



Legal Aid
Agency

Working with others to achieve excellence in the delivery of legal aid

Advocates Fee Scheme

Guide for advocates

November 2023



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Guidance and other resources

- Crown Court Fee Guidance, offence band and offence class guidance
<https://www.gov.uk/government/publications/crown-court-fee-guidance>
- Fee Scheme calculators
<https://www.gov.uk/government/publications/graduated-fee-calculators>
- Travel and Local Bar Allowance
<https://www.gov.uk/government/publications/graduate-fee-travel-expenses>
- Cost Judge Decisions
<https://www.gov.uk/government/publications/key-cost-judge-decisions>
- Criminal Bills Assessment Manual
<https://www.gov.uk/guidance/funding-and-costs-assessment-for-civil-and-crime-matters>
- CCD
crowncourtdefence@legalaid.gsi.gov.uk
- Unused material forms AGFS
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918747/AGFS_Used_Preparation.pdf
- Unused material forms LGFS
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918750/LGFS_Used_Preparation.pdf
- Other useful links
<https://www.gov.uk/guidance/financial-relief-for-legal-aid-practitioners>
[Criminal Legal Aid \(Remuneration\) Regulations 2013](#)
[Crown Court fee guidance](#)

[Hardship payment scenarios – COVID-19 transmission period](#)

[support for public services, individuals and businesses affected by coronavirus \(COVID-19\).](#)

[Legal Aid Agency payments to providers](#)

Advocate Fee Scheme

Advocate fee scheme 9

Scheme 9 applies to representation orders dated between the 1st April 2012 to 31st March 2018

- Claims must be submitted within three months of the date of the final hearing. You must supply justification with any claims submitted out of time.
- For cases with a representation order on or after 5th May 2015, the advocate who attended the main hearing must submit all costs for the case (This will be counsel who attended the Fixed Fee, Guilty Plea, Cracked Trial or first day of the Trial). For cases with a representation order before 5th May 2015, the instructed advocate would bill all costs.
- Offence class A – K
- Offence class K should be supported by evidence of value of offence being more than £100k.
- First four standard appearance fees are included in the basic fee. Only the fifth standard appearance fee onwards would generate a separate fee.
- No standalone fee payable for a sentence hearing which is classed as a standard appearance fee.
- A PPE threshold of 10,000 applies across all offence classes
- Included in the Basic fee: – The first 2 days of trial, first four standard appearance fees, the Plea and Trial Preparation Hearing and first three conferences.

Advocate fee scheme 10

Representation order dated between 1st April 2018 and 30th December 2018

- This fee scheme represented a large-scale change from scheme 9. Below is a summary of the key changes. Fee schemes 11-16 are built on the foundations laid in scheme 10.
- Claims must be submitted within three months of the final hearing date (for late claims please supply justification).

- Claim should be submitted by the Trial Advocate who attended the main hearing (Fixed fee, Guilty Plea, Cracked Trial or the first day of Trial)
- Offence bands 1.1 -17.1. This is outlined within AGFS Banding Document version 1.1.
- For band 1 offences which relate to murder and manslaughter offences, the banding runs from band 1.1-1.4; additional evidence will be required to support claims for band 1.1 and 1.2. The requirements to meet each higher band are as follows:
 - Band 1.1: Evidence needed to show the offence involves either - The killing of a child (16 years old or under); killing of two or more persons; killing of a police officer, prison officer or equivalent Public servant in the course of their duty; killing of a patient in a medical or nursing care context; corporate manslaughter; manslaughter by gross negligence; missing body killing.
 - Band 1.2: Evidence needed to show the offence involves either - The killing is done with a firearm; defendant has a previous conviction for murder; body is dismembered (literally) or destroyed by fire or other means by the offender; the defendant is a child (16 or under).
- For band 6 offences which relate to fraud offences, the banding runs from band 6.1-6.5; additional evidence will be required to support claims for band 6.1-6.4. The requirements are as follows:
 - Band 6.1: Value of fraud over £10m or over 20,000 pages of prosecution evidence (PPE).
 - Band 6.2: Value of fraud over £1m or over 10,000 pages of PPE.
 - Band 6.3: Value of Fraud over £100,000.
 - Band 6.4: Value of fraud over £30,000.
- For band 9 offences which relate to drugs offences, please be aware this section is for offences charged with producing drugs/intention to supply etc. If the defendant is charged with simple possession this falls under band 17.1. The banding runs from band 9.1-9.7, additional evidence will be required to support claims for band 9.1-9.6. The requirements are as follows:
 - Band 9.1: For class A drugs. A 9.1 is payable if case includes - Importation under Section 3 Misuse of Drugs Act/ Section 170, Customs and Excise Management Act; Or over 5,000 pages of PPE; Or weight over: 5kg heroin or cocaine, 10,000 ecstasy tablets, 250,000 squares of LSD.

