

2007 No. 1174

LEGAL SERVICES COMMISSION, ENGLAND AND  
WALES

# The Criminal Defence Service (Funding) Order 2007

<i>Made - - - - -</i>	<i>3rd April 2007</i>
<i>Laid before Parliament</i>	<i>5th April 2007</i>
<i>Coming into force - -</i>	<i>30th April 2007</i>



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This Order is made in exercise of the powers conferred upon the Lord Chancellor<sup>(a)</sup> by sections 14(3), 14(5) and 105 of, and paragraph 9 of Schedule 14 to, the Access to Justice Act 1999<sup>(b)</sup>.

The Lord Chancellor has had regard to the matters specified in section 25(3) of that Act and has consulted the General Council of the Bar and the Law Society in accordance with section 25(2) of that Act.

Accordingly, the Lord Chancellor makes the following Order.

### **Citation and commencement**

1. This Order may be cited as the Criminal Defence Service (Funding) Order 2007 and shall come into force on 30th April 2007.

### **Interpretation**

2. In this Order—

“the Act” means the Access to Justice Act 1999;

“advocate” means a barrister, a solicitor advocate or a solicitor who is exercising their automatic rights of audience in the Crown Court;

“appropriate officer” means—

- (a) in the case of proceedings in the civil division of the Court of Appeal, the head of the civil appeals office;
- (b) in the case of proceedings in the criminal division of the Court of Appeal, the registrar;
- (c) in the case of proceedings in the Crown Court, the Commission;

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(a) The powers were conferred on the Lord Chancellor, transferred to the Secretary of State for Constitutional Affairs by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), and were transferred back to the Lord Chancellor by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429).

(b) 1999 c..2.2

- (d) in respect of advice or assistance as to an appeal from the Crown Court to the Court of Appeal, (except in the case of an appeal under section 9(11) of the Criminal Justice Act 1987(a)(preparatory hearings)) where, on the advice of any representative instructed, notice of appeal is given, or application for leave to appeal is made, whether or not such appeal is later abandoned, the registrar;
- (e) in respect of advice or assistance as to an appeal to the Courts-Martial Appeal Court, the registrar;
- (f) in respect of advice or assistance as to an appeal from the Court of Appeal to the House of Lords, where the appeal is not lodged with the House of Lords, the registrar; and
- (g) in any other case, the Commission,

and, in any case, includes an officer designated by the appropriate officer to act on his behalf for the purposes of this Order;

“assisted person” means a person in receipt of funded services;

“CDS Regulations” means the Criminal Defence Service (General) (No.2) Regulations 2001(b);

“class 1 offence”, “class 2 offence” and “class 3 offence” have the meanings given in paragraph III.21.1 of the Practice Direction (Criminal Proceedings: Consolidation)(c);

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“fee earner” means a litigator, or person employed by a litigator, who undertakes work on a case;

“funded services” means services which are provided directly for an individual and funded for that individual as part of the Criminal Defence Service under sections 12 to 18 of the Act;

“instructed advocate” means

- (a) where a representation order provides for a single advocate, the first barrister or solicitor advocate instructed in the case, who has primary responsibility for the case; or
- (b) where a representation order provides for more than one advocate, each of—
  - (i) the leading instructed advocate; and
  - (ii) the led instructed advocate;

“leading instructed advocate” means the first leading barrister or solicitor advocate instructed in the case, who has primary responsibility for those aspects of a case undertaken by a leading advocate;

“led instructed advocate” means the first led barrister or solicitor advocate instructed in the case, who has primary responsibility for those aspects of the case undertaken by a led advocate;

“litigator” means the person named on the representation order as representing an assisted person, being a solicitor, firm of solicitors or other appropriately qualified person;

“registrar” means the registrar of criminal appeals;

“related proceedings” means—

- (a) two or more sets of proceedings involving the same defendant which are prepared, heard or dealt with together; or
- (b) proceedings involving more than one defendant which arise out of the same incident, so that the defendants are charged, tried or disposed of together;

“representation order” means a document granting a right to representation;

(a) 1987 c.38.

(b) S.I. 2001/1437, as amended by S.I. 2002/712, 2002/2785, 2003/644, 2003/2378, 2004/1196, 2004/2046, 2005/2784, 2006/2490 and 2007/780.

(c) [2002] 1WLR 2870. Paragraph III.21 was amended by Practice Direction (Crown Court: Classification and Allocation of Business) [2005] 1 WLR 2215.

“representative” means a litigator or an advocate, including, where appropriate, an instructed advocate;

“senior solicitor” means a solicitor who, in the judgement of the appropriate officer, has the skill, knowledge and experience to deal with the most difficult and complex cases;

“solicitor advocate” means a solicitor who has obtained a higher courts advocacy qualification in accordance with regulations and rules of conduct of the Law Society;

“solicitor, legal executive or fee earner of equivalent experience” means a solicitor, Fellow of the Institute of Legal Executives or equivalent senior fee earner who, in the judgement of the appropriate officer, has good knowledge and experience of the conduct of criminal cases;

“trainee solicitor or fee earner of equivalent experience” means a trainee solicitor or other fee earner who is not a Fellow of the Institute of Legal Executives, who, in the judgement of the appropriate officer, carries out the routine work on a case; and

“Very High Cost Case” is a Crown Court case where if the case proceeds to trial, that trial would be likely to last for 41 days or longer, and any question as to whether the case fulfils this criterion must be determined by the Commission.

### **Scope**

3.—(1) Article 10 of this Order applies to proceedings in magistrates’ courts only.

(2) Article 12 of this Order applies to proceedings in magistrates’ courts and to proceedings in the Crown Court.

(3) Articles 5, 6, 14 to 24, and 29 to 31 of, and Schedules 1 and 2 to, this Order apply to proceedings in the Crown Court only.

(4) Articles 4, 7, 11, 13, 25 to 28 and 32 of, and Schedule 3 to, this Order apply to proceedings in the Crown Court and to proceedings in the Court of Appeal.

(5) Article 8 of, and Schedule 4 to, this Order apply to proceedings in the Court of Appeal only.

(6) Article 9 of this Order applies to proceedings in the House of Lords only.

(7) For the purpose of this Order any reference to the Court of Appeal includes a reference to—

- (a) the criminal division of the Court of Appeal;
- (b) the civil division of the Court of Appeal;
- (c) the Courts-Martial Appeal Court; and
- (d) a Divisional Court of the High Court.

### **Funding of Services**

4.—(1) Where a representation order is granted on or after 30th April 2007 for proceedings in the Crown Court or Court of Appeal—

- (a) the Commission must fund representation in accordance with its duty under section 14(1) of the Act; and
- (b) the provisions of this Order apply.

(2) Where a representation order is granted on or after 1st April 2003, but before 30th April 2007 for proceedings in the Crown Court or the Court of Appeal—

- (a) the Commission must fund representation in accordance with its duty under section 14(1) of the Act; and
- (b) the provisions of the Criminal Defence Service (Funding) Order 2001(a) apply.

