



Legal Aid
Agency

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

Litigator Fee Scheme

Guide for litigators

December 2020



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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](#)

Litigator Fee Scheme

Fixed fees

Please ensure the correct representation order is attached to your claim

Fixed fees can have a case number beginning with an S, A or T.

Case numbers beginning with a S will have a trial type of Committal for Sentence or Breach of a Crown Court Order.

Case numbers beginning with an A will have a trial type of Appeal Against Conviction or Appeal Against Sentence.

Cases beginning with a T number will have a trial type of an Elected case or Hearing subsequent to sentence.

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

Definitions of Fixed Fees

Appeal against conviction - The magistrates' court convict the defendant (find guilty), the defence feels that the conviction is unfair so the appeal is heard in the crown. A Magistrate's representation order must be provided stating that it covers appeal proceedings.

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. A Magistrate's representation order must be provided stating that it covers appeal proceedings

Committal for sentence - When the magistrates' 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. A Magistrates representation order must be provided.

Contempt - The judge can find someone in contempt of court for interrupting court proceedings or being abusive in court for example. Contempt claims need to be supported with a Crown Court representation order.

Breach - If a defendant breaches a previous crown court order it must go back to the crown to be dealt with. Breach claims submitted need to be supported by either a new representation order, issued by the relevant magistrates' court specifically covering the Breach Proceedings or a representation order issued by the Crown Court.

Elected fixed fees – 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. A magistrates' representation order must be provided.

A litigator may claim a fixed fee for the following proceedings with a representation order dated on or after 3 August 2009:

Hearing Subsequent to Sentence – Is a hearing that happens after the sentencing hearing to vary, discharge or alter the sentencing.

We will verify the following claims by checking the court records:

- Section 1CA of the Crime and Disorder Act 1998 (variation and discharge of orders under 1C)
- Section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 (alteration of Crown Court sentence)
- Section 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendant: review of sentence)

Fixed Fees Payable

Appeal Against Conviction- £419.36 including VAT

Appeal Against Sentence- £186.38 including VAT

Committal for Sentence- £279.58 including VAT

Contempt- £139.79 including VAT

Breach of Crown Court Order- £93.19 including VAT

Elected Case That Does Not Proceed (ENP)- £396.40 including VAT

Hearing Subsequent to Sentence- £186.38 including VAT

Interim Disbursements

Please note that Interim Disbursements cannot be redetermined – please do not send messages regarding redeterminations for this category of claim – please submit new claims only

All disbursements can be claimed on CCD with the firm's litigator fee claim at the end of the case, however if a case is ongoing some firms may choose to apply for a payment on account in respect of certain disbursements. These claims are known as Interim claims.

Claims for Interim disbursements should include the following documentation:

- The representation order/ MAAT number
- The original invoice
- A copy of the CRM4 prior authority grant certificate

Interim claims cannot be made for any disbursements under £100

All invoices should include client's name/case reference and a breakdown of work undertaken. We cannot accept quotations or estimates only invoices are accepted

Final Fee Overview

There are 4 main trial types for a final fee. These can be a discontinuance, a guilty plea, a cracked trial or a trial.

There are also several transfer scenarios which are also considered to be final fees. These are payable when legal aid is transferred from one provider to another before the case has concluded.

This overview will give some basic detail of some regularly used terms and each of the 4 main scenarios.

Effective PTPH

PTPH standards for 'Pre-Trial Plea Hearing'.

This is generally the first hearing in the Crown Court and is where a defendant will enter their initial plea.

For the purposes of billing we only consider a PTPH as effective if the defendant has been arraigned and has entered a plea. The plea can be either Guilty or Not Guilty for each count that they are charged with.

Note that effective PTPH is not payable if a client has elected for a trial in the Crown Court, or if the matter has been listed for a FCMH

Following Covid we will accept an indication of a NG plea and trial listing to pay an effective PCMH fee, we will check this by the court log but the firm can also upload the completed PTPH form or DCS Case Commentary with their claim as evidence of indication of pleas and trial listing.

Effective Start of Trial

The effective trial start refers to the first day of trial.

The general principle of this is that the trial will not be deemed to have effectively started until both the Jury has been sworn and the prosecution has opened their case.

There are some exceptions to this which are not detailed here.

