1971 s.9	B

Acts outraging public decency	Common law	H
Administering a substance with intent	Sexual Offences Act 2003 s. 61	D
Administering chloroform, laudanum etc.	Offences against the Person Act 1861 s.22	B
Administering drugs to obtain intercourse	Sexual Offences Act 1956 s.4	D
Administering poison etc. so as to endanger life	Offences against the Person Act 1861 s.23	B
Administering poison with intent to injure etc.	Offences against the Person Act 1861 s.24	C
Affray	Public Order Act 1986 s.3	H
Aggravated arson	Criminal Damage Act 1971 s.1(2), (3)	B
Aggravated burglary	Theft Act 1968 s.10	B
Aggravated criminal damage	Criminal Damage Act 1971 s.1(2)	B
Aggravated vehicle taking	Theft Act 1968 s.12A	H
Aggravated vehicle taking resulting in death	Theft Act 1968 s.12A	B
Agreeing to indemnify sureties	Bail Act 1976 s.9(1)	H
Aiding and abetting suicide	Suicide Act 1961 s.2	B
Allowing or procuring child under 16 to go abroad to perform	Children and Young Persons Act 1933 ss.25, 26	J
Allowing the death of a child	Under Section 5 of the Domestic Violence Act 2004	B
Armed robbery	Theft Act 1968 s.8(1)	B
Arranging child sex offence	Sexual Offences Act 2003 s. 14	J
Arson (other than aggravated arson) where value does not exceed £30,000	Criminal Damage Act 1971 s.1(3)	C
Arson (where value exceeds £30,000)	Criminal Damage Act 1971 s.1(3)	B
Assault by penetration	Sexual Offences Act 2003 s. 2	J
Assault occasioning actual bodily harm	Offences against the Person Act 1861 s.47	C
Assault of child under 13 by penetration	Sexual Offences Act 2003 s. 6	J
Assault with intent to commit buggery	Sexual Offences Act 1956 s.16	J
Assault with intent to resist arrest	Offences against the Person Act 1861 s.38	H

Assault with weapon with intent to rob	Theft Act 1968 s.8(2)	B
Assaulting prison officer whilst possessing firearm etc.	Criminal Justice Act 1991 s.90	B
Assaults on officers saving wrecks	Offences against the Person Act 1861 s.37	C
Assisting illegal entry or harbouring persons	Immigration Act 1971 s.25	C
Assisting offenders	Criminal Law Act 1967 s.4(1)	I
Assisting prisoners to escape	Prison Act 1952 s.39	C
Attempt to cause explosion, making or keeping explosive etc.	Explosive Substances Act 1883 s.3	A
Attempting to choke, suffocate, strangle etc.	Offences against the Person Act 1861 s.21	B
Attempting to injure or alarm the Sovereign	Treason Act 1842 s.2	C
Being drunk on an aircraft	Air Navigation Order 2005, article 75	H
Blackmail	Theft Act 1968 s.21	B
Bomb hoax	Criminal Law Act 1977 s.51	C
Breach of anti-social behaviour order	Crime and Disorder Act 1998 s. 1(10)	H
Breach of harassment injunction	Protection from Harassment Act 1997 s. 3(6)	H
Breach of prison	Common law	C
Breach of restraining order	Protection from Harassment Act 1997 s. 5(5)	H
Breach of sex offender order	Crime and Disorder Act 1998 s. 2(8)	H
Breaking or injuring submarine telegraph cables	Submarine Telegraph Act 1885 s.3	C

Buggery of males of 16 or over otherwise than in private	Sexual Offences Act 1956 s.12	H
Buggery of person under 16	Sexual Offences Act 1956 s.12	J
Burglary (domestic)	Theft Act 1968 s.9(3)(a)	E
Burglary (non-domestic)	Theft Act 1968 s.9(3)(b)	E
Care workers: causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003 s. 41	D
Care workers: inciting person with mental disorder to engage in sexual act	Sexual Offences Act 2003 s. 39	J
Care workers: sexual activity in presence of a person with a mental disorder	Sexual Offences Act 2003 s. 40	D
Care workers: sexual activity with a person with a mental disorder	Sexual Offences Act 2003 s. 38	J
Carrying loaded firearm in public place	Firearms Act 1968 s.19	C
Causing a child to engage in sexual activity	Sexual Offences Act 2003 s. 10	J
Causing a child to watch a sexual act	Sexual Offences Act 2003 s. 12	D

Causing a child under 13 to engage in sexual activity	Sexual Offences Act 2003 s. 8	J
Causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003 s. 33	D
Causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003 s. 37	D
Causing bodily injury by explosives	Offences against the Person Act 1861 s.28	B
Causing danger to road users	Road Traffic Act 1988 s.22A	B
Causing death by careless driving while under the influence of drink or drugs	Road Traffic Act 1988 s.3A	B
Causing death by dangerous driving	Road Traffic Act 1988 s.1	B
Causing explosion likely to endanger life or property	Explosive Substances Act 1883 s.2	A
Causing miscarriage by poison, instrument	Offences against the Person Act 1861 s.58	B
Causing or allowing the death of a child	Domestic Violence, Crime and Victims Act 2004 s.5	B
Causing or encouraging prostitution of defective	Sexual Offences Act 1956 s.29	D
Causing or encouraging prostitution of girl under 16	Sexual Offences Act 1956 s.28	J
Causing or inciting a person with a mental disorder to engage in sexual activity	Sexual Offences Act 2003 s. 31	J
Causing or inciting child prostitution or pornography	Sexual Offences Act 2003 s. 48	J
Causing or inciting prostitution for gain	Sexual Offences Act 2003 s. 52	D
Causing prostitution of women	Sexual Offences Act 1956 s.22	H
Causing sexual activity with penetration	Sexual Offences Act 2003 s. 4	J
Causing sexual activity without penetration	Sexual Offences Act 2003 s. 4	D
Child abduction by connected person	Child Abduction Act 1984 s.1	C
Child abduction by other person	Child Abduction Act 1984 s.2	C
Child destruction	Infant Life (Preservation) Act 1929 s.1(1)	A
Child sex offence committed by person under 18	Sexual Offences Act 2003 s. 13	D
Circumcision of females	Prohibition of Female Circumcision Act 1985 s.1	C
Committing offence with intent to commit sexual offence	Sexual Offences Act 2003 s. 62	D
Concealing an arrestable offence	Criminal Law Act 1967 s.5	I
Concealing criminal property	Proceeds of Crime Act 2002 s.327	B
Concealment of birth	Offences against the Person Act 1861 s.60	C