(3) Where a representation order is granted before 1st April 2003 for—

- (a) criminal proceedings in the House of Lords;

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(a) S.I. 2001/855, amended by S.I. 2001/1143, 2001/1256, 2001/3341, 2002/714, 2003/642, 2004/2045, 2005/2621 and 2006/389.

- (b) proceedings in the Court of Appeal; or
- (c) proceedings in the Crown Court,

the duty of the Commission under section 14(1) of the Act has effect as a duty of the Lord Chancellor and the provisions of the Criminal Defence Service (Funding) Order 2001 apply.

(4) Where a representation order is granted before 1st April 2003 for—

- (a) any proceedings in the Crown Court which are prescribed under section 12(2)(g) of the Act;
- (b) any Very High Cost Case which is the subject of an individual contract for the provision of funded services; or
- (c) any proceedings in which representation is provided by a person employed by the Commission for that purpose,

the Commission must fund representation in accordance with its duty under section 14(1) of the Act and the provisions of the Criminal Defence Service (Funding) Order 2001 apply.

### **Claims for fees by advocates – Crown Court**

**5.—(1)** Claims for fees by an instructed advocate in proceedings in the Crown Court must be made and determined in accordance with the provisions of Schedule 1 to this Order.

(2) A claim for fees under this article and Schedule 1 must be made by each instructed advocate.

(3) Subject to article 32, a claim by an instructed advocate 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.

(4) An instructed advocate must submit a claim for fees to the appropriate officer in such form and manner as he may direct.

(5) An instructed advocate must supply such further information and documents as the appropriate officer may require.

(6) Where a confiscation hearing under Part 2 of the Proceeds of Crime Act 2002(a) (Confiscation: England and Wales), section 2 of the Drug Trafficking Act 1994(b) (confiscation orders) or section 71 of the Criminal Justice Act 1988(c) (confiscation orders) is to be held more than 28 days after—

- (a) the conclusion of the trial to which the representation order relates; or
- (b) the entering of a guilty plea,

an instructed advocate may submit any claim for fees in respect of the trial or guilty plea as soon as the trial has concluded or the guilty plea has been entered.

(7) Where a representation order provides for representation by—

- (a) a single advocate other than a QC, and a QC agrees to appear as the single advocate; or
- (b) two or more advocates other than QC, and a QC agrees to appear as a leading junior,

that QC must be treated for all the purposes of this Order as having been instructed under that representation order, and his remuneration must be determined as if he were not a QC.

(8) This article does not apply to a Very High Cost Case which is the subject of an individual contract for the provision of funded services.

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(a) 2002 c.29.

(b) 1994 c.37. Section 2 was repealed by sections 456 and 457 of, and Schedules 11 and 12 to, the Proceeds of Crime Act 2002, subject to certain savings set out in S.I. 2003/333.

(c) 1988 c.33. Section 2 was repealed by sections 456 and 457 of, and Schedules 11 and 12 to, the Proceeds of Crime Act 2002, subject to certain savings set out in S.I. 2003/333.

### **Claims for fees and disbursements by litigators – Crown Court**

6.—(1) Claims for fees by litigators in proceedings in the Crown Court must be made and determined in accordance with the provisions of Schedule 2 to this Order.

(2) Claims for disbursements by litigators in proceedings in the Crown Court must be made and determined in accordance with the provisions of articles 14 to 16.

(3) Subject to article 32, 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.

(4) Subject to paragraph (5), a claim for fees in proceedings in the Crown Court must be submitted to the appropriate officer in such form and manner as he may direct and must be accompanied by the representation order and any receipts or other documents in support of any disbursement claimed.

(5) A claim must—

- (a) summarise the items of work done by a fee earner in respect of which fees are claimed according to the classes specified in paragraph 2(1) of Schedule 2;
- (b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person;
- (c) specify, where appropriate, the level of fee earner who undertook each of the items of work claimed; and
- (d) give particulars of any work done in relation to more than one indictment or a retrial.

(6) Where the litigator claims that paragraph 6(1) of Schedule 2 applies in relation to an item of work, he must give full particulars in support of his claim.

(7) The litigator must specify any special circumstances which the litigator considers should be drawn to the attention of the appropriate officer.

(8) The litigator must supply such further information and documents as the appropriate officer may require.

(9) This article does not apply to a Very High Cost Case which is the subject of an individual contract for the provision of funded services.

### **Very High Cost Cases**

7. Where services are provided in a Very High Cost Case which is the subject of an individual contract for the provision of funded services—

- (a) the provisions of Schedule 3 to this Order apply; and
- (b) fees for that case must be paid—
  - (i) in accordance with the terms of the individual contract; and
  - (ii) at rates no higher than those set out for the appropriate category and the appropriate level of representative set out in Schedule 3.

### **Proceedings in the Court of Appeal**

8. Claims for fees by representatives in proceedings in the Court of Appeal must be made and determined in accordance with the provisions of Schedule 4 to this Order.

### **Proceedings in the House of Lords**

9.—(1) In proceedings in the House of Lords, the fees payable to a representative under sections 13 or 14 of the Act must be determined by such officer as may be prescribed by order of the House of Lords.

(2) Subject to paragraph (1), this Order does not apply to proceedings in the House of Lords.

## The General Criminal Contract

**10.**—(1) Where the Commission funds services as part of the Criminal Defence Service under section 13(2)(a) or 14(2)(a) of the Act, remuneration must be at rates no higher than those set out in Part E of the Specification to the General Criminal Contract, published by the Commission in February 2001, as amended<sup>(a)</sup>.

(2) Paragraph (1) does not apply to a Very High Cost Case which is the subject of an individual contract for the provision of funded services.

### Payments from other sources

**11.** Where a representation order has been made in respect of any proceedings, the representative, whether acting under a representation order or otherwise, must not receive or be a party to the making of any payment for work done in connection with those proceedings, except such payments as may be made—

- (a) by the Lord Chancellor or the Commission; or
- (b) in respect of any expenses or fees incurred in—
  - (i) preparing, obtaining or considering any report, opinion or further evidence, whether provided by an expert witness or otherwise; or
  - (ii) obtaining any transcripts or recordings,

where an application under CDS Regulations for an authority to incur such fees or expenses has been refused by a committee appointed under arrangements made by the Commission to deal with, amongst other things, appeals of, or review of, assessment of costs.

### Indictable-only offences

**12.**—(1) Where a case is sent for trial to the Crown Court under section 51 of the Crime and Disorder Act 1998<sup>(b)</sup> (No committal proceedings for indictable-only offences), any fees in relation to work carried out in the magistrates' court must be assessed and paid—

- (a) at the same time as the Crown Court fees for that case; and
- (b) at the rate set out in the General Criminal Contract, published by the Commission in February 2001, as amended, as appropriate to that category of work.

(2) Paragraph (1) does not apply where the case is remitted to a magistrates' court.

### Proceedings for contempt

**13.**—(1) Where representation is provided in proceedings referred to in section 12(2)(f) of the Act (proceedings for contempt in the face of a court), the Commission may only fund services as part of the Criminal Defence Service under section 13(2)(b) or 14(2)(b) of the Act.