Interim Trial Fee - Only payable if the trial has started and the trial is estimated/listed to last 10 days or more

Mode of Trial

Mode of trial refers to the method in which the case arrived in the Crown Court. This is dependant of the type of offence on the indictment.

An offence can be Indictable only, Either way or Summary only.

Indictable only means that this offence can only be dealt with in the Crown Court.

Either way means that the offence can be dealt with by either in the magistrates' court or the Crown Court.

Summary only means that the offence can only be dealt in the magistrates' court. We tend not to see these as we only deal with Crown Court work. 22 Last Updated 24/06/2020

The main difference between a trial in the magistrates' court and a trial in the Crown Court is that there would not be a Jury in a magistrates' trial whereas there always will be a jury in a Crown Court trial.

Either Way Offences

Where an offence is either way, it could either be directed for trial by jury or elected for trial by jury.

Directed means that due to the seriousness of the offence the magistrates' felt that it should be heard in front of a jury and so has sent it to the Crown Court.

Elected means that the defendant has chosen to be tried by a jury and so the case has been sent to the Crown Court.

Discontinuance

This scenario is where the prosecution has decided to discontinue the case before the PTPH has taken place.

Guilty Plea

This scenario is where the defendants has entered guilty pleas to all counts at the PTPH

Cracked Trail

This scenario is where the defendant has entered not guilty plea at the PTPH and the case has been listed for trial but the case concluded before the trial has taken place.

This can either be because the defendant changed his plea to guilty or that the prosecution has dropped the case because they do not have enough evidence.

Trial

This scenario is when the case proceeds and the trial has taken place

Number of Defendants

Defendant Uplifts payable if you have had more than one client in that case at some point – Uplift for Defendants - Please ensure that you provide a copy of the Representation Orders for each defendant for which you are claiming an uplift.

Number of case uplift – Please provide the additional case number(s) for each case uplift claimed.

Additional information: Up to 3 defendants a 20% uplift is payable - more than 3 defendants a 30% uplift is payable (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 1 advocate represents.

Quashed Indictment/Amended Indictment

Where an indictment has been quashed and a new one preferred there will be two fees payable. The provider will be able to claim the scenario of the quashed indictment for the stage that the case had gotten to at the time of the indictment being quashed. They will then also be able to claim the final fee for the preferred indictment.

Amended/Stayed Indictment

The inclusion of additional counts on the same indictment or amendments to the existing counts is not enough to give rise to a second fee. The test is whether the indictment has been changed so significantly that there was two separate set of proceedings against the defendant

Joinder Indictments

It can be the case the two indictments can be joined into a single indictment. This could be for different defendants joined onto a single indictment or for multiple indictment for the same defendant joined into one.

In these circumstances the Provider will only be able to claim one fee for the joinder indictment. They cannot also claim a fee for the original indictment or indictments

More Than One Fee – What is Payable

Joined Cases = 1 fee

Severed indictment – more than one fee

Severed trials – more than one fee

Quashed indictment & New Indictment Preferred – Fee per indictment

Stayed & New Indictment Preferred – Fee per indictment

Remitted Back to Magistrates – AGFS Fee for point in Crown Court until remission plus Mags bill

Trial Type and Length

Verified by court log

Guilty Plea – concludes on or before PTPH and PPE served

Cracked Trial – proceeds past PTPH & is listed for trial but does not go to trial or the indictment is changed

Newton Hearings – treated as a trial when effective - the trial length is the combined length of the hearing where the GP was entered and the number of days the Newton hearing lasted

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 – please refer to Appendix S Crown Court Fee Guidance for s28 Hearings link:-

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/926998/CCFG - Version 1.12 - October 2020.pdf

Offence Class

An indictment should be attached to each claim to evidence the offences the defendant was charged with.

The indictment should be crossed checked against the table of offences to identify the correct offence classification being claimed.

A copy of the table of offences can be found at:-

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/390214/offence-classification-and-type-for-agfs-and-lgfs-claims.xls

Where there are multiple counts, we always consider the highest possible offence class.

Where there are multiple defendants on a single indictment, please check the defendant you are claiming for is listed under the correct charges

When an Offence is Not listed

Most offences are classified on the table of offences. However, there are a number of newer offences that are yet to be classified. In this situation a class H should be claimed for 'Miscellaneous'.

You can request a reclassification on redetermination but please provide an explanation as why you believe that offence should fall within a higher offence class.

