



Legal Aid
Agency

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Advocates & Litigator Fee Scheme

Guide PPE and Electronic PPE

December 2020



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Pages of Prosecution Evidence

For ALL claims we require evidence of PPE

- Full LAA Report from DCS
- Notices of Additional Evidence
- Statement & Exhibit Indexes
- Correspondence from Prosecuting Authority
- Upload Evidence on Secure File Exchange
- For all PPE claims please provide the full LAA report including the cover sheet (which show the case and defendant details) and all attached sheets.
- Please note that cover sheets, edited documents, duplicate documents are not payable and will be removed from the final number of pages paid.
- Please refer to Crown Court Fee Guidance Appendix D [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/926998/CCFG - Version 1.12](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/926998/CCFG_-_Version_1.12) for further information on pages of evidence payable.

Secure File Exchange

- AGFS agfs-sfe@justice.gov.uk
- LGFS Litigators-fee@justice.gov.uk
- Special Preparation CCU@justice.gov.uk
- Criminal Finance criminalfinance@justice.gov.uk
- More information can be found at the following links.
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/891616/How_do_I_register.pdf
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889437/Uploading_Files_to_Galaxkey_v1.1.pdf
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889439/How_do_I_upload_files.pdf

Claiming Electronic Evidence on CCD

- Selecting 'Disk Evidence' on CCD
- Uploading Supporting Documents into CCD
- Files accepted: pdf, doc, rtf, jpeg, png, tiff, bmp:
- (Max file upload 20MB)
- Upload electronic evidence on secure file exchange
- Discs/USB must be sent to [LAA Nottingham](#)

Supporting Information Required

In cases where electronic evidence is sought as PPE we require:

- Electronic Evidence uploaded on to Secure File Exchange
- Proof of Service – NAE, LAA Report, Exhibit List, Correspondence from Prosecuting Authority
- Detailed Submissions explaining the importance of the material on disc to the client's case
- A detailed breakdown of the pages on disc sought as PPE – by file/tab

In certain cases we may also require:

- Case Summary
- Skeleton Arguments
- Basis of Plea
- Admissions
- Please see [Appendix D Crown Court Fee Guidance Paragraphs 16 and 17](#) for more information

LAA Reports

- PPE LAA do not pay the following:-
 1. Duplication – R v El Treki
 2. Cover Sheet/ Title/ Separator Pages
 3. Edited Transcripts
- Please refer to:-

[Appendix D Paragraph 4 Crown Court Fee Guidance](#)

- Section M – Expert Reports can only be claimed if they are prosecution expert reports

Electronic Evidence

- Representation orders pre 3/10/2011 all served electronic material is subject to special prep provisions. Please refer to **Part 3 Schedule 2 Paragraph 15 CDS Funding (Amendment) Order 2007 no.3552.**
- Representation orders between 3/10/2011 and 1/4/2012 – only evidence served on disc which would have previously existed in paper pre- digital age can be allowed as PPE. **Part 1, Schedule 2, Paragraph 1 (2A) CDS Funding (Amendment) Order 2011 no. 2065.** I.e. statements, photos, transcripts, man-made reports etc served on disc (generally for convenience) should be included in the PPE. Pre-existing digital material i.e. Excel documents and telephone data are excluded from the PPE and subject to Special Preparation.
- Representation orders after 1/4/2012 – Evidence which has always existed in a digital format can be allowed as PPE if considered appropriate by the determining officer. **Part 1, Schedule 2, Paragraph 1(5) Criminal Legal Aid (Remuneration) Regulations 2013 and R v Napper**

R v Napper (2014) Held that the amended definition, must be interpreted to mean that where there is insufficient evidence to establish that electronic evidence would previously have been served in paper form, then a decision on whether the material should be counted as PPE must be based on how important or integral it is to the case and the work involved in considering it.

Lord Chancellor v SVS Solicitors (2017)

- Material relied upon by the prosecution should be allowed as PPE
- If material is relied upon and there is no Notice of Additional Evidence, the defence should not be penalised
- The status of material should be clarified and agreed between prosecution and defence at the earliest opportunity
- If there is a dispute the trial judge can make a ruling on the status of the material
- Paragraph 50 of the judgment sets out the principles – points vii & viii are of significance in cases where material has been extracted and relied upon by the prosecution and there is a dispute as to the underlying source material

Paragraph 50 (vii) *Where the prosecution seek to rely on only part of the data recovered from a particular source, and therefore serve an exhibit which contains only some of the data, issues may arise as to whether all of the data should be exhibited. The resolution of such issues will depend on the circumstances of the particular case, and on whether the data which have been exhibited can only fairly be considered in the light of the totality of the data. It should almost always be possible for the parties to resolve such issues between themselves, and it is in the interests of all concerned that a clear decision is reached and any necessary notice of additional evidence served. If, exceptionally, the parties are unable to agree as to what should be served, the trial judge can be asked whether he or she is prepared to make a ruling in the exercise of his case management powers. In such circumstances, the trial judge (if willing to make a ruling) will have to consider all the circumstances of the case before deciding whether the prosecution should be directed either to exhibit the underlying material or to present their case without the extracted material on which they seek to rely*