Conspiring to commit offences outside the United Kingdom	Criminal Justice (Terrorism and Conspiracy) Act 1998 s. 5	I
Contamination of goods with intent	Public Order Act 1986 s.38	B
Controlling a child prostitute	Sexual Offences Act 2003 s. 49	J
Controlling prostitution for gain	Sexual Offences Act 2003 s. 53	D
Copying false instrument with intent	Forgery and Counterfeiting Act 1981 s.2	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Corrupt transactions with agents	Prevention of Corruption Act 1906 s.1	I
Corruption in public office	Public Bodies Corrupt Practices Act 1889 s.1	I
Counterfeiting Customs documents	Customs and Excise Management Act 1979 s.168	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Counterfeiting notes and coins	Forgery and Counterfeiting Act 1981 s.14	G
Counterfeiting of dies or marks	Hallmarking Act 1973 s.6	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Criminal damage (other than aggravated criminal damage)	Criminal Damage Act 1971 s.1(1)	C
Cruelty to persons under 16	Children and Young Persons Act 1933 s.1	B
Cultivation of cannabis plant	Misuse of Drugs Act 1971 s.6	B
Custody or control of false instruments etc.	Forgery and Counterfeiting Act 1981 s.5	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Dangerous driving	Road Traffic Act 1988 s.2	H
Dealing in firearms	Firearms Act 1968 s.3	C
Destruction of registers of births etc.	Forgery Act 1861 s.36	F
Detention of woman in brothel or other premises	Sexual Offences Act 1956 s.24	H
Directing terrorist organisation	Terrorism Act 2000 s.56	B
Disclosure prejudicing, or interference of material relevant to, investigation of terrorism	Terrorism Act 2000 s.39	B
Disclosure under sections 330, 331, 332 or 333 of the Proceeds of Crime Act 2002 otherwise than in the form and manner prescribed	Proceeds of Crime Act 2002 s.339(1A)	B
Drug trafficking offences at sea	Criminal Justice (International Co-operation) Act 1990 s.18	B
Embracery	Common law	I

Endangering the safety of an aircraft	Aviation Security Act 1982 s. 2(1)(b)	B
Endangering the safety of railway passengers	Offences against the Person Act 1861 ss.32, 33, 34	B
Engaging in sexual activity in the presence of a child	Sexual Offences Act 2003 s. 11	D
Engaging in sexual activity in the presence of a person with a mental disorder	Sexual Offences Act 2003 s. 32	D
Engaging in sexual activity in the presence of a person with a mental disorder	Sexual Offences Act 2003 s. 36	D
Escaping from lawful custody without force	Common law	C
Evasion of liability by deception	Theft Act 1978 s.2	F **

**** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise**

Exposure	Sexual Offences Act 2003 s. 66	D
Fabrication of evidence with intent to mislead a tribunal	Common law	I
Facilitating child prostitution	Sexual Offences Act 2003 s. 50	J
Failing to keep dogs under proper control resulting in injury	Dangerous Dogs Act 1991 s.3	C
Failure to comply with certificate when transferring firearm	Firearms Act 1968 s.42	C
Failure to disclose information about terrorism	Terrorism Act 2000 s.19	C
Failure to disclose knowledge or suspicion of money laundering	Drug Trafficking Offences Act 1986 s.26B	C
Failure to disclose knowledge or suspicion of money laundering: nominated officers in the regulated sector	Proceeds of Crime Act 2002 s.331	B
Failure to disclose knowledge or suspicion of money laundering: other nominated officers	Proceeds of Crime Act 2002 s.332	B
Failure to disclose knowledge or suspicion of money laundering: regulated sector	Proceeds of Crime Act 2002 s.330	B
False accounting	Theft Act 1968 s.17	F **

**** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise**

False evidence before European Court	European Communities Act 1972 s.11	I
False imprisonment	Common law	B
False statement tendered under section 5B of the Magistrates' Courts Act 1980	Magistrates' Courts Act 1980 s.106	I
False statement tendered under section 9 of the Criminal Justice Act 1967	Criminal Justice Act 1967 s.89	I