If you are requesting a reclassification of an offence please ensure you have attached evidence to support your request including the Police Report and Witness Statement.

Value Based Dishonesty Offences

Some offences, such as theft or fraud, can either be a class F, G or K. This is based on the value of that offence.

Please provide evidence of the value. This is often provided in the form of the prosecution's case summary or a police/ forensic report.

If the value is over £100,000 offence class K is payable.

Where the value is below £50,000 or no evidence of the value has been provided then an offence class F will be paid

Armed Robbery

Robbery is offence class C but Armed Robbery is offence class B.

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

Facts that will be considered when your claim is being assessed for Armed Robbery: -

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

If we cannot identify an offensive weapon having been used, then only a class C will be paid.

Conspiracy and Attempted Offences

Where there counts on the indictment are a Conspiracy to commit an offence or an attempt to commit an offence the offence class will be determined by the offence that is the subject of the conspiracy or attempt.

For example, a count of attempted murder will fall under offence class A. This is based on the offence of murder.

A count of Conspiracy to supply Class B drugs will fall under offence class B. This is based on the offence of Supplying class B drugs.

Hospital Orders

Where there has been an hospital order/ restriction order made under Section 41 of the Mental Health Act 1983 then offence class A is payable. This is where instead of imposing a sentence, the Judge orders the defendant to received medical treatment for their mental health problems.

This is not to be confused with a hospital order under Section 37 of the Mental Health Act 1983 which does not affect the offence class.

Please provide a copy of the hospital order issues

Fitness to Plea

Where a fitness to plead hearing has taken place, the provider can choose to claim offence class D rather than the class of offences on the indictment.

If a trial is held, or continues, following a fitness hearing, the length of trial includes the fitness hearing

If a trial is not held because the defendant is found unfit, the litigator can elect to be paid either:

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

If at any time the defendant pleads guilty, the litigator can elect to be paid either:

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

Any case in which a Restriction Order is made under Section 41 of the Mental Health Act within offence class A, regardless of the offence

Newton Hearing

Whenever a Newton Hearing takes place, the case is treated as a trial with the hearing that the guilty plea was taken being the main hearing and the Newton Hearing being the second (and subsequent) day(s) of the trial. Refer to Costs Judge decision: R. v. Gemeskel (1998).

This 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 above cannot apply and there is no other provision that would allow for the payment of a graduated fee. Accordingly, for litigators, only a fixed fee (Committal for Sentencing) is payable in such a situation. Refer to Costs Judge decision: R. v. Holden (2010). Advocates can claim ex post facto fees

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

Out of Time Claims

If your claim is being submitted more than 3 months after the final hearing, please ensure you supply justification for the late submission so your claim can be considered.

Paragraph 6 (3) of the CDS Funding Order 2007, states that a claim by a litigator for fees in respect of work done under a representation order must not be entertained unless he submits it within three months of the conclusion of the proceedings to which it relates.

However rather than refuse out of time claims a reduction to the Litigator fee will be imposed. The reduction imposed will increase depending on how far out of time the claim is.

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

If you are submitting a claim which is out of time, please always submit reasons as to why the claim is out of time so your claim is not rejected.

Transfer Fee Assessment

The 'new' solicitor is the solicitor who has conduct of the case last. All other litigators are treated as 'original' litigators and can claim the associated fees depending at the point at which the case transferred. Where possible the transfer rep order should be uploaded with your claim, however for more recent claims we can check the transfer dates on our internal systems

Representation Orders and Amended Representation Orders

The Crown Court has the power to grant a transfer of Legal Aid and as such the amending orders are issued by the court. When this occurs, the new solicitor should provide to the LAA CAT team the amending order so that our records can be updated

Up to and Including PTPH Transfer (original)

This trial type is payable to an original solicitor when Legal Aid has transferred at or before the PTPH were the defendant first enters their plea. This is the lowest transfer fee that can be paid.

Before Trial Transfer

This trial type is payable to an original solicitor when Legal Aid has transferred after the PTPH were pleas are entered and after the case is listed for trial.

Up to and Including PTPH Transfer (new) – Guilty Plea, Cracked Trial, Trial

This trial type is payable to a new solicitor when Legal Aid has transferred at or before the PTPH were the defendant first enters their plea and where they have represented the defendant to the case conclusion. When claiming this the solicitor should have provided

the date of the transfer and the amending representation order in their firm's name or Maat number provided that the CAT team have been previously informed of the transfer.