(2) The provisions of Schedules 1, 2, 3 and 4 do not apply to proceedings referred to in section 12(2)(f) of the Act.

(3) Subject to paragraphs (4) to (11), remuneration for advocates in proceedings referred to in section 12(2)(f) of the Act must be at the rates specified in the table following this paragraph.

<i>Category of advocate</i>	<i>Payment rates (£ per day)</i>
QC	300
Leading junior	225
Led junior or junior acting alone	150

<sup>(a)</sup> available from [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

<sup>(b)</sup> 1998 c.37.



(4) Where an advocate and a litigator are instructed in proceedings referred to in section 12(2)(f) of the Act, remuneration must be at the rates specified in the table following this paragraph, as appropriate to the category of advocate.

<i>Category of advocate</i>	<i>Advocate's payment rates (£ per day)</i>	<i>Litigator's payment rates (£ per day)</i>
QC	175	125
Leading junior	125	100
Led junior or junior acting alone	100	50

(5) A litigator, or, in the Court of Appeal, an advocate, may, where he claims remuneration for work done in respect of proceedings referred to in section 12(2)(f) of the Act, claim that there are exceptional circumstances which justify remuneration greater than the standard fee specified in paragraph (3) or paragraph (4).

(6) If the appropriate officer considers that there are such exceptional circumstances, he may allow the litigator, or, in the Court of Appeal, the advocate, such fee as appears to him to be reasonable (having regard to the standard fee) for such work as appears to him to have been reasonably done.

(7) If the appropriate officer considers that there are no such exceptional circumstances, the standard fee must apply.

(8) The fee payable to a litigator under this article must not exceed the rates set out in Schedule 2 as appropriate to the type of work, the court in which the proceedings took place, the grade and the situation of the office of the fee earner who did the work.

(9) In the application of paragraph (8), the rates appropriate to the Crown Court shall apply to proceedings in all courts other than a magistrates' court.

(10) The fee payable to an advocate in the Court of Appeal under this article must not exceed the maximum basic fee for a junior counsel set out in the Table following paragraph 10 of Schedule 4.

(11) The provisions of articles 5, 6, 19, 23, 24, 29, 30 and 31 apply with the necessary modifications to the remuneration payable to a representative under this article.

### **Interim payment of disbursements**

**14.**—(1) A litigator may submit a claim to the appropriate officer for payment of a disbursement for which he has incurred liability in proceedings in the Crown Court in accordance with the provisions of this article.

(2) A claim for payment under paragraph (1) may be made where—

- (a) a litigator has obtained prior authority to incur expenditure of £100 or more under CDS Regulations; and
- (b) he has incurred such a liability.

(3) Without prejudice to articles 16(4) and 16(5) a claim for payment under paragraph (1) must not exceed the maximum amount authorised under the prior authority.

(4) A claim for payment under paragraph (1) may be made at any time before the litigator submits a claim for fees under article 6.

(5) A claim for payment under paragraph (1) must be submitted to the appropriate officer in such form and manner as he may direct and must be accompanied by the authority to incur expenditure and any invoices or other documents in support of the claim.

(6) The appropriate officer must allow the disbursement subject to the limit in paragraph (3) if it appears to have been reasonably incurred in accordance with the prior authority.

(7) Where the appropriate officer allows the disbursement, he must notify the litigator and, where the disbursement includes the fees or charges of any person, that person, of the amount payable, and must authorise payment to the litigator accordingly.

(8) Articles 29 to 31 do not apply to a payment under this article.

### **Interim disbursements and final determination of fees**

**15.**—(1) On a final determination of fees, articles 6(2) and 16 apply notwithstanding that a payment has been made under article 14.

(2) Where the amount found to be due under article 16 in respect of a disbursement is less than the amount paid under article 14 (“the interim payment”), the appropriate officer must deduct the difference from the sum otherwise payable to the litigator on the determination of fees, and where the amount due under article 16 exceeds the interim payment, the appropriate officer must add the difference to the amount otherwise payable to the litigator.

### **Determination of litigators’ disbursements**

**16.**—(1) Subject to paragraphs (2) to (5), the appropriate officer must allow such disbursements claimed under article 6(2) as appear to him to have been reasonably incurred.

(2) If the disbursements claimed are abnormally large by reason of the distance of the court or the assisted person’s residence or both from the litigator’s place of business, the appropriate officer may limit reimbursement of the disbursements to what otherwise would, having regard to all the circumstances, be a reasonable amount.

(3) No question as to the propriety of any step or act in relation to which prior authority has been obtained under CDS Regulations may be raised on any determination of disbursements, unless the litigator knew or ought reasonably to have known that the purpose for which the authority was given had failed or had become irrelevant or unnecessary before the disbursements were incurred.

(4) Where disbursements are reasonably incurred in accordance with and subject to the limit imposed by a prior authority given under CDS Regulations, no question may be raised on any determination of fees as to the amount of the payment to be allowed for the step or act in relation to which the authority was given.

(5) Where disbursements are incurred in taking any steps or doing any act for which authority may be given under CDS Regulations, without such authority having been given or in excess of any fee so authorised, payment in respect of those disbursements may nevertheless be allowed on a determination of disbursements payable under article 6.

### **Interim payments in cases awaiting determination of fees**

**17.**—(1) The appropriate officer must make an interim payment in respect of a claim for fees in proceedings in the Crown Court in accordance with this article.

(2) Entitlement to a payment arises in respect of a claim for fees—

- (a) in the case of an instructed advocate, where the graduated fee claimed in accordance with Schedule 1 is £4,000 or more (exclusive of VAT);
- (b) in the case of a litigator, where the total fees claimed in accordance with Schedule 2 are £4,000 or more (exclusive of VAT); and
- (c) in the case of a litigator or an instructed advocate, where the claim for fees is for less than the amounts mentioned in (a) or (b) but is related to any claim for fees falling under (a) or (b).

(3) For the purposes of this article, the following claims for fees are related to each other —

- (a) the claims of representatives acting in the same proceedings for a defendant; and
- (b) the claims of any representative acting for any assisted person in related proceedings.

(4) Entitlement to a payment under paragraph (1) does not arise until three months have elapsed from the earlier of—

- (a) the date on which the claim for fees is received by the appropriate officer for determination, except that where there are related claims for fees, the date on which the last claim is received by the appropriate officer; or

(b) three months after the conclusion of the last of any related proceedings.

(5) A litigator or an instructed advocate may submit a claim for an interim payment under this article where—

(a) no payment has been made under paragraph (1); and

(b) six months have elapsed from the conclusion of the proceedings against the assisted person.

(6) Subject to article 32, payment must not be made under this article unless the representative has submitted a claim for fees in accordance with article 5(3) or article 6(3), as appropriate.

#### **Amount of interim payments in cases awaiting determination of fees**

**18.**—(1) Where entitlement to an interim payment arises under article 17, the amount payable is 40 per cent of the total claim for fees, less any sum already paid.

(2) Articles 29 to 31 do not apply to an interim payment under this article.