- Band 9.2: For class B drugs. A 9.2 is payable if case includes - Importation under Section 3 Misuse of Drugs Act/ Section 170, Customs and Excise Management Act; Or over 5,000 pages of PPE; Or weight over: 20kg amphetamine, 200kg cannabis, 5kg ketamine.
 - Band 9.3. For class C drugs. A 9.3 is payable if case includes - Importation under Section 3 Misuse of Drugs Act/ Section 170, Customs and Excise Management Act; Or over 5,000 pages of PPE.
 - Band 9.4. For class A drugs. A 9.4 is payable if case includes - 1,000 pages of evidence; Or weight over: 1kg Heroin or Cocaine, 2,000 ecstasy tablets, 25,000 squares of LSD.
 - Band 9.5. For class B drugs. A 9.5 is payable if case includes - 1,000 pages of evidence; Or weight over: 4kg of amphetamine, 40kg of cannabis, 1kg ketamine.
 - Band 9.6. For class C drugs. A 9.6 is payable if case includes - 1,000 pages of evidence.
- Each standard appearance fee attracts a standalone fee, and a standalone fee is paid for sentence hearings and other miscellaneous hearings.
 - PPE is only payable for offence bands 6.1-6.2 and 9.1-9.6 as highlighted above.
 - Basic fee – Each trial day except the first one attracts a daily attendance fee; each standard appearance fee and miscellaneous hearing attracts a fee. First three conferences are within the basic fee.

Advocate fee scheme 11

Representation Order dated between 31st December 2018 and 16th September 2020

- The main changes from scheme 10 to 11 are as follows:
- An update was made to the offence bands with a small number of offences changed into different offence bandings. AGFS Banding Document version 1.2 was created to reflect this.
- For cases with a representation order that falls within this scheme but has a main hearing on or after 23rd December 2022, enhanced fees are payable in line with the changes agreed under the response to the Criminal Legal Aid Independent Review.

Advocate fee scheme 12

Representation orders dated between 17th September 2020 and 29th September 2022

- The main changes from scheme 11 to 12 are as follows:
- The removal of ‘thirds’ for cracked trials. All cracked trials are now paid at the equivalent of a one-day trial.
- The introduction of fees for unused material. Unused material is only payable on a cracked trial or trial case.
- For cases with a representation order that falls within this scheme but has a main hearing on or after 31st October 2022, enhanced fees are payable in line with the changes agreed under the response to the Criminal Legal Aid Independent Review.

Advocate fee scheme 13

Representation orders dated between 30th September 2022 and 31st January 2023

- The main changes from scheme 12 to 13 are as follows:
- An 15% fee increase.
- The removal of the ‘elected case not proceed’ fixed fee for cases where the defendant elected for trial by jury.

Advocate fee scheme 14

Representation orders dated between 1st February 2023 and 16th April 2023

- This scheme added a fixed fee of £670 plus VAT payable, once, on any case that has a section 28 cross examination hearing. This fixed fee is in addition to the trial daily attendance fee which is payable for a section 28 hearing.

Advocate fee scheme 15

Representation orders between 17th of April 2023 and 15th November 2023

- This scheme added a fixed fee for additional preparation which is payable at £62 plus VAT on any cracked trial or trial case.

Advocate fee scheme 16

Representation orders dated on or after 16th of November 2023

- This scheme amended the fee payable for the section 28 fixed fee hearing brought in under scheme 14, from £670 plus VAT to £1000 plus VAT.