Firing on Revenue vessel	Customs and Excise Management Act 1979 s.85	B
Forgery	Forgery and Counterfeiting Act 1981 s.1	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Forgery and misuse of driving documents	Public Passenger Vehicles Act 1981 s.65	H
Forgery etc. of licences and other documents	Road Traffic Act 1988 s.173	H
Forgery of driving documents	Road Traffic Act 1960 s.233	H
Forgery, alteration, fraud of licences etc.	Vehicle Excise and Registration Act 1994 s.44	H
Fraud by abuse of position	Fraud Act 2006 s.4	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Fraud by failing to disclose information	Fraud Act 2006 s.3	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Fraud by false representation	Fraud Act 2006 s.2	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Fraudulent evasion of agricultural levy	Customs and Excise Management Act 1979 s.68A(1) and (2)	C
Fraudulent evasion of controls on Class A and B drugs	Customs and Excise Management Act 1979 s.170(2)(b), (c)	B
Fraudulent evasion of controls on Class C drugs	Customs and Excise Management Act 1979	C
	s.170(2)(b), (c)	
Fraudulent evasion of duty	Customs and Excise Management Act 1979 s.170(1)(b)	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Fraudulent evasion: counterfeit notes or coins	Customs and Excise Management Act 1979 s.170(2)(b), (c)	G
Fraudulent evasion: not elsewhere specified	Customs and Excise Management Act 1979 s.170(2)(b), (c)	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Fund-raising for terrorism	Terrorism Act 2000 s.15	B
Giving false statements to procure cremation	Cremation Act 1902 s.8(2)	I
Going equipped to steal	Theft Act 1968 s.25	E
Gross indecency between male of 21 or over and male under 16	Sexual Offences Act 1956 s.13	D

Gross indecency between males (other than where one is 21 or over and the other is under 16)	Sexual Offences Act 1956 s.13	H
Handling stolen goods	Theft Act 1968 s.22	F**
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Harbouring escaped prisoners	Criminal Justice Act 1961 s.22	C
Harming, threatening to harm a witness, juror etc.	Criminal Justice and Public Order Act 1994 s.51(2)	I
Having an article with a blade or point in a public place	Criminal Justice Act 1988 s. 139	H
Hostage taking	Taking of Hostages Act 1982 s.1	B
Illegal importation of Class A and B drugs	Customs and Excise Management Act 1979 s.50	B
Illegal importation of Class C drugs	Customs and Excise Management Act 1979 s.50	C
Illegal importation: counterfeit notes or coins	Customs and Excise Management Act 1979 s.50	G
Illegal importation: not elsewhere specified	Customs and Excise Management Act 1979 s.50	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Ill-treatment of persons of unsound mind	Mental Health Act 1983 s.127	D
Impeding persons endeavouring to escape wrecks	Offences against the Person Act 1861 s.17	B
Impersonating Customs officer	Customs and Excise Management Act 1979 s.13	H
Incest by man with a girl under 13	Sexual Offences Act 1956 s. 10	J
Incest other than by man with a girl under 13	Sexual Offences Act 1956 ss.10 and 11	D
Incitement of terrorism overseas	Terrorism Act 2000 s.59	B
Incitement to commit incest	Criminal Law Act 1977 s.54	D
Inciting a child family member to engage in sexual activity	Sexual Offences Act 2003 s. 26	J
Indecency with children under 14	Indecency with Children Act 1960 s.1(1)	J
Indecent assault on a man	Sexual Offences Act 1956 s.15	D
Indecent assault on a woman	Sexual Offences Act 1956 s.14	D
Indecent display	Indecent Displays (Control) Act 1981 s.1	H
Inducing person with mental disorder to engage in sexual activity	Sexual Offences Act 2003 s. 35	J
Infanticide	Infanticide Act 1938 s.1(1)	A
Intercourse with an animal	Sexual Offences Act 2003 s. 69	D
Intimidating a witness, juror etc.	Criminal Justice and Public Order Act 1994 s.51(1)	I

Involvement in arrangements facilitating the acquisition, retention, use or control of criminal property	Proceeds of Crime Act 2002 s.328	B
Keeping a disorderly house	Common law; Disorderly Houses Act 1751 s.8	H
Kidnapping	Common law	B
Living on earnings of male prostitution	Sexual Offences Act 1967 s.5	D
Making a false statement to obtain interim possession order	Criminal Justice and Public Order Act 1994 s.75(1)	I
Making false entries in copies of registers sent to register	Forgery Act 1861 s.37	F
Making false statement to authorised officer	Trade Descriptions Act 1968 s.29(2)	I
Making false statement to resist making of interim possession order	Criminal Justice and Public Order Act 1994 s.75(2)	I
Making gunpowder etc. to commit offences	Offences against the Person Act 1861 s.64	C
Making off without payment	Theft Act 1978 s.3	H
Making or possession of explosive in suspicious circumstances	Explosive Substances Act 1883 s.4(1)	B
Making or supplying articles for use in frauds	Fraud Act 2006 s.7	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Making threats to destroy or damage property	Criminal Damage Act 1971 s.2	C
Making threats to kill	Offences against the Person Act 1861 s.16	B
Making, custody or control of counterfeiting materials etc.	Forgery and Counterfeiting Act 1981 s.175	G
Man living on earnings of prostitution	Sexual Offences Act 1956 s.30	D
Manslaughter	Common law	A
Manufacture and supply of scheduled substances	Criminal Justice (International Co-operation) Act 1990 s.12	B
Meeting child following sexual grooming	Sexual Offences Act 2003 s. 15	D
Membership of proscribed organisations	Terrorism Act 2000 s.11	B
Misconduct endangering ship or persons on board ship	Merchant Shipping Act 1970 s.27	H
Mishandling or falsifying parking documents etc.	Road Traffic Regulation Act 1984 s.115	H
Murder	Common law	A
Neglecting to provide food for or assaulting servants etc.	Offences against the Person Act 1861 s.26	C
Obscene articles intended for publication for gain	Obscene Publications Act 1964 s.1	H
Obstructing Customs officer	Customs and Excise Management Act 1979 s.16	H
Obstructing engine or carriage on railway	Malicious Damage Act 1861 s.36	H