Before Trial Transfer (new) – Cracked Trial, Trial

This trial type is payable to a new solicitor when Legal Aid has transferred after the PTPH were a plea is entered, after the case is listed for trial and where they have represented the defendant to the case conclusion. When claiming this the solicitor should have provided the date of the transfer and the amending representation order in their firm's name or Maat number provided that the CAT team have been previously informed of the transfer.

During Trial Transfer (original), Transfer During Retrial (original)

This trial type is payable to an original Solicitor when Legal Aid has transferred in the middle of a trial or retrial. The solicitor will be able to claim for however many trial/ retrials days have taken place before the point of transfer. When claiming this the solicitor should have provided the date of the transfer and the original/ amending representation order in their firm's name or Maat number.

During Trial Transfer (new), Transfer During Retrial (new)

This trial type is payable to a new solicitor when Legal Aid has transferred in the middle of a trial/ retrial and where they have represented the defendant to the case conclusion. The solicitor will be able to claim for however many trial/ retrial days have taken place after the point of transfer. When claiming this the solicitor should have provided the date of the transfer and the original/ amending representation order in their firm's name or Maat number provided that the CAT team have been previously informed of the transfer.

Transfer Before Retrial (original) – Retrial

This trial type is payable to an original solicitor when Legal Aid has transferred after a trial has taken place and the case is listed for retrial but before the retrial has taken place. When claiming this the solicitor should have provided the date of the transfer and the original/ amending representation order in their firm's name or Maat number.

Transfer After Trial /Retrial before Sentence Hearing (original)

This trial type is payable to an original solicitor when Legal Aid has transferred after the trial/ retrial has concluded but before sentence has taken place. The solicitor can claim for however many days the trial lasted. When claiming this the solicitor should have provided the date of the transfer and the original/ amending representation order in their firm's name or Maat number.

Transfer after Trial/Retrial before Sentence Hearing (new)

This trial type is payable to a new solicitor when Legal Aid has transferred after the trial/ retrial has concluded but before sentence has taken place. When claiming this the solicitor should have provided the date of the transfer and the original/ amending representation

order in their firm's name or Maat number provided that the CAT team have been previously informed of the transfer

Elected Case and Transfer Fees

Where there is an Up to and including PTPH transfer (org) or a Before trial Transfer (org) and the defendant as elected for a trial by jury then we would pay and Elected case - Up to and including PTPH transfer (org) or Elected case - Before trial Transfer (org) respectively.

Where there is an Up to and including PTPH transfer (new) or a Before trial Transfer (new) and the defendant as elected for a trial by jury and plead guilty at any stage then we would pay and Elected case - Up to and including PTPH transfer (new) or Elected case - Before trial Transfer (new) respectively which both pay the same as the Elected that did not proceed fixed fee.

Where an elected case is cracked before retrial the solicitor can claim an Elected Case – Transfer before retrial (Org) or an Elected case – transfer before retrial (new) depending whether they are the new or the original.

Warrant Fees

Where a defendant has failed to attend court, the Judge may issue a warrant for their arrest. In this situation, after 3 months have passed, the Provider can bill for the work that they have done on the case. The scenario they can claim will be the scenario that is most applicable to the stage the case has progressed at the time the warrant has been issued.

For example, if the warrant has been issued prior to the effective PCMH and PPE has been served the warrant fee can be paid as a guilty plea. If the warrant was issued after the effective PCMH and the case has been listed for trial, the warrant fee can be paid as a Cracked trial.

When the defendant is arrested the warrant will be said to have been executed.

Warrants Executed within 3 Months of Issue

A Provider cannot claim a warrant fee within 3 months of the issue. If a claim is submitted within 3 months of the warrant being issued, it should be refused.

If the warrant is executed within the 3 months, then the case will continue as normal and the provider should submit their claim after the case has concluded

Warrants Executed 3-15 Months of Issue

If a warrant is executed after 3 months but within 15 months of the issue of the warrant the Provider's final fee will be offset by the warrant fee that has been paid to them.

This means the difference between the warrant fee and final fee will be paid to them once the case has been concluded

Warrants Executed after 15 Months of Issue

If a warrant is executed after 15 months of the issue of the warrant then the Provider can receive a full final fee separate from the warrant fee.



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