Case numbering for cases on the Xhibit court system

Claims can have a case number beginning with an S, A or T, depending on the type of case:

- Case numbers beginning with **S** have a trial type of either:
 - Committal for Sentence
 - Breach of a Crown Court order
- Case numbers beginning with **A** have a trial type of either:
 - Appeal Against Conviction
 - Appeal Against Sentence
- Case numbers beginning with **T** have a trial type of either:
 - Cases on indictment (Guilty Pleas, Cracked Trials and Trials)
 - Discontinuance

Trial type	Letter
Committal for sentence	S
Breach of a Crown Court order	S
Appeal Against Conviction	A
Appeal against sentence	A
Cases on indictment (Including elected case not proceed fixed fees)	T
Discontinuance	T

Contempt proceedings are only payable to a person other than the main defendant and would usually fall under the main defendant's case number.

Common Platform

HMCTS are currently implementing a new court system called Common Platform. This will replace amongst other systems, the Xhibit system for Crown Court Cases.

The case numbering system used in relation to the Xhibit system would not be applicable for cases on Common Platform. All Common Platform cases use the URN identifying number. The format for all Crown Court cases follows the same pattern, generally in the format of 2 numbers, a series of letters, then a further series of numbers.

Fixed fee case types

Appeal against Conviction

The Magistrates' Court convict the defendant (found guilty); the defence feels that the conviction is unfair, so the appeal is heard in the Crown.

An appeals specific means tested representation order covering the appeal must be provided.

Appeal against Sentence

The Magistrates' Court convict and sentence the defendant, the defence feels that the sentence is unfair, so the appeal is heard in the Crown.

An appeals specific means tested representation order covering the appeal must be provided.

Committal for Sentence

When the Magistrates' Court has convicted the defendant but sent the case to the Crown Court for sentencing. This may be because the maximum sentence magistrates can impose is 6 months imprisonment or £5000 fine on a single either way offence.

A means tested representation order covering for the specific Committal for Sentence must be provided.

Breach

If a defendant breaches a previous Crown Court order and is brought before the Crown Court to deal with this breach.

Breach claims need to be supported by a representation order specific to the breach. This will either be granted directly by the court or will be a non means tested representation order granted by the Legal Aid Agency for the breach.

Contempt

A Judge may find someone in contempt of court, for example for disobeying a court order or for inappropriate behaviour in court.

Contempt claims should be supported with a Crown Court representation order for the contempt. This will be non means tested.

Fixed Fees

A fixed fee is payable for Appeals, Committals for Sentence, and Breach hearings. This is set out in paragraph 20, Schedule 1 of the Remuneration Regulations. If an appeal lasts for more than one day, the fee payable is the graduated fee for a trial under offence banding 17.1 from scheme 10 onwards.

The Regulations allow additional fees to be paid for other hearings on the case, such as for mention and bail hearings. These should be claimed as an 'Adjourned Appeal' fee on CCCD.

Where a fixed fee for an Appeal, Committal for Sentence, or Breach does not provide reasonable remuneration for a particular case, the Legal Aid Agency may allow an ex post facto fee instead. If the advocate seeks to make an ex post facto claim in the first instance, they may not also claim a fixed fee. Claims for ex post facto fees must be submitted to the LAA's Criminal Cases Unit (CCU).

See also Crown Court Fee Guidance para 2.19

For applications for representation for breach hearings, refer to Appendix G of the Crown Court Fee Guidance.

Discontinuance

If the prosecution serves a discontinuance notice before serving its evidence, 50% of the Basic Fee for a Guilty Plea under the Advocates' Graduated Fee Scheme (AGFS) will be payable. If they serve it afterwards, a guilty plea graduated fee is payable.

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

In a case where the main hearing took place before the prosecution has served papers a fee of 50% of the basic fee for a Guilty plea is payable appropriate to the offence group and the category of advocate.

Where the case is discontinued or otherwise disposed of after the service of the prosecution case, at the first hearing at which a plea is entered (either at the PTPH or FCMH), or at any other time before a PTPH (or FCMH) has taken place, the fee payable is a Guilty Plea fee.

You should also provide an indictment or charge sheet.

If you are claiming a Guilty Plea fee due to PPE being served for the discontinuance hearing, you must provide evidence of PPE – LAA report, NAE, or letter from the CPS to confirm service of PPE.