Obtaining pecuniary advantage by deception	Theft Act 1968 s.16	F**
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Obtaining property by deception	Theft Act 1968 s.15	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Obtaining services by deception	Theft Act 1978 s.1	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		

Obtaining services dishonestly	Fraud Act 2006 s.11	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Occupier knowingly permitting drugs offences etc.	Misuse of Drugs Act 1971 s.8	B
Offences against international protection of nuclear material	Nuclear Material (Offences) Act 1983 s.2	B
Offences in relation to dies or stamps	Stamp Duties Management Act 1891 s.13	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Offences in relation to money laundering investigations	Drug Trafficking Act 1994 ss.52 and 53	B
Offences in relation to proceeds of drug trafficking	Drug Trafficking Act 1994 ss.49, 50 and 51	B
Offences involving custody or control of counterfeit notes and coins	Forgery and Counterfeiting Act 1981 s.16	G
Offences of publication of obscene matter	Obscene Publications Act 1959 s.2	H
Offences relating to the safe custody of controlled drugs	Misuse of Drugs Act 1971 s.11	H
Offender armed or disguised	Customs and Excise Management Act 1979 s.86	C
Offering inducement to procure sexual activity with a person with a mental disorder	Sexual Offences Act 2003 s. 34	J
Other offences involving money or property to be used for terrorism	Terrorism Act 2000 ss.16-18	B
Participating in fraudulent business carried on by sole trader etc.	Fraud Act 2006 s.9	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Passing counterfeit notes and coins	Forgery and Counterfeiting Act 1981 s.15	G

Paying for sexual services of a child	Sexual Offences Act 2003 s. 47	J
Perjuries (7 offences)	Perjury Act 1911 ss.1-7(2)	I
Permitting an escape	Common law	C
Permitting defective to use premises for intercourse	Sexual Offences Act 1956 s.27	D
Permitting girl under 13 to use premises for sexual intercourse	Sexual Offences Act 1956 s.25	J
Permitting girl under 16 to use premises for intercourse	Sexual Offences Act 1956 s.26	J
Personating for purposes of bail etc.	Forgery Act 1861 s.34	I
Personation of jurors	Common law	I
Perverting the course of public justice	Common law	I
Placing explosives with intent to cause bodily injury	Offences against the Person Act 1861 s.30	B
Possessing anything with intent to destroy or damage property	Criminal Damage Act 1971 s.3	C
Possession (with intention) of apparatus or material for making false identity documents	Identity Cards Act 2006 s.25(3)	F
Possession (with intention) of false identity documents	Identity Cards Act 2006 s.25(1)	F
Possession of false identify documents	Section 25(1) and (3) of the Identify Cards Act	F
Possession (without reasonable excuse) of false	Identity Cards Act 2006 s.25(5)	F

identity documents or apparatus or material for making false identity documents		
Possession etc of articles for use in frauds	Fraud Act 2006 s.6	F **

**** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise**

Possession of a Class A or B drug with intent to supply	Misuse of Drugs Act 1971 s.5(3)	B
Possession of a Class C drug with intent to supply	Misuse of Drugs Act 1971 s.5(3)	C
Possession of articles for terrorist purposes	Terrorism Act 2000 s.57	B
Possession of Class A drug	Misuse of Drugs Act 1971 s.5(2)	C
Possession of Class B or C drug	Misuse of Drugs Act 1971 s.5(2)	H
Possession of firearm with criminal intent	Firearms Act 1968 s.18	B
Possession of firearm with intent to endanger life	Firearms Act 1968 s.16	B

Possession of firearm without certificate	Firearms Act 1968 s.1	C
Possession of firearms by person convicted of crime	Firearms Act 1968 s.21(4)	C
Possession of offensive weapon	Prevention of Crime Act 1953 s.1	H
Possession or acquisition of certain prohibited weapons etc.	Firearms Act 1968 s.5	B
Possession or acquisition of shotgun without certificate	Firearms Act 1968 s.2	C
Practitioner contravening drug supply regulations	Misuse of Drugs Act 1971 ss.12 and 13	B
Prejudicing a drug trafficking investigation	Drug Trafficking Act 1994 s.58(1)	I
Presentation of obscene performance	Theatres Act 1968 s.2	H
Prison mutiny	Prison Security Act 1992 s.1	B
Procurator of girl under 21	Sexual Offences Act 1956 s.23	D
Procurement of a defective	Sexual Offences Act 1956 s.9	D
Procurement of a woman by false pretences	Sexual Offences Act 1956 s.3	H
Procurement of intercourse by threats etc.	Sexual Offences Act 1956 s.2	H
Procuring others to commit homosexual acts	Sexual Offences Act 1967 s.4	H
Producing or supplying a Class A or B drug	Misuse of Drugs Act 1971 s.4	B
Producing or supplying Class C drug	Misuse of Drugs Act 1971 s.4	C
Putting people in fear of violence	Protection from Harassment Act 1997 s. 4(1)	H
Racially aggravated harassment/putting another in fear of violence	Crime and Disorder Act 1998 s. 32(1)	H
Racially-aggravated arson (not endangering life)	Crime and Disorder Act 1998 s. 30(1)	B
Racially-aggravated assault	Crime and Disorder Act 1998 s. 29(1)	C
Racially-aggravated criminal damage	Crime and Disorder Act 1998 s. 30(1)	C
Racially-aggravated public order offence	Crime and Disorder Act 1998 s. 31(1)	H
Rape	Sexual Offences Act 1956 s.1(1)	J
Rape	Sexual Offences Act 2003 s. 1	J
Rape of child under 13	Sexual Offences Act 2003 s. 5	J
Removal of articles from places open to the public	Theft Act 1968 s.11	G
Rescue	Common law	C
Riot	Public Order Act 1986 s.1	B
Robbery (other than armed robbery)	Theft Act 1968 s.8(1)	C
Sending prohibited articles by post	Post Office Act 1953 s.11	H