#### **Staged payments in long Crown Court proceedings**

**19.**—(1) A litigator or an instructed advocate may submit a claim to the appropriate officer for a staged payment of his fees in relation to proceedings in the Crown Court.

(2) Where a claim is submitted in accordance with this article, a staged payment must be allowed where the appropriate officer is satisfied—

(a) that the claim relates to fees for a period of preparation of 100 hours or more, for which the litigator or instructed advocate will, subject to final determination of the fees payable, be entitled to be paid in accordance with Schedule 1 or Schedule 2, as appropriate; and

(b) that the period from committal, transfer or sending for trial (or from the date of the representation order, if later) to the conclusion of the Crown Court proceedings is likely to exceed 12 months, having regard, amongst other matters, to the number of defendants, the anticipated pleas and the weight and complexity of the case.

(3) In this article “preparation” means—

(a) in the case of advocates—

(i) reading the papers in the case;

(ii) contact with prosecutors;

(iii) written or oral advice on plea;

(iv) researching the law, preparation for examination of witnesses and preparation of oral submissions;

(v) viewing exhibits or undisclosed material at police stations;

(vi) written advice on evidence;

(vii) preparation of written submissions, notices or other documents for use at the trial; and

(viii) attendance at views at the scene of the alleged offence; and

(b) in the case of litigators—

(i) taking instructions;

(ii) interviewing witnesses;

(iii) ascertaining the prosecution case;

(iv) advising on plea and mode of trial;

(v) preparing and perusing documents;

(vi) dealing with letters and telephone calls which are not routine;

(vii) instructing an advocate and expert witnesses; and

(viii) attendance at conferences, consultations and views of the scene of the alleged offence,

and is limited to preparation done before the trial, except in proceedings in which a preparatory hearing has been ordered under section 8 of the Criminal Justice Act 1987 (commencement of trial and arraignment), in which case it is limited to preparation done before the date on which the jury is sworn (or on which it became certain, by reason of pleas of guilty or otherwise, that the matter would not proceed to trial).

(4) The amount allowed for preparation falling within paragraph (3)(a) must be computed by reference to the number of hours of preparation which it appears to the appropriate officer, without prejudice to the final determination of the fees payable, has been reasonably done, multiplied by the hourly rate for special preparation as set out in the table following paragraph 19 of Schedule 1, as appropriate to the category of advocate.

(5) The amount allowed for preparation falling within paragraph (3)(b) must be computed by reference to the number of hours of preparation which it appears to the appropriate officer, without prejudice to the final determination of the fees payable, has been reasonably done, multiplied by the relevant hourly rate prescribed in Part 1 of Schedule 2, as appropriate to the class of work and the grade and office location of the fee earner.

(6) A claim for staged payment of fees under this article must be made to the appropriate officer in such form and manner as he may direct, including such case plan as he may require for the purposes of paragraph (2)(a).

(7) A litigator or instructed advocate may claim further staged payments in accordance with this article in respect of further periods of preparation exceeding 100 hours which were not included in an earlier claim.

(8) Articles 29 to 31 do not apply to a payment under this article.

#### **Interim payments for attendance at trial**

**20.—**(1) A litigator may make a claim to the appropriate officer for an interim payment in respect of attendance at court where a Crown Court trial lasts for a qualifying period.

(2) Where a claim is made in accordance with this article, an interim payment must, without prejudice to the final determination of the fees payable, be allowed where a litigator or a fee earner representing him has attended at court on each day of the relevant qualifying period.

(3) For the purposes of this article, the qualifying period is 20 days, and a day shall qualify as part of the relevant qualifying period, whether or not the days within the qualifying period are continuous, if the hearing begins at any time on that day.

(4) The amount payable in respect of each day which qualifies as part of the qualifying period is—

- (a) where the hearing begins before and ends after the luncheon adjournment, five times the hourly rate for a trainee solicitor or fee earner of equivalent experience attending court where more than one representative is instructed as prescribed in Part 1 of Schedule 2; or
- (b) where the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, two and a half times the hourly rate referred to in sub-paragraph (a).

(5) A claim for an interim payment may be made in respect of a qualifying period and must be submitted in such form and manner as the appropriate officer may direct.

(6) Further interim payments under this article may be claimed if the trial lasts for further qualifying periods.

(7) A litigator who has obtained prior approval under CDS Regulations for the incurring of travelling or accommodation expenses may, at the same time as he submits a claim for an interim payment under this article, submit a claim for an interim payment of all such expenses incurred to date (less any expenses previously recovered by him by way of interim payment under this article).

(8) A claim under paragraph (7) must be submitted in such form and manner as the appropriate officer may direct, and must be supported by such evidence of the expense claimed as he may require.

(9) Articles 29 to 31 do not apply to a payment under this paragraph.

### **Hardship payments**

**21.**—(1) Subject to paragraphs (4) and (5), the appropriate officer may allow a hardship payment to a representative in the circumstances set out in paragraph (2).

(2) Those circumstances are that the representative—

- (a) represents the assisted person in proceedings in the Crown Court;
- (b) applies for such payment, in such form and manner as the appropriate officer may direct, not less than six months after he was first instructed in those proceedings, or in related proceedings if he was instructed in those proceedings earlier than in the proceedings to which the application relates;
- (c) is unlikely to receive final payment in respect of the proceedings, as determined under Schedules 1 or 2, within the three months following the application for the hardship payment; and
- (d) satisfies the appropriate officer that, by reason of the circumstance in sub-paragraph (c), he is likely to suffer financial hardship.

(3) Every application for a hardship payment must be accompanied by such information and documents as the appropriate officer may require as evidence of—

- (a) the work done by the representative in relation to the proceedings up to the date of the application; and
- (b) the likelihood of financial hardship.

(4) The amount of any hardship payment is at the discretion of the appropriate officer, but must not exceed such sum as would be reasonable remuneration for the work done by the representative in the proceedings up to the date of the application.

(5) A hardship payment must not be made if it appears to the appropriate officer that the sum which would be reasonable remuneration for the representative, or the sum required to relieve his financial hardship, is less than £5,000 (excluding VAT).

(6) Where the appropriate officer allows a hardship payment under paragraph (1), he must authorise payment accordingly.

(7) Where the application for a hardship payment is made by an advocate other than an instructed advocate, and the appropriate officer allows a hardship payment under paragraph (1)—

- (a) payment must be made to the leading instructed advocate or the led instructed advocate, as appropriate; and
- (b) the appropriate officer must notify the advocate who made the application that payment has been made to the instructed advocate.

### **Computation of final claim where an interim payment has been made**

**22.**—(1) At the conclusion of a case in which one or more payments have been made to an instructed advocate or a litigator under articles 17 to 21, he must submit a claim under article 5 or 6 for the determination of his overall remuneration, whether or not such a claim will result in any payment additional to those already made.

(2) In the determination of the amount payable to an instructed advocate or litigator under article 5 or 6—

- (a) the appropriate officer must deduct the amount of any payment made under articles 17 to 21 in respect of the same case from the amount that would otherwise be payable; and

- (b) if the amount of the interim payment is greater than the amount that would otherwise be payable, the appropriate officer may recover the amount of the difference, either by way of repayment by the instructed advocate or litigator or by way of deduction from any other amount that may be due to him.