Elected case not proceed fixed fee

If the offence is an ‘either way’ offence and the client elects to go to the crown court but the case does not proceed to trial an elected fixed fee is payable. There are some exceptions to the elected not proceed fee set out in the Regulations. This fee was abolished for cases under scheme 13 onwards.

A means tested representation order covering the specific offences of the case must be provided.

Guilty Plea

A ‘Guilty Plea’ is defined as such (and not a Cracked Trial) if either:

- At the first hearing that pleas are entered, the prosecution agrees that these pleas are acceptable. The Regulations also specify that a guilty plea is due if the prosecution asks for time to consider whether the entered pleas are acceptable, and then accept.
- The fee type falls within the discontinuance provisions and PPE was served.

You should provide:

- A copy of the indictment.
- Either MAAT number or representation order (for case/defendant uplifts please provide a MAAT number for each separate case being claimed).
- Proof of PPE served (only if relevant to the offence band claimed), or other supporting evidence for the offence band claimed.

Cracked Trial

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

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

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

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

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

Adjourning a case to allow the prosecution time to decide whether to proceed would not attract a Cracked Trial fee.

The essence of a Cracked Trial is that after the conclusion of the first hearing at which a plea is entered, there are still counts on which the prosecution and defence are not agreed, so that a Trial remains a real possibility. This will be marked by the court either fixing the date of trial or ordering it to be placed in a warned list.

Adjourning a PTPH (or FCMH) to allow the prosecution time to decide whether to proceed would not qualify for a Cracked Trial fee. Refer to Costs Judge decision: *R. v. Mohammed* (2001) which held that for a Cracked Trial fee to be payable there would need to be a real possibility of a Trial marked by either the judge fixing a date or ordering it be placed in a warned list.

You must provide:

- A copy of the indictment.
- Either MAAT number or representation order (for case/defendant uplifts please provide a MAAT number for each case claimed).
- Proof of PPE served (only if relevant to the offence band being claimed), or other evidence to support the offence band claimed.

Cracked before Retrial

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 to proceed further – with the case subsequently being listed for mention hearing at which the prosecution offer no evidence – would not qualify for a Cracked Trial fee.

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

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

Additionally, if there is no order by the Judge that there will be a new Trial and the new Trial is deemed to be part of the same Trial process, then the fee payable is for one continuous Trial only. Refer to Appendix O of the Crown Court Fee Guidance for more information.

Cracked Retrial reductions

In cases where the same advocate attends the first trial and a confirmed cracked retrial, and the cracked retrial 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% (if the same advocate attends).

Where a confirmed cracked retrial 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% (if the same advocate attends).

Where a Cracked Trial fee is to be paid following the ordering of a retrial by the Court of Appeal, a full cracked trial fee is due.

Trials

Paragraph 4, Schedule 1 of the Remuneration Regulations specifies the formula for calculating the advocate's graduated fee. The calculation of the graduated fee for a trial is the basic fee (according to the offence banding and advocate), and a daily attendance fee for each additional day of trial for scheme 10 onwards. For scheme 9 claims, the first two days of trial are in the basic fee and day three onwards attract daily attendance fees.

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

Fees for ineffective trials

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

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

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

An ineffective trial fee is likely to be payable where:

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

Retrial – same Trial Advocate at Trial/Retrial

If the advocate at the first trial and the advocate at the new trial are different, each advocate receives a full graduated fee subject to confirmation that the matter is a trial and retrial, rather than one continuous trial event.

If the new trial starts within one calendar month of the conclusion of the first trial attended by the same advocate, the advocate is paid a new trial Graduated Fee but reduced by 30%. 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 reduced by 20%. Where this provision applies, the advocate may elect from which trial the reduction should be made.

The determining officer will need to consider whether any trial and retrial claimed is accepted as such, or if they are considered as one continuous event. Further information can be found within Appendix O of the Crown Court Fee Guidance.

Newton Hearings

The Trial Advocate is the advocate who attends the original Guilty Plea hearing, not the advocate who attends the Newton Hearing. Accordingly, if different advocates attend the

two hearings, the advocate who attended when the initial Guilty Plea was entered is the Trial Advocate and must submit the AGFS claim.

Whenever a Newton Hearing takes place, the case is treated as a trial. The hearing at which the Guilty Plea was taken is the main hearing and the Newton Hearing is the second (and any subsequent days) of the trial¹.