Setting spring guns with intent to inflict grievous bodily harm	Offences against the Person Act 1861 s.31	C
Sex with adult relative	Sexual Offences Act 2003 s. 64, 65	D
Sexual activity with a child	Sexual Offences Act 2003 s. 9	J
Sexual activity with a child family member, with penetration	Sexual Offences Act 2003 s. 25	J
Sexual activity with a person with a mental disorder	Sexual Offences Act 2003 s. 30	J
Sexual assault	Sexual Offences Act 2003 s.3	D
Sexual assault of child under 13	Sexual Offences Act 2003 s. 7	J
Sexual intercourse with defective	Sexual Offences Act 1956 s.7	J
Sexual intercourse with girl under 13	Sexual Offences Act 1956 s.5	J
Sexual intercourse with girl under 16	Sexual Offences Act 1956 s.6	J
Sexual intercourse with patients	Mental Health Act 1959 s.128	J
Sexual penetration of a corpse	Sexual Offences Act 2003 s. 70	D
Shortening of shotgun or possession of shortened shotgun	Firearms Act 1968 s.4	C
Shortening of smooth bore gun	Firearms Amendment Act 1988 s.6(1)	C
Solicitation for immoral purposes	Sexual Offences Act 1956 s.32	H
Soliciting to commit murder	Offences against the Person Act 1861 s.4	A
Stirring up racial hatred	Public Order Act 1986 ss.18-23	C
Supplying instrument etc. to cause miscarriage	Offences against the Person Act 1861 s.59	C
Support or meeting of proscribed organisations	Terrorism Act 2000 s.12	B
Taking, having etc. indecent photographs of children	Protection of Children Act 1978 s.1	J
Theft	Theft Act 1968 s.1	F**
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Tipping off	Proceeds of Crime Act 2002 s.333	B
Tipping-off in relation to money laundering investigations	Drug Trafficking Offences Act 1986 s.26C	C
Trade description offences (9 offences)	Trade Descriptions Act 1968 ss.1, 8, 9, 12, 13, 14	H
Trafficking into UK for sexual exploitation	Sexual Offences Act 2003 s. 57	J
Trafficking out of UK for sexual exploitation	Sexual Offences Act 2003 s. 59	J

Trafficking within UK for sexual exploitation	Sexual Offences Act 2003 s. 58	J
Trespass with intent to commit sexual offence	Sexual Offences Act 2003 s. 63	D
Trespassing with a firearm	Firearms Act 1968 s.20	C
Undischarged bankrupt being concerned in a company	Insolvency Act 1986 s. 360	G
Uniform of proscribed organisations	Terrorism Act 2000 s.13	B
Unlawful collection of information for terrorist purposes	Terrorism Act 2000 s.58	B
Unlawful eviction and harassment of occupier	Protection from Eviction Act 1977 s.1	H
Unlawful wounding	Offences against the Person Act 1861 s.20	C
Use of firearm to resist arrest	Firearms Act 1968 s.17	B
Using a copy of a false instrument	Forgery and Counterfeiting Act 1981 s.4	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Using a false instrument	Forgery and Counterfeiting Act 1981 s.3	F**
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Using explosive or corrosives with intent to cause grievous bodily harm	Offences against the Person Act 1861 s.29	B
VAT offences	Value Added Tax Act 1994 s. 72(1-8)	F **
** The above offence is in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise		
Violent disorder	Public Order Act 1986 s.2	B
Voyeurism	Sexual Offences Act 2003 s. 67	D
Wanton or furious driving	Offences against the Person Act 1861 s.35	H
Weapons training	Terrorism Act 2000 s.54	B
Woman exercising control over prostitute	Sexual Offences Act 1956 s.31	D
Wounding or grievous bodily harm with intent to cause grievous bodily harm etc.	Offences against the Person Act 1861 s.18	B

ANNEX 3 Guidance on Instructed Advocates in Appeals, Committals for Sentence and Breach Proceedings

Queries have been raised about the identity of the 'instructed advocate' in appeals, committals for sentence and breach proceedings.

The Bar Council, Law Society and Solicitors' Association of Higher Courts Advocates have agreed that although the Criminal Defence Service (Funding) Order 2007 does not contain specific provisions relating to the identity of the instructed advocate in appeals, committals for sentence and breaches, the instructed advocate should be deemed to be the person that attends the main hearing, with any other advocate being treated as a substitute advocate.

To clarify, although the definition of "instructed advocate" in the Funding Order is "the first barrister or solicitor advocate instructed in the case...", if this advocate does not attend the "main hearing" (as defined in the funding order), either because the date is not suitable, or he attends but the case is adjourned, e.g. for reports, or any other reason, and he does not attend the hearing that becomes the "main hearing", then he will not be deemed to be the instructed advocate, but the advocate who attends the main hearing will be deemed to be the instructed advocate, and will be responsible for claiming all fees, including the fixed fees for any substitute advocates.

For the avoidance of doubt, there is no requirement to notify the identity of the instructed advocate to the court in such proceedings, this agreement being designed solely to ensure that only one payment is made per case, and to clarify who should claim the fees.

Finally, if the instructed advocate claims ex post facto fees in respect of the main hearing under paragraph 17(1) of Schedule 1, he should also claim the fees in relation to any other hearings (whether he or a substitute advocate attended).