#### **Payment of fees to advocates – Crown Court**

**23.**—(1) Having determined the fees payable to each instructed advocate, in accordance with Schedule 1, the appropriate officer must notify each instructed advocate of the fees payable and authorise payment accordingly.

(2) Where, as a result of any redetermination or appeal made or brought pursuant to articles 29 to 31—

- (a) the fees payable under paragraph (1) are increased, the appropriate officer must authorise payment of the increase; or
- (b) the fees payable under paragraph (1) are decreased, the instructed advocate must repay the amount of such decrease.

(3) Where the payment of any fees of an instructed advocate is ordered under article 30(12) or article 31(8), the appropriate officer must authorise payment.

(4) This article does not apply to a Very High Cost Case which is the subject of an individual contract for the provision of funded services.

#### **Payment of fees to litigators – Crown Court**

**24.**—(1) Having determined the fees payable to a litigator in accordance with Schedule 2, the appropriate officer must authorise payment accordingly.

(2) Where, as a result of any redetermination or appeal made or brought pursuant to articles 29 to 31—

- (a) the fees payable under paragraph (1) are increased, the appropriate officer must authorise payment of the increase; and
- (b) the fees payable under paragraph (1) are decreased, the litigator must repay the amount of such decrease.

(3) Where the payment of any fees of the litigator is ordered under article 30(12) or paragraph 14(5) of Schedule 2 or article 31(8), the appropriate officer must authorise payment.

(4) This article does not apply to a Very High Cost Case which is the subject of an individual contract for the provision of funded services.

#### **Notification of fees**

**25.** For the purposes of an order which is made under section 17 of the Act, except where the proceedings are in a magistrates' court only, having determined the fees payable to a representative in accordance with this Order, the appropriate officer must notify the court before which the proceedings are heard of the amount determined.

#### **Recovery of overpayments**

**26.**—(1) This article applies where a representative is entitled to be paid a certain sum (“the amount due”) by virtue of the provisions of Schedules 1, 2 or 4 and, for whatever reason, he is paid an amount greater than that sum.

(2) Where this article applies, the appropriate officer may—

- (a) require immediate repayment of the amount in excess of the amount due (“the excess amount”) and the representative must repay the excess amount to the appropriate officer; or



- (b) deduct the excess amount from any other sum which is or becomes payable to the representative by virtue of the provisions of Schedules 1, 2 or 4.
- (3) The appropriate officer may proceed under paragraph (2)(b) without first proceeding under paragraph (2)(a).
- (4) Paragraph (2) applies notwithstanding that the representative to whom the excess amount was paid is exercising, or may exercise, a right under articles 29 to 31.

#### **Adverse observations**

27.—(1) Where in any proceedings to which Schedule 1, 2, 3 or 4 applies, the court makes adverse observations concerning a representative's conduct of the proceedings, the appropriate officer may reduce any fee which would otherwise be payable in accordance with Schedule 1, 2, 3 or 4 by such proportion as he considers reasonable.

(2) Before reducing the fee payable to a representative in accordance with the provisions of paragraph (1), the appropriate officer must give the representative the opportunity to make representations about whether it is appropriate to reduce the fee and the extent to which the fee should be reduced.

#### **Wasted costs orders**

28.—(1) Subject to paragraph (2), where the court has disallowed the whole or any part of any wasted costs under section 19A of the Prosecution of Offences Act 1985(a) (costs against legal representatives etc.), the appropriate officer, in determining fees in respect of work done by the representative against whom the wasted costs order was made, may deduct the amount in the wasted costs order from the amount otherwise payable in accordance with this Order.

(2) Where the appropriate officer, in accordance with this article, is minded to disallow any amount of a claim for work done to which the wasted costs order relates, he must disallow that amount or the amount of the wasted costs order, whichever is the greater.

#### **Redetermination of fees by appropriate officer**

29.—(1) Where—

- (a) an advocate in proceedings in the Crown Court is dissatisfied with the decision not to allow any of the following fees, or with the number of hours allowed in the calculation of such a fee, namely—
  - (i) a special preparation fee under paragraph 14 of Schedule 1; or
  - (ii) a wasted preparation fee under paragraph 15 of Schedule 1; or
- (b) an instructed advocate in proceedings in the Crown Court is dissatisfied with—
  - (i) the decision not to allow an hourly fee in respect of attendance at conferences or views at the scene of the alleged offence under paragraph 16 of Schedule 1, or with the number of hours allowed in the calculation of such a fee;
  - (ii) the calculation by the appropriate officer of the fee payable to the instructed advocate in accordance with Schedule 1; or
  - (iii) the decision of the appropriate officer under paragraph 3(3) of Schedule 1 (reclassification of an offence not specifically listed in the relevant Table of Offences and so deemed to fall within Class H); or
- (c) a litigator is dissatisfied with—
  - (i) the fees determined in accordance with Part 1 of Schedule 2; or
  - (ii) the decision to allow standard fees in accordance with Part 2 of Schedule 2,

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(a) 1985 c.23. Section 19A was inserted by s.111 of the Courts and Legal Services Act 1990 (c.41).

the advocate, instructed advocate or litigator, as the case may be, may apply to the appropriate officer to redetermine those fees, to review that decision or to reclassify the offence, as appropriate.

(2) An application under paragraph (1) may not challenge the quantum of—

- (a) any of the fixed or graduated fees set out in Schedule 1; or
- (b) the standard fees set out in Part 2 of Schedule 2.

(3) Subject to article 32, an application under paragraph (1), or paragraph 15(1) of Schedule 4, must be made—

- (a) within 21 days of the receipt of notification of the fees payable under article 23, article 24 or paragraph 15 of Schedule 4, as appropriate;
- (b) by giving notice in writing to the appropriate officer, specifying the matters in respect of which the application is made and the grounds of objection; and
- (c) in such form and manner as the appropriate officer may direct.

(4) The notice of application must be accompanied by the information and documents supplied under article 5, article 6 or Schedule 4, as appropriate.

(5) The notice of application must state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the appropriate officer must notify the applicant of the hearing date and time.

(6) The applicant must supply such further information and documents as the appropriate officer may require.

(7) The appropriate officer must, in the light of the objections made by the applicant or on his behalf—

- (a) redetermine the fees, whether by way of confirmation, or increase or decrease in the amount previously determined;
- (b) review the decision to allow standard fees under Part 2 of Schedule 2, and confirm it, or allow fees in accordance with paragraph 8(1) of Schedule 2;
- (c) confirm the classification of the offence within Class H; or
- (d) reclassify the offence,

as the case may be, and must notify the applicant of his decision.

(8) Where the applicant so requests, the appropriate officer must give reasons in writing for his decision.

(9) Subject to article 32, any request under paragraph (8) must be made within 21 days of receiving notification of the appropriate officer's decision under paragraph (7).