Paragraph 2(8), Schedule 1 of the Regulations only applies where a Newton Hearing takes place following a case on indictment. Where there is no indictment, and a Guilty Plea is entered before the case reaches the Crown Court, the paragraph cannot apply. There is no provision in the schedule that would allow for the payment of a fee. Advocates may claim ex post facto fees under Schedule 1, paragraph 20(4) if they believe the Remuneration Regulations do not provide reasonable remuneration.

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 case are subsequently accepted, then the type of case reverts to the fee that would have been previously payable under the Regulations. The advocate who attended the ineffective hearing may be paid the standard appearance fee for attendance (or a sentence hearing if sentence proceeded on this date).

Bench Warrant

If a defendant fails to attend a hearing, the court issues a warrant, and the case does not proceed, the fee payable is as follows for Scheme 10 onwards:

If a warrant is issued and the case does not progress in the absence of the defendant:

Cases on indictment

If the warrant remains outstanding for three months or more, the trial advocate may claim a 'warrant fee' – which is the basic fee for a Guilty Plea which corresponds to the relevant offence band and category of advocate (no standard appearance fees or any other miscellaneous fees are payable)

If the warrant is executed within 15 months of being issued, then any previous warrant fee payment is deducted from the fee payable to the trial advocate, and if the final fee is greater than the warrant fee, then the overpayment can be recovered

If the warrant is executed more than 15 months after it was issued, then a 'standard' case fee is payable in addition to any warrant fee already paid

¹ Refer to Costs Judge decision: R. v. Gemeskel (1998).

Cases not on Indictment

If the warrant remains outstanding for three months or more, the trial advocate can claim a 'warrant fee' – which is the amount of the basic fixed fee for the relevant type of case (such as a Committal for Sentence fee).

If the warrant is executed within 15 months of being issued, then any previous warrant fee payment is deducted from the fee payable to the trial advocate, and if the final fee is greater than the warrant fee, then the overpayment can be recovered

If the warrant is executed more than 15 months after it was issued, then a 'standard' case fee is payable in addition to any warrant fee already paid

More than one advocate

Please provide the extending representation order with all claims where the court have extended representation to multiple advocates.

In cases where more than one advocate is assigned, for example King's Counsel and junior advocate or two junior advocates, there will be a Trial Advocate for each type of advocate. This advocate will be responsible for billing the whole of the claim for their type of advocate so for example two claims would be submitted, from KC and junior respectively.

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

Fitness to plead hearings

If there is a fitness hearing, the advocate may choose whether the offence banding is either:

- relevant to the charge on the indictment
- banding 5.3

Any case in which a Restriction Order is made under Section 41 of the Mental Health Act 1983 falls within offence banding 1.3, regardless of the offence

Standard Appearance Fees and Miscellaneous Hearings

Select the correct fee type when claiming a half day for any miscellaneous fees. This will be validated against information held on court records.

Miscellaneous hearings all attract a separate fixed fee, including standard appearance fees, the Plea and Trial Preparation Hearing (PTPH), and any Further Case Management Hearing (FCMH).

Armed robbery

Table 1 - Robbery versus armed robbery offence class or band

Scheme	Robbery	Armed robbery
9	Offence class C	Offence class B
10 onwards	Offence band 11.2	Offence band 11.1

Please provide evidence of use of an offensive weapon. This is usually in the form of the prosecution’s case summary or a police/ forensic report.

We consider the following facts when assessing claims for Armed Robbery:

- Is the primary purpose of the object to cause injury?
- Did the defendant bring the object with them or did they find it at the scene?
- Has the object been adapted for the purpose of causing injury?
- Is the object capable of causing serious or long-term injury?

If we cannot identify use of an offensive weapon, then we will pay a class C or Band 11.2 fee.

See 2.3(6) of the Crown Court Fee Guidance for further information.

Confiscation proceedings

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 Criminal Cases Unit (CCU).