Any queries should be addressed to David Carter at the Ministry of Justice by telephone – 020 3334 4211, or by email - David.Carter@justice.gsi.gov.uk

ANNEX 4 Claims for Special Preparation

The determination of claims for special preparation by advocates under the Graduated Fee scheme are the responsibility of the National Taxing Team. All such claims should initially be sent to the court with the appropriate supporting documentation. They will calculate and pay the actual Graduated Fee. The court having conducted some basic checks will then send a copy of the claim and the appropriate documents to their regional National Taxing Team where a determining officer will determine the special preparation claim and notify the advocate and the court of their decision. The court will then make the appropriate payment.

Applications for redetermination and written reasons should be sent to the court for forwarding to the National Taxing Team regional office.

Special preparation may now be claimed and paid under 3 heads. These 3 options were introduced at different times into the Advocates Graduated Fee scheme and are respectively available in cases where representation orders are dated on or after 01/04/01; for very unusual or novel point of law or factual issue -(A), 02/08/04; where the pages of prosecution evidence exceeds 10,000-(B) and 30/04/07; where any or all of the prosecution evidence, as defined in paragraph 1(2), is served in electronic form only(C). Below are the full texts and are to be found in paragraph 17 of schedule 4 to the Criminal Defence Service Funding Order 2001 (as amended) and paragraph 14 of schedule 1 to the Criminal Defence Service Funding Order 2007 (as amended). As will be seen in each case a time to perform the specific task is claimed by the advocate and the determining officer, if they come to the conclusion that a special preparation fee should be paid, must assess the hours to be allowed which are then paid at a rate dependant on the type of advocate, and in the 2001 Funding Order the type of case. It should be noted that the wording and therefore the tests to be applied in (A) & (B) were changed in the 2007 Funding Order.

17. - (1) *Where this paragraph applies, a preparation fee may be claimed in addition to the graduated fee payable under this Schedule.*
- (2) *This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable under this Schedule, it has been necessary for the trial advocate 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.*

- (3) *The amount of the special preparation fee shall be calculated from the number of hours of preparation in excess of the amount normally done for cases of the same type, using the rates for hourly fees set out in the Table following paragraph 22 as appropriate to the category of trial advocate and length of the trial.*
- (4) *A trial advocate claiming a special preparation fee shall supply such information and documents as may be required by the appropriate officer as proof of the unusual nature or novelty of the point of law or factual issue and of the number of hours of preparation.*

17A - (1) Where this paragraph applies, a special preparation fee may be claimed in addition to the graduated fee payable under this Schedule.

- (4) *This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable under this Schedule, the pages of prosecution evidence as defined in paragraph 1(2) in Part 1 of this Schedule exceeds 10.000 and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule.*
- (5) *The amount of the special preparation fee shall be calculated from the number of hours preparation in excess of the amount normally done for cases of the same type, using the rates of hourly fees set out in the table following paragraph 22 as appropriate to the category of trial advocate and length of the trial.*
- (6) *A trial advocate claiming a special preparation fee shall supply such information and documents as may be required by the appropriate officer in support of his claim*

“Fees for special preparation

14.-(1).This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable under Part 2 or Part 3 —

- (a) it has been necessary for an advocate 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 pages of prosecution evidence, as defined in paragraph 1(2), exceeds 10,000 and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule; or*
- (c) any or all of the prosecution evidence, as defined in paragraph 1(2), is served in electronic form only, and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule.*

(2) Where this paragraph applies, a special preparation fee may be paid, in addition to the Graduated fee payable under Part 2 or Part 3.

(3) The amount of the special preparation fee must be calculated —

(a) where sub-paragraph (1)(a) applies, from the number of hours preparation in excess of the amount the appropriate officer considers reasonable for cases of the same type;

(b) where sub-paragraph (1)(b) applies, from the number of hours which the appropriate officer considers reasonable to read the excess pages; and

(c) where sub-paragraph (1)(c) applies, from the number of hours which the appropriate officer considers reasonable to view the prosecution evidence, and in each case using the rates of hourly fees set out in the table following paragraph 19 as appropriate to the category of trial advocate.

(4) Any claim for a special preparation fee under this paragraph must be made by an instructed advocate, whether or not he did the work claimed for.

(5) An instructed advocate claiming a special preparation fee must supply such information and documents as may be required by the appropriate officer in support of the claim.

(6) In determining a claim under this paragraph, the appropriate officer must take into account all the relevant circumstances of the case, including, where special preparation work has been

undertaken by more than one advocate, the benefit of such work to the trial advocate.”

Although the National Taxing Team has been dealing with claims for special preparation in the first category for some time, because of the lifespan of the type of case that is likely to attract such a claim, it is only recently that claims in the second have started to be made, and there have been none to date in the third. Whilst the first has presented some difficulties in assessing, we are finding that the way some of the claims are being formulated, now that the second is coming on stream are presenting even greater problems, as it can be unclear whether the claim is under one head, or a combination. We foresee that with the third, when they start to arrive, it will be even more difficult.

It is becoming increasingly clear that the type of information which the National Taxing Team require from an advocate in order to satisfactorily assess a claim for special preparation is quite detailed.

That has been has recognised by the bar as is evidenced by the following extracts from Archbold.

The passage at G-57 in the First Supplement to the 2007 edition of Archbold:-

"On October 15, 1998, the Remuneration and Terms of Work Committee of the Bar Council resolved that it should be mandatory for counsel in ex post facto cases to keep contemporaneous logs recording the date, and the starting and finishing time of work done, and to identify in simple terms the nature of the task. Such logs should be made available to substantiate the claim for fees. The Bar Council further resolved that it would not support claims or appeals by barristers in matters in which no adequate or proper log was kept".