Paragraph 50 (viii) *If – regrettably - the status of particular material has not been clearly resolved between the parties, or (exceptionally) by a ruling of the trial judge, then the Determining Officer (or, on appeal, the Costs Judge) will have to determine it in the light of all the information which is available. The view initially taken by the prosecution as to the status of the material will be a very important consideration, and will often be decisive, but is not necessarily so: if in reality the material was of central importance to the trial (and not merely helpful to the defence), the Determining Officer (or Costs Judge) would be entitled to conclude that it was in fact served, and that the absence of formal service should not affect its inclusion in the PPE. Again, this will be a case-specific decision. In making that decision, the Determining Officer (or Costs Judge) would be entitled to regard the failure of the parties to reach any agreement, or to seek a ruling from the trial judge, as a powerful indication that the prosecution's initial view as to the status of the material was correct. If the Determining Officer (or Costs Judge) is unable to conclude that material was in fact served, then it must be treated as unused material, even if it was important to the defence.*

The Assessment Process

As well as applying the principles laid out in the regulations, *R v Napper* and Lord Chancellor v *SVS* we also use the following decisions in our decision making particularly where the material in question is telephone evidence:

R v Sibanda (SCCO Ref 227/14): where a defendant is charged with substantive offences telephone data relating to co-defendants is not sufficiently relevant to merit inclusion in the PPE.

R v Sana [2014] 6 Costs LR 1143: The Costs Judge held that if some electronic evidence is relevant to the case and some is irrelevant to the case, the nature of the document and the circumstances mean that it is not reasonable to treat the irrelevant material as PPE. However, reasonable time spent considering the material could still be the subject of a claim under the special preparation rules

R v T Mahmood and Z Mahmood (SCCO Ref 149/16;155/16 and 185/16): In cases where a telephone report is served it may be appropriate to subdivide a report into its individual sections and allow only the relevant tabs or sections. In particular, there is a distinction between “social material” i.e. audio files, images, photographs, internet history, cookies, installed applications etc that may properly be remunerated as special preparation and telecommunications data i.e. contacts, call history, SMS and other messages which is more likely to be paid as PPE.

R v Robertson (SCCO Ref 22/17): Personal photographs or images contained on a defendant’s telephone are unlikely to merit inclusion within the pages of prosecution evidence.

Depending on the nature of the case and the client’s role it may be appropriate to draw a distinction between material directly attributable to the defendant which is integral to the case and should be included in the PPE and material attributable to the co-defendant which is useful only as additional background and therefore payable as special preparation as per **R v Yates (SCCO Ref 66/17)**

Where duplicate material is served in multiple formats is a relevant consideration that the determining officer should take into account as held in :

R v Daugnitis (SCCO ref. 154/17, 155/17, 177/17):

Where it is clear that the duplicate documents would not have required separate consideration they should only be included in the page count once. There is a distinction between material in PDF which provides a dependable page count and is formatted in a way which permits the material to be read and printed in page format so that the printed page will reflect the page on screen and material in Excel format which does not provide a

representative or predictable page count (as it is subject to the version of Excel used and the print settings of the user). Excel data is intended to be manipulated electronically using various search tools and filters, if printed the data would become distorted and incomprehensible and may include a number of blank pages. Depending on the circumstances of the case the appropriate method of remuneration for time spent considering or manipulating the Excel data may be special preparation which is based on actual time reasonably spent.

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

If the litigator and advocate are from the same firm we require both of their names to be supplied to ensure that there is no duplication of work pertaining to the electronic material as per **R v Napper & R v Hennessey**

- If an assessment has been made and you are dissatisfied you have 21 days from the assessment notification to lodge a redetermination.
- If a redetermination is lodged you will need to resubmit the electronic material
- If your redetermination request is refused or part authorised; you have the right to request written reasons within 21 days of receiving the redetermination notification.
- If a written reasons request is lodged you will need to resubmit the electronic material
- Once the written reasons have been supplied you can lodge a Form A at the SCCO.

Unusual Circumstances

- In cases where the status of material has not been resolved we can contact the prosecution to clarify whether the material was used or not
- In terrorism and indecent images cases where there is an undertaking not to disclose material we can contact the CPS to verify the page count
- In all other cases where there is an undertaking not to disclose information, an application to vary the terms of the undertaking should be made so that the material can be provided to the LAA. If the CPS refuse we can liaise with them directly.



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