### **Appeals to a Costs Judge**

**30.**—(1) Where the appropriate officer has given his reasons for his decision under article 29(8), a representative who is dissatisfied with that decision may appeal to a Costs Judge.

(2) Subject to article 32, an appeal under paragraph (1) or paragraph 15(2) of Schedule 4 must be instituted within 21 days of the receipt of the appropriate officer's reasons, by giving notice in writing to the Senior Costs Judge.

(3) The appellant must send a copy of any notice of appeal given under paragraph (2) to the appropriate officer.

(4) The notice of appeal must be accompanied by—

- (a) a copy of any written representations given under article 29(3);
- (b) the appropriate officer's reasons for his decision given under article 29(8); and
- (c) the information and documents supplied to the appropriate officer under article 29.

(5) The notice of appeal must—

- (a) be in such form as the Senior Costs Judge may direct—



- (b) specify separately each item appealed against, showing (where appropriate) the amount claimed for the item, the amount determined and the grounds of the objection to the determination; and
- (c) state whether the appellant wishes to appear or to be represented or whether he will accept a decision given in his absence.

(6) The Senior Costs Judge may, and if so directed by the Lord Chancellor either generally or in a particular case must, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.

(7) With a view to ensuring that the public interest is taken into account, the Lord Chancellor may arrange for written or oral representations to be made on his behalf and, if he intends to do so, he must inform the Senior Costs Judge and the appellant.

(8) Any written representations made on behalf of the Lord Chancellor under paragraph (7) must be sent to the Senior Costs Judge and the appellant and, in the case of oral representations, the Senior Costs Judge and the appellant must be informed of the grounds on which such representations will be made.

(9) The appellant must be permitted a reasonable opportunity to make representations in reply.

(10) The Costs Judge must inform the appellant (or the person representing him) and the Lord Chancellor, where representations have been or are to be made on his behalf, of the date of any hearing and, subject to the provisions of this article, may give directions as to the conduct of the appeal.

(11) The Costs Judge may consult the trial judge or the appropriate officer and may require the appellant to provide any further information which he requires for the purpose of the appeal and, unless the Costs Judge otherwise directs, no further evidence may be received on the hearing of the appeal and no ground of objection may be raised which was not raised under article 29.

(12) The Costs Judge has the same powers as the appropriate officer under this Order and, in the exercise of such powers, may alter the redetermination of the appropriate officer in respect of any sum allowed, whether by increase or decrease, as he thinks fit.

(13) The Costs Judge must communicate his decision and the reasons for it in writing to the appellant, the Lord Chancellor and the appropriate officer.

(14) Where he increases the sums redetermined under article 29, the Costs Judge may allow the appellant a sum in respect of part or all of any reasonable costs incurred by him in connection with the appeal (including any fee payable in respect of an appeal).

(15) In proceedings in which standard fees are payable to litigators in accordance with Part 2 of Schedule 2, the provisions of paragraph 14 of Schedule 2 apply.

### **Appeals to the High Court**

**31.—**(1) A representative who is dissatisfied with the decision of a Costs Judge on an appeal under article 30 may apply to a Costs Judge to certify a point of principle of general importance.

(2) Subject to article 32, an application under paragraph (1) or paragraph 15(3) of Schedule 4 must be made within 21 days of receiving notification of a Costs Judge's decision under article 30(13).

(3) Where a Costs Judge certifies a point of principle of general importance the appellant may appeal to the High Court against the decision of a Costs Judge on an appeal under article 30, and the Lord Chancellor must be a respondent to such an appeal.

(4) Subject to article 32, an appeal under paragraph (3) must be instituted within 21 days of receiving notification of a Costs Judge's certificate under paragraph (1).

(5) Where the Lord Chancellor is dissatisfied with the decision of a Costs Judge on an appeal under article 30, he may, if no appeal has been made by an appellant under paragraph (3), appeal to the High Court against that decision, and the appellant must be a respondent to the appeal.

(6) Subject to article 32, an appeal under paragraph (5) must be instituted within 21 days of receiving notification of the Costs Judge's decision under article 30(13).

- (7) An appeal under paragraph (3) or (5) must—
- (a) be brought in the Queen’s Bench Division;
  - (b) subject to paragraph (4), follow the procedure set out in Part 52 of the Civil Procedure Rules 1998(a); and
  - (c) be heard and determined by a single judge whose decision will be final.

(8) The judge has the same powers as the appropriate officer and a Costs Judge under this Order and may reverse, affirm or amend the decision appealed against or make such other order as he thinks fit.

### **Time limits**

**32.**—(1) Subject to paragraph (2), the time limit within which any act is required or authorised to be done under this Order may, for good reason, be extended—

- (a) in the case of acts required or authorised to be done under article 30 or 31, by a Costs Judge or the High Court as the case may be; and
- (b) in the case of acts required or authorised to be done by a representative under any other article, by the appropriate officer.

(2) Where a representative without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the appropriate officer, a Costs Judge or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and must consider whether it is reasonable in the circumstances to reduce the fees payable to the representative under articles 5, 6 or 8, provided that the fees must not be reduced unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why the fees should not be reduced.

(3) A representative may appeal to a Costs Judge against a decision made under this article by an appropriate officer and such an appeal must be instituted within 21 days of the decision being given by giving notice in writing to the Senior Costs Judge specifying the grounds of appeal.

### **Revocation**

**33.** Subject to article 4, the Criminal Defence Service (Funding) Order 2001 is revoked.

Signed by authority of the Lord Chancellor

3rd April 2007

*Vera Baird,*  
Parliamentary Under Secretary of State  
Department for Constitutional Affairs

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(a) S.I. 1998/3132. There are relevant amendments in S.I. 2000/221, 2003/2113, 2003/3361, 2004/2072, 2005/3515, 2006/1689 and 2006/3435.

## Advocates' Graduated Fee Scheme

## PART 1

## Definitions and Scope

**Interpretation****1.—(1)** In this Schedule—

“case” means proceedings in the Crown Court against any one assisted person—

- (a) on one or more counts of a single indictment;
  - (b) arising out of a single notice of appeal against conviction or sentence, or a single committal for sentence, whether on one or more charges; or
  - (c) arising out of a single alleged breach of an order of the Crown Court,
- and a case falling within paragraph (c) must be treated as a separate case from the proceedings in which the order was made;

“cracked trial” means a case on indictment in which—

- (a) a plea and case management hearing takes place and—
  - (i) the case does not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offers no evidence; and
  - (ii) either—
    - (aa) in respect of one or more counts to which the assisted person pleaded guilty, he did not so plead at the plea and case management hearing; or
    - (bb) in respect of one or more counts which did not proceed, the prosecution did not, before or at the plea and case management hearing, declare an intention of not proceeding with them; or
- (b) the case is listed for trial without a plea and case management hearing taking place;

“guilty plea” means a case on indictment which—

- (a) is disposed of without a trial because the assisted person pleaded guilty to one or more counts; and
- (b) is not a cracked trial;