Passage at G-51, states:-

"As a graduated fee case might unexpectedly become subject to an ex post facto assessment by, for example, exceeding 30 days, counsel should always keep full contemporaneous notes of all preparation and times of work undertaken. Counsel is also required to supply such further particulars, information and documents as the appropriate authority may require".

Andrew Hall, of the Remuneration Committee, Bar Council, in a special edition of Archbold News September 2001, entitled "The Revised Graduated Fees Scheme", on page 9, where he deals with special preparation:-

"The continuing need for counsel to maintain contemporaneous logs of preparation, even in Graduated Fee cases, is obvious in the light of this and linked provisions".

The requirement to keep contemporaneous records of work done, even on a graduated fee case, remains a fundamental part of the professional conduct for members of the Bar. One of the specific "linked provisions" to which Andrew Hall refers is special preparation, which can very often be a live issue if counsel wishes to make a claim under this provision.

In the light of the above the National Taxing Team has decided to prepare a protocol for the assistance of determining officers and for advocates who are instructed in cases where claims for special preparation will be or, are likely to be made.

Claims that are based on a unit of time per page read over 10,000 or on an extrapolation of the unit rate per page found in the Graduated Fee scheme equation will not be accepted and the same will apply to claims for evidence served in an electronic form.

What will be required will be a running log 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 determining officer when considering it will be able to identify the work that is the subject of a special preparation claim and under which of the three heads. A best practice pro forma is set out below.

Date	Nature of work	Nature of docs & pages	Times	Total time	Special prep-	a,b,c
09/02/08	perusing prosecution evidence	Statements p1-100	10.00-13.50	3.50		
10/02/08	Con with sol & client at Brixton		14.00-16.00	2-00 + 3.00(t)		
11/02/08	Prep submissions novel law see skeleton		10.00-13.30	3.30	yes	a
12/02/08	perusing prosecution evidence	Exhibits-Interview of smith p10150-10205	15.00-17.00	2.00	yes	b
12/02/08	perusing prosecution evidence	Statements p101-150	17.00-19.15	2.15		
13/02/08	perusing prosecution evidence	Exhibits- bank statements p 15000-15500	19.00-23.00	4.00	yes	b

14/02/08	Viewing documentary evidence served on DVD only.	30 applications for credit cards-5 pages each.	10.00-13.00	3.00	yes	c
14/02/08	Advice on evidence.	4 pages.	14.00-15.15	1.15		

By use of the protocol the whole processing of these claims up to appeal to a Costs Judge should be made easier and more straightforward for all concerned.

ANNEXE 5 - PPE

Pages of Prosecution Evidence

4.1 Following feedback from Representative Bodies and HMCS, the LSC agreed to provide further guidance on PPE. This section aims to provide PPE guidance in relation to the operation of LGFS and AGFS that can be used by the LSC, legal aid providers, Representative Bodies and HMCS.

4.2 The original PPE Guidance was approved by the Crown Prosecution Service (CPS) and HMCS and has been consulted upon with Representative Bodies. This was amalgamated into the LGFS guidance and for ease, the LGFS numbering has been maintained and sections may be referenced as *Paragraph 4.2 of Annex 5 of the AGFS guidance*.

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

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

- a) witness statements;*
- b) documentary and pictorial exhibits;*
- c) records of interviews with the assisted person; and*
- d) records of interviews with other defendants*

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

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

Table 1 – PPE criteria

Elements of the PPE definition	Explanation
Pages	<ul style="list-style-type: none"> • Evidence must be in the form of „pages“ • Any page that is classified as PPE is to be counted as one page regardless of the number of lines or images on the page or the size of small or large typefaces
Prosecution Evidence	<ul style="list-style-type: none"> • Prosecution evidence is material that the prosecution serve and rely on¹

¹ See Costs Judge decision in Regina v Riglesford

	<ul style="list-style-type: none"> This does not include, for example, all the data generated when
	interrogating the contents of a database if the prosecution intends to rely on only part of that data or provides the data for continuity purposes.
Served on the court	<ul style="list-style-type: none"> Evidence must be served on the court
Type of evidence	<ul style="list-style-type: none"> Evidence must be witness statements, documentary exhibits, pictorial exhibits or interviews of the defendant or co-defendants
Included in the prosecution bundle or NAE	<ul style="list-style-type: none"> Evidence must be served as part of committal bundle for either way cases, or form part of the prosecution bundle for indictable only cases (served prosecution documents) or be included in any notice of additional evidence (NAE)
Excludes electronic evidence	<ul style="list-style-type: none"> Electronic evidence cannot be claimed as PPE Please note that where the defence team are served prosecution evidence on CD-Rom or DVD, and a paper copy of that evidence has been served on the court, the pages that have been served on the court will be counted as PPE for the purpose of the graduated fee Where the defence team and the court are served prosecution evidence on CD-Rom, and all of the above criteria are met, a claim can be made by way of special preparation (see Special Preparation section below)

Evidence not counted as PPE

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

- a) Evidence that is not served on the court
- b) Evidence that does not form part of the prosecution bundle or that is not supported by a NAE
- c) Evidence that is served in electronic format²
- d) Title pages, index pages, exhibit labels and separator pages
- e) Evidence served after the litigator or advocate is no longer representing the client

² Please note evidence that meets the criteria (e.g. witness statements in the committal bundle that is served on the court) that is served in electronic format can be claimed as Special Preparation where the work is assessed and paid by way of hourly rates.