Download the form from GOV.UK:

<https://www.gov.uk/guidance/claims-paid-out-of-the-legal-aid-fund>

A Drug Trafficking Act 1994 or Criminal Justice Act 1988 or Proceeds of Crime Act 2002 Confiscation Hearing attracts a half day/full day fee in addition to any other fee for work done that day. If there is an effective DTA/CJA/POCA hearing at the same time as a sentence,

then both the sentence fee and the confiscation fee are permitted (subject to paragraph 2.12.4 of the Criminal Legal Aid (Remuneration) Regulations 2013)

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

Schedule 1 Paragraph 14(2) Criminal Legal Aid (Remuneration) Regulations 2013 contains a table of fees which apply depending on the volume of PPE. They are broken down into 3 categories:

- fewer than 51 pages
- between 51 – 1,000 pages
- more than 1,000 pages

For Confiscation Proceedings to be effective, a Confiscation Hearing (so called by the Court) must take place. There is no requirement for evidence to be called or for a Confiscation Order to be made².

Sentence hearings

Under scheme 10 onwards, the fee payable for a sentencing hearing for cases with a representation order dated on or after 1st April 2018 is a daily fixed fee. The fee is payable unless the hearing is held on a day where a graduated fee applies. Sentencing hearings that are held on the same day as the verdict are counted towards a day of trial.

Please note that if a Committal for Sentence and sentence on a case on indictment are heard concurrently for a defendant, then either the Committal for Sentence fee on the fixed fee case, *or* the sentence hearing on the case on indictment may be paid. We are unable to pay both fees.

For Scheme 9 claims the sentence fee forms part of the standard appearance fees payable and the first four are included in the basic fee

A deferred sentencing hearing fixed fee is payable according to the rate set out in paragraph 24, of Schedule 1, though these are only payable on cases on indictment.

A DAF Equivalent Fee is payable for a sentencing hearing where the assisted person is under a hospital direction, a hospital order, or a restriction order from scheme 10 onwards.

² This principle was held in Costs Judge decision, R. v. Ali (Keir Monteith) (2013)

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

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

Extension of time requests

If advocates will be submitting a claim out of time, please first request an extension of time setting out reasons for the request.

All extension of time requests should be emailed to:

- advocates-fee@justice.gov.uk (AGFS)
- litigators-fee@justice.gov.uk (LGFS)

Out of time advocate and litigator fee claims

Claims for payment must be submitted within three months of the case conclusion. If confiscation proceedings are scheduled for 28 days from the case conclusion, the Trial Advocate may submit their claim for payment of the main case early (prior to the confiscation hearing).

For LGFS claims, ‘the conclusion of the proceedings’ is the date on which the defendant was acquitted or sentenced. If, following sentence, the defendant is subject to proceedings under the Proceeds of Crime Act 2002, the LAA treats these as separate proceedings³.

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

You must advise us why a claim is out of time, or we will potentially reject.

Uplifts

An uplift of 20% of the main hearing fee of the principal case is allowed for each additional case involving the advocate that had been heard concurrently and/or each additional

³ This approach has been confirmed as an accurate interpretation of the Funding Order by the Costs Judge (R v Turnbull).

defendant that the one advocate represents. For two cases to be heard concurrently, the main hearing in each case will have been heard at the same time⁴.

The main hearing fee is the basic fee on indictment, or fixed fee for Appeals, Breaches and Committals for Sentence.

Please provide a copy of the representation order for each additional case for the defendant, or for each additional defendant for which you are claiming an uplift.

Multiple cases uplift

Provide the additional case numbers for each case uplift claimed.

More than one fee

- Joined Cases - one fee
- Severed indictment – more than one fee
- Severed trials – more than one fee
- Quashed indictment & New Indictment Preferred – fee per indictment dependent on the circumstances.
- Stayed & New Indictment Preferred – fee per indictment dependent on the circumstances.
- Remitted Back to Magistrates – AGFS Fee for hearings in the Crown Court until remission plus Magistrates' court claim

Offence Band

If the offence band you are claiming is not listed within the table of offences, it would automatically be classified as a band 17.1, but would be open to reclassification. If you believe the case should be reclassified to a higher offence band, you should attach a copy of the indictment, case summary and submissions as to which offence band you feel is appropriate and why.

The list of offences and their corresponding bandings are published in the AGFS Banding Document on GOV.UK:

<https://www.gov.uk/government/publications/banding-of-offences-in-the-advocates-graduated-fee-scheme>

⁴ As held in Costs Judge decisions: R. v. Fletcher (1998) and R. v. Fairhurst (1999) cases where the main hearings are held on different days are not heard concurrently. Counsel is entitled to separate fees for each case.