“main hearing” means—

- (a) in relation to a case which goes to trial, the trial;
- (b) in relation to a guilty plea, the hearing at which pleas are taken or, where there is more than one such hearing, the last such hearing;
- (c) in relation to a cracked trial, the hearing at which—
  - (i) the case becomes a cracked trial by meeting the conditions in the definition of a cracked trial, whether or not any pleas were taken at that hearing; or
  - (ii) a formal verdict of not guilty was entered as a result of the prosecution offering no evidence, whether or not the parties attended the hearing;
- (d) in relation to an appeal against conviction or sentence in the Crown Court, the hearing of the appeal;
- (e) in relation to proceedings arising out of a committal for sentence in the Crown Court, the sentencing hearing; and

- (f) in relation to proceedings arising out of an alleged breach of an order of the Crown Court, the hearing at which those proceedings are determined;

“Newton Hearing” means a hearing at which evidence is heard for the purpose of determining the sentence of a convicted person in accordance with the principles of *R v Newton* (1982) 77 Cr App R 13;

“standard appearance” means an appearance by the trial advocate or substitute advocate in any of the following hearings which do not form part of the main hearing—

- (a) a plea and case management hearing, except the first plea and case management hearing;
- (b) a pre-trial review;
- (c) the hearing of a case listed for plea which is adjourned for trial;
- (d) any hearing (except a trial, a plea and case management hearing, a pre-trial review or a hearing referred to in paragraph 2(1)(b)) 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;
- (e) custody time limit applications;
- (f) bail and other applications (except where any such applications take place in the course of a hearing referred to in paragraph 2(1)(b)); or
- (g) the hearing of the case listed for mention only, including applications relating to the date of the trial (except where an application takes place in the course of a hearing referred to in paragraph 2(1)(b)),

provided that a fee is not payable elsewhere under this Schedule in respect of the hearing;

“substitute advocate” means an advocate who is not an instructed advocate or the trial advocate but who undertakes work on the case; and

“trial advocate” means an advocate instructed in accordance with a representation order to represent the assisted person at the main hearing in any case, including a QC or a leading junior advocate so instructed after the hearing at which pleas are taken.

(2) For the purposes of this Schedule, the number of pages of prosecution evidence 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.

(3) In proceedings on indictment in the Crown Court initiated otherwise than by committal for trial, the appropriate officer must determine the number of pages of prosecution evidence in accordance with sub-paragraph (2) or as nearly in accordance with sub-paragraph (2) as possible as the nature of the case permits.

(4) A reference to the Table of Offences in this Schedule is to the Table of Offences in Part 6 and a reference to a Class of Offence in this Schedule is to the Class in which that offence is listed in the Table of Offences.

## **Application**

2.—(1) Subject to sub-paragraphs (2) to (8), this Schedule applies to—

- (a) every case on indictment; and
- (b) the following proceedings in the Crown Court—
  - (i) an appeal against conviction or sentence;

- (ii) a sentencing hearing following a committal for sentence to the Crown Court; and
  - (iii) proceedings arising out of an alleged breach of an order of the Crown Court (whether or not this Schedule applies to the proceedings in which the order was made).
- (2) This Schedule does not apply to a Very High Cost Case which is the subject of an individual contract for the provision of funded services.
- (3) Sub-paragraph (4) applies where, following a trial, an order is made for a new trial and the same trial advocate appears at both trials where—
- (i) the defendant is an assisted person at both trials; or
  - (ii) the defendant is an assisted person at the new trial only; or
  - (iii) the new trial is a cracked trial or guilty plea.
- (4) In respect of a new trial, or if he so elects, in respect of the first trial, the trial advocate will receive a graduated fee calculated in accordance with Part 2 or Part 3, as appropriate, except that the fee will be reduced by—
- (a) 30 percent, where the new trial started within one month of the conclusion of the first trial;
  - (b) 20 percent, where the new trial did not start within one month of the conclusion of the first trial;
  - (c) 40 percent where the new trial becomes a cracked trial or guilty plea within one month of the conclusion of the first trial; or
  - (d) 25 percent where the new trial becomes a cracked trial or guilty plea more than one month after the conclusion of the first trial.
- (5) Where a different trial advocate appears for the assisted person at each trial then, in respect of each trial, the trial advocate will receive a graduated fee calculated in accordance with Part 2 or Part 3, as appropriate.
- (6) Where following a case on indictment a Newton hearing takes place—
- (a) for the purposes of this Schedule the case will be treated as having gone to trial;
  - (b) the length of the trial will be taken to be the combined length of the main hearing and the Newton hearing;
  - (c) the provisions of this Schedule relating to cracked trials and guilty pleas will not apply; and
  - (d) no fee will be payable under paragraph 12 in respect of the Newton hearing.
- (7) Sub-paragraph (8) applies where proceedings are—
- (a) sent for trial to the Crown Court under section 51 of the Crime and Disorder Act 1998 (no committal proceedings for indictable-only offences); or
  - (b) transferred to the Crown Court under—
    - (i) section 4 of the Criminal Justice Act 1987 (transfer of serious fraud cases); or
    - (ii) section 53 of the Criminal Justice Act 1991<sup>(a)</sup> (transfer of certain cases involving children).
- (8) Where, at any time after proceedings are sent or transferred to the Crown Court under the provisions referred to in sub-paragraph (7), they are—
- (a) discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985<sup>(b)</sup> (discontinuance of proceedings after accused has been sent for trial); or
  - (b) dismissed pursuant to—
    - (i) paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (applications for dismissal);

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<sup>(a)</sup> 1991 c.53.

<sup>(b)</sup> 1985 c.23 Section 23A was inserted by section 119 of the Crime and Disorder Act 1998 (c.37).

- (ii) section 6 of the Criminal Justice Act 1987 (applications for dismissal); or
- (iii) paragraph 5 of Schedule 6 to the Criminal Justice Act 1991 (applications for dismissal),

the provisions of paragraph 18 apply.

### **Class of offences**

3.—(1) For the purposes of this Schedule—

- (a) every indictable offence falls within the Class under which it is listed in the Table of Offences and, subject to sub-paragraph (2), indictable offences not specifically so listed will be deemed to fall within Class H;
- (b) conspiracy to commit an indictable offence contrary to section 1 of the Criminal Law Act 1977<sup>(a)</sup> (the offence of conspiracy), incitement to commit an indictable offence and attempts to commit an indictable offence contrary to section 1 of the Criminal Attempts Act 1981<sup>(b)</sup> (attempting to commit an offence), fall within the same Class as the substantive offence to which they relate;
- (c) where the Table of Offences specifies that the Class within which an offence falls depends on whether the value involved exceeds a stated limit, the value must be presumed not to exceed that limit unless the advocate making the claim under article 5 proves otherwise to the satisfaction of the appropriate officer;
- (d) where more than one count of the indictment is for an offence in relation to which the Class depends on the value involved, that value must be taken to be the total value involved in all those offences, but where two or more counts relate to the same property, the value of that property must be taken into account once only;
- (e) where an entry in the Table of Offences specifies an offence as being contrary to a statutory provision, then subject to any express limitation in the entry that entry will include every offence contrary to that statutory provision whether or not the words of description in the entry are appropriate to cover all such offences;
- (f) where in a case on indictment there is a hearing to determine the question of whether an assisted person is unfit to plead or unfit to stand trial, the trial advocate must elect whether that hearing falls within the same Class as the indictable offence to which it relates or within Class D; and
- (g) where in a case on indictment a restriction order is made under section 41 of the Mental Health Act 1983<sup>(c)</sup> (power of higher courts to restrict discharge from hospital), the offence falls within Class A, regardless of the Class under which the offence would be listed in the Table of Offences but for this paragraph.

