



Legal Aid  
Agency

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# Special preparation claims

## Getting your claim right

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# Scope of the scheme

## The regulations

### Litigators

The Criminal Legal Aid (Remuneration) Regulations 2013 state:

20 (3) The amount of the special preparation fee must be calculated from the number of hours which the appropriate officer considers reasonable—

(a) where sub-paragraph (1)(a) applies, to view the prosecution evidence; and

(b) where sub-paragraph (1)(b) applies, to read the excess pages, and in each case using the rates specified in the table following paragraph 27

### Advocates

The Criminal Legal (Remuneration) Regulations 2013 state:

17 (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.

The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 and The Criminal Legal Aid (Remuneration) (Amendment) (No2) Regulations 2018 both state:

17 (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.

## Excluded work

The following work is excluded from payment:

- work undertaken on cases that do not attract a graduated fee:
  - committal for sentence
  - breach of crown court order
  - appeal against conviction or sentence
- work undertaken during confiscation proceedings
- work undertaken before the grant of legal aid or the extension of the order for a second advocate
- work undertaken after legal aid is transferred or the case has concluded.
- anything other than the reading or viewing relevant PPE or Electronic material - this includes:
  - cross-referencing documents
  - preparation of schedules, chronologies or other ancillary work
  - conference or liaison time
  - preparation of any defence documents (outside of very unusual/novel cases for advocates)
  - video and audio (outside of very unusual/novel cases for advocates)
  - considering unused material (outside of very unusual/novel cases for advocates).

## Very unusual or novel points of law or factual issues

No categories of work are explicitly excluded under this header.

However, any work should have arisen as a direct result of the points of law or factual issues.

It should also be substantially more than typically undertaken on cases of the same type.

Special preparation is only payable for the hours in excess of those normally undertaken.

# Getting your claim right

## Page count

You may claim special preparation for reading pages of evidence served in excess of the relevant threshold.

### **Difference in agreed page count**

For Litigators, we will assess the PPE and determine if the 10,000 PPE cap is met or not. If it is not, your claim will not be referred to the Criminal Cases Unit until the final page count is agreed.

Advocates must tell us how many pages of evidence were served. This is because we generally do not assess PPE for advocate claims. You must provide supporting evidence, such as Notice of Additional Evidence (NAE) or LAA reports.

You must provide copies of any electronic evidence, that would previously have been on paper, and which you have included in the final page count. You must also detail what pages have been included in the graduated fee.

### **PPE included in the graduated fee**

Ensure that you are not claiming time to view evidence that has been remunerated by way of the graduated fee.

### **Duplication between formats**

The prosecution often serves telephone evidence. This can vary between full phone download reports, in and out call data and cell siting data.

Telephone reports are typically served in either Excel or PDF format. Occasionally, both formats will be served.

We use the PDF documents to quantify the number of pages as they most accurately reflect the amount of data. Excel spreadsheets can provide differing page counts depending on viewing parameters. We would, however, expect the Excel ones to be used for analysis due to the greater functionality.

We would expect detailed consideration of one format with a small amount of time to confirm any duplication.

### **Avoid print preview in Excel to calculate a page count**

Often 'print preview' is used to generate a page count for Excel documents but this is not always reflective of the amount of data. The format and layout can dramatically change the page count.

We calculate how many cells are within a print area and then using a CountBlank formula, calculate how many cells are blank. This provides a sense of the amount of data in the document. We use this and other information to decide how much viewing time is reasonable.

The regulations are silent on which pages are included within the graduated fee. It is reasonable, however, for you to consider the evidence as it is served. It is not reasonable to consider latterly served telephone evidence prior to the documentary evidence.

It is important that you remember to deduct the PPE threshold from your claim.

## **Case details and supporting documents**

### **Indictment**

This tells us what your client is charged with.

### **Case summary**

This tells us the case against your client and helps us build a picture of what evidence is likely to be important.

### **LAA report or NAE**

This tells us the page count, the type of evidence and if any electronic evidence has been served.

### **Amended representation order for additional counsel or KC**

This allows us to determine the appropriate rates for counsel.

### **Attendance notes or work log**

Your work log or attendance notes should detail:

- the date the work was carried out – so we can tell if legal aid was in place
- the number of pages read on each date and what those pages were – this guides us as to how long it would take to consider the material
- the start and end times of preparation – we are unable to remunerate comfort breaks or time not spent reading or viewing the material
- the number of hours spent reading the material – we need to know how much time has been spent considering the evidence

Avoid including time engaged in non-reading tasks. If it is necessary to include them, you should quantify how much time was spent engaged in each aspect.

Record different tasks separately, even if undertaken on the same day.

Your work log or attendance notes allow us to check that you are only claiming for reading or viewing evidence.

### **Justification of claim**

#### *Meeting the criterion*

Confirm which criterion you are claiming under and how it has been met.

#### *PPE in excess of the corresponding thresholds*

Provide a breakdown of:

- pages of witness statements
- pages of documentary exhibits
- pages of served electronic evidence

Then provide a breakdown of the pages claimed under special preparation.

#### *Very unusual or novel point of law or factual issue*

Provide a description of the very unusual or novel point of law or factual issue and the reasons why it meets the criteria.

#### *Wasted preparation*

Provide the reason for returning the brief using the scenarios a to e listed in the 2013 regulations. You should also confirm where applicable the number of trial days, or the PPE total if the case was a cracked trial.

#### *Overview of case*

Provide a brief overview of the case and the client's role. This helps us build a picture of the case and what evidence is important.

#### *Approach to evidence*

For example:

- page by page in chronological order for documentary exhibits and witness statements
- electronic search functions for Excel electronic material

This helps us determine what time is reasonable to consider the evidence.

#### *Grade of each fee earner and justification for higher grades*

Tell us why it is reasonable for a higher grade to consider the evidence.

## **Evidence**

If your claim is for viewing electronic evidence either as part of the PPE or as standalone electronic material, we need to view the material. If not provided we will reduce or reject your claim.

All electronic evidence can now be uploaded to our Secure File Exchange. There is a special preparation workspace. Where necessary discs can still be provided, however, this is not currently advisable. This is because the pandemic has restricted access to our offices.



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