- f) Defence generated evidence (including the product of any defence analysis of forensic computer images or copies of electronic storage media (e.g. hard drives))
- g) Transcripts edited for the purpose of being put before the jury³
- h) Pre-sentence and psychiatric reports
- i) Physical exhibits
- j) Software or databases
- k) Unused material
- l) Audio and video evidence⁴
- m) Advance disclosure⁵
- 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

Notice of Additional Evidence

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

PPE limitation

³ Please note that when a transcript has been expanded, because the original was deemed insufficient for the jury, the fullest transcript produced will be included in the PPE count. The version that is in the committal bundle should also be counted.

⁴ Please see paragraph 4.21 of the guidance.

⁵ Please see paragraphs 4.12 & 4.13 of this guidance.

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

Multiple defendants

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

Advance disclosure

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

3.12 However, in circumstances where the case concludes before the prosecution documents are served, and it does not fall within paragraph 16 of Schedule 2 of the Funding Order, and the PPE count is relevant, the correct number of pages of PPE is the material served on the court for the purposes of enabling the Judge to deal with the case, which is usually similar to the advance disclosure bundle.⁶

Bad character and hearsay

3.13 Where bad character or hearsay evidence is not served under a NAE, it cannot be claimed as PPE.⁷ See Costs Judge decision in Regina v McCall 2010 (SCCO/124/10).

Evidence served at trial

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

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

Special preparation for advocates

4.17 Advocates can claim special preparation where:

- 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;

⁶ Para 1(3) of schedules 1 and 2 of the Funding Order

⁷ Please see http://www.cps.gov.uk/publications/finance/gfs_faq.html#_22 for further information.

- b) the representation order is dated on or after 2 August 2004 and the number of PPE exceeds 10,000;
- c) any or all of the prosecution evidence, as defined in paragraph 1(2) of the Funding Order, is served in electronic form only

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

4.18 The appropriate officer must consider:

- a) the number of hours in excess of the amount considered reasonable for cases of the same type where 4.17(a) applies;
- b) the reasonable number of hours to read the evidence where 4.17(b) applies;
- c) the reasonable number of hours to view the evidence where 4.17(c) applies.

4.19 Not applicable to advocates

Assessment of Special Preparation

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

- a) Where pages of statements, exhibits or interviews are scanned into a computer and served electronically for convenient presentation, and it meets the PPE definition, the determining officer may adjust the special preparation fee so that the provider receives an amount as if this evidence had been served in paper format
- b) Where electronic media material is served (e.g. a sample of individual documents or images extracted from a computer hard drive that are not scanned statements or exhibits but which the prosecution are relying on), and it meets the PPE definition, the determining officer may consider the reasonable hours of time spent viewing the material.

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

History of validation of PPE

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

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

- 4.24 However, in August 2009, the LSC discovered there were still large-scale PPE disparities, which posed an unacceptable risk to the legal aid fund. The LSC took immediate remedial action and requested that advocates provide objective evidence supporting the submitted PPE with the PPE Form and that litigators provide objective evidence supporting the claimed PPE for LGFS claims.
- 4.25 Following the AGFS transfer, advocates will not be required to complete the PPE form. Advocates should provide objective evidence supporting the claimed PPE to the LSC instead.

Current process for validating PPE

4.26 The process for validating PPE is as follows:

- a) CPS will provide paginated evidence bundles supported by an endorsement of the PPE on the committal bundle and updated running totals of PPE on any NAE or for non-CPS cases, a paginated bundle and index.⁸
- b) Litigators and advocates submit claims to the LSC⁹ supported by evidence of the claimed PPE (along with the documents specified in the LF1 and AF1)
- c) The LSC validate claims against the supporting evidence. Where this is inconsistent with the claim, the LSC will liaise with the prosecuting authority to determine the correct PPE figure.

4.27 Please note the following in relation to this process:

- a) Evidence of PPE must be sourced from material generated by the **prosecution** and provided to the defence teams in the course of the client's case. Such evidence of PPE includes:
 - Committal bundle or NAE front sheets endorsed with the CPS / prosecuting authority page count
 - Index of evidence
 - Paginated pages
 - Any other objective evidence that has been generated by the prosecution.
- b) Evidence of PPE must be generated by the prosecution office and cannot be a document prepared by the defence and/or prosecution advocate.
- c) The PPE form is no longer mandatory and, if submitted without any additional objective evidence, is not an acceptable form of evidence.

⁸ A requirement for PPE in the Crown Court to be numbered, indexed and for the prosecution to provide a running total of PPE was handed down by the Lord Chief Justice on 30 July 2010 following a recommendation by the LGFS review group. Supporting PPE evidence should now be available on all Crown Court cases. ⁹ As of 7 February 2011, all cases with 2011 representation orders and all cases in Wales and the South West should be submitted to the LSC. All other claims should be submitted to HMCS until such time as those regions transfer to LSC administration in accordance with the agreed timetable.

- d) Where the prosecution has provided a committal bundle or NAE cover sheet or have paginated the evidence, it is the responsibility of providers to ensure they maintain this evidence for the purposes of claiming payment.
- e) HMCS is not required to provide copies of any documents.
- f) Prosecuting authorities are not required to provide duplicate copies of supporting evidence for PPE purposes.
- g) The LSC and CPS have agreed that where the bundles of evidence have not been paginated or indexed, or where a running total of the PPE has not been endorsed on committal bundles or NAE then litigators should inform the LSC and the LSC will raise this as an issue with CPS direct.
- h) The CPS will not routinely deal with queries raised directly with them by defence litigators in relation to PPE after cases are concluded.
- i) For non-CPS cases, litigators should inform the LSC where evidence has not been paginated or indexed and they can therefore not provide PPE evidence to support their claim.