Supporting evidence for offence bands

Supporting evidence is required for offence bands where there is:

1. a higher financial value and/or higher PPE – 6.1, 6.2, 6.3, 6.4, 7.2
2. weight of drugs seized and/or higher PPE – 9.1, 9.2, 9.4, 9.5
3. supporting evidence is required to support the offence band claimed – 1.1, 1.2, 3.1 and 7.1
4. sexual offences – 4.1, 4.2, 4.3, 5.1, 5.2, 5.3

Evidence may include witness statements, prosecution opening/closing statement, forensic report, or police reports.

For offence bands where there is a PPE requirement, attach evidence of PPE served by the prosecution.

The list of offences and their corresponding bandings are published in the AGFS Banding Document on GOV.UK:

<https://www.gov.uk/government/publications/banding-of-offences-in-the-advocates-graduated-fee-scheme>

Trial type and length

We verify the trial type and length using the court log.

- Guilty Plea
- Cracked Trial
- Trial
- Newton Hearings – treated as a trial
- Fitness Hearings – see 2.31 Crown Court Fee Guidance
- Video recorded cross-examination under Section 28, Youth Justice and Criminal Evidence Act 1999 - treated as trial days

Conference and views

The Basic Fee covers all preparation (including viewing or listening to evidence on tapes or discs), the first three conferences or views and the first day of Trial.

Paragraph 19, Schedule 1 of the Remuneration Regulations lists the types of conferences and views which may be claimed. It further sets out where a separate fixed fee may be paid and the circumstances where additional conferences and views are permissible.

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

The first three Pre-Trial Conferences (which includes conferences with the defendant 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 2.18.6 of the Crown Court Fee Guidance.

Reasonably incurred travel expenses and travel time are paid for all Pre-Trial conferences and views, including those for which payment for the conference is included in the basic fee. Advocates must demonstrate that the additional conferences were reasonable. Travel time for conferences is only payable if the advocate shows that the defendant or expert was unable to, or could not reasonably have been expected to, attend a conference at the advocate’s chambers or office.

Travel time and travel expenses are allowed for views of the scene of the alleged offence, conferences with expert witnesses or visits to view prosecution evidence, provided they are reasonably incurred.

Conferences will be paid as per the table below:

Table 2 -Payment of additional conferences

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

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

Conferences will be restricted to Pre-Trial Conferences not held at court and within the capped number and length. Travel time is rounded up to the nearest 15 minutes.

All advocates instructed to appear at the main hearing are entitled to claim a conference fee up to the capped number and hours, although payment will only be made to the Trial Advocate. However, paragraph 19(2) of Schedule 1 requires the Legal Aid Agency is satisfied that the work was reasonably necessary.

Hardship claims

Regulation 21 of the Remuneration Regulations allows claims for a hardship payment for advocates and litigators.

Advocates and litigators must meet the following criteria:

- To have spent at least one month working on the case
- They would be unlikely to receive a final payment within the next three months
- They are able to demonstrate that financial hardship will result

The sum paid for a hardship claim is at the discretion of the determining officer but must not exceed the amount which would be considered reasonable remuneration for work done up to the date the claim is made.

Please manually check the claim meets the minimum requirement of £450 exclusive of VAT. Fee calculators are available on GOV.UK:

<https://www.gov.uk/government/publications/graduated-fee-calculators>

Claim through the CCCD billing system. You must submit a copy of the representation order and evidence of financial hardship (where required). You should also provide the usual case details, such as offence type, PPE and number of defendants.

The one-month rule applies to the representative and not to the representation order. For example, if a litigator began representing a client following a transfer of legal aid the period commences on the date of transfer.

We require evidence of hardship such as bank statements and/ or letters from the bank, except where trial delays stem from COVID-19 transmission control period. We accept this will likely result in financial hardship.

Use the same court reference number to claim the final fee. If there has been a change in court venue, and a different court reference number assigned, you must inform the LAA.

We will regularly review hardship payments to ensure duplicate payments have not been made.

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

Hardship claims may be submitted by any advocate working on a case. For representation orders dated on or after 5th May 2015, hardship payments are made to the Trial Advocate. If the trial has not started and there is no Trial Advocate, payment will be made to the Instructed Advocate.



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