(2) Where an advocate in proceedings in the Crown Court is dissatisfied with the classification within Class H of an indictable offence not listed in the Table of Offences, he may apply to the appropriate officer when lodging his claim for fees to reclassify the offence.

(3) The appropriate officer must, in light of the objections made by the advocate—

- (a) confirm the classification of the offence within Class H; or
- (b) reclassify the offence,

and must notify the advocate of his decision.

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(a) 1977 c.45.  
(b) 1981 c.47.  
(c) 1983 c.20.

## PART 2

### Graduated Fees for Trial

#### Calculation of Graduated Fees

4.—(1) The amount of the graduated fee for a single trial advocate representing one assisted person being tried on one indictment in the Crown Court in a trial lasting one to 40 days must be calculated in accordance with the following formula—

$$G = B + (d \times D) + (e \times E) + (w \times W)$$

(2) In the formula in sub-paragraph (1)—

**G** is the amount of the graduated fee;

**B** is the basic fee specified in the Table following paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate;

**d** is the number of days or parts of a day on which the advocate attends at court by which the trial exceeds 2 days but does not exceed 40 days;

**D** is the fee payable in respect of daily attendance at court for the number of days by which the trial exceeds two days but does not exceed 40 days, as appropriate to the offence for which the assisted person is tried and the category of trial advocate;

**e** is the number of pages of prosecution evidence excluding the first 50, up to a maximum of 10,000;

**E** is the evidence uplift specified in the Table following paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate;

**w** is the number of prosecution witnesses excluding the first 10;

**W** is the witness uplift specified in the Table following paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate.

#### Table of fees

5. For the purposes of paragraph 4 the basic fee (B), the daily attendance fee (D), the evidence uplift (E) and the witness uplift (W) appropriate to any offence will be those specified in the Table following this paragraph in accordance with the Class within which that offence falls.

#### Table of Fees and Uplifts

<i>Class of Offence</i>	<i>Basic Fee (B)</i>	<i>Daily attendance fee (D)</i>	<i>Evidence uplift (E)</i>	<i>Witness uplift (W)</i>
<b>QC</b>				
A	£4,434	£1,321	£1.89	£7.55
B	£2,924	£991	£1.89	£7.55
C	£2,275	£943	£1.89	£7.55
D	£2,641	£943	£1.89	£7.55
E	£1,750	£708	£1.89	£7.55
F	£1,750	£708	£1.89	£7.55
G	£2,200	£943	£1.89	£7.55
H	£2,200	£943	£1.89	£7.55
I	£2,453	£943	£1.89	£7.55
J	£3,302	£1,132	£1.89	£7.55
K	£3,302	£1,132	£1.89	£7.55
<b>Leading Junior</b>				
A	£3,325	£991	£1.42	£5.66
B	£2,193	£743	£1.42	£5.66



C	£1,706	£708	£1.42	£5.66
D	£1,981	£708	£1.42	£5.66
E	£1,313	£531	£1.42	£5.66
F	£1,313	£531	£1.42	£5.66
G	£1,650	£708	£1.42	£5.66
H	£1,650	£708	£1.42	£5.66
I	£1,840	£708	£1.42	£5.66
J	£2,476	£849	£1.42	£5.66
K	£2,476	£849	£1.42	£5.66
<b>Led Junior</b>				
A	£2,217	£660	£0.94	£3.77
B	£1,462	£495	£0.94	£3.77
C	£1,038	£472	£0.94	£3.77
D	£1,300	£472	£0.94	£3.77
E	£802	£354	£0.94	£3.77
F	£802	£354	£0.94	£3.77
G	£1,100	£472	£0.94	£3.77
H	£943	£472	£0.94	£3.77
I	£1,132	£472	£0.94	£3.77
J	£1,887	£566	£0.94	£3.77
K	£1,651	£566	£0.94	£3.77
<b>Junior alone</b>				
A	£2,547	£778	£1.13	£5.66
B	£1,509	£542	£1.13	£5.66
C	£1,038	£472	£1.13	£5.66
D	£1,300	£472	£1.13	£5.66
E	£755	£377	£1.13	£5.66
F	£802	£377	£1.13	£5.66
G	£1,415	£472	£1.13	£5.66
H	£943	£472	£1.13	£5.66
I	£1,132	£472	£1.13	£5.66
J	£1,887	£613	£1.13	£5.66
K	£1,887	£613	£1.13	£5.66

## PART 3

### Graduated Fees for Guilty Pleas and Cracked Trials

#### Calculation of graduated fees in guilty pleas and cracked trials—

6. The amount of the graduated fee for a single trial advocate representing one assisted person in a guilty plea or cracked trial is—

- (a) the basic fee specified in the table following paragraph 7 as appropriate to the offence with which the assisted person is charged, the category of trial advocate and whether the case is a guilty plea or a cracked trial; and
- (b) the evidence uplift, as appropriate to the number of pages of prosecution evidence, calculated in accordance with the table following paragraph 7.

#### Tables of fees

7.—(1) Subject to sub-paragraphs (2) and (3), for the purposes of paragraph 6 the basic fee and evidence uplift appropriate to any offence are specified in the Tables following this paragraph in accordance with the class within which that offence falls.



(2) Where—

- (a) the trial of a case does not commence on the date first fixed; or
- (b) the case is not taken and disposed of from the first warned list in which it is entered,

the basic fee and evidence uplift for the offence are specified for the last third in the Table referred to in sub-paragraph (1).

(3) In this paragraph, and in the Tables following this paragraph, references to the first, second and last third are references to the first, second and last third—

- (a) where a case is first listed for trial on a fixed date, of the period of time beginning after the date on which the case is so listed and ending before the date so fixed,
- (b) where the case is first placed in a warned list, of the period of time beginning after the date on which the case is so placed and ending before the date of the start of that warned list, and

where the number of days in this period of time cannot be divided by three equally, any days remaining after such division must be added to the last third.

(4) Where a graduated fee is calculated in accordance with this Part for the purposes of paragraph 2(4), the fee must be calculated as if the trial had cracked in the final third.

**Table A -Fees and uplifts in guilty pleas and trials which crack in the first third**

<i>Class of Offence</i>	<i>Basic fee</i>	<i>Evidence uplift per page of prosecution evidence (pages 1 to 1,000)</i>	<i>Evidence uplift per page of prosecution evidence (1,001 to 10,000)</i>
<b>QC</b>			
A	£2,358.00	£2.53	£1.17
B	£1,509.00	£2.08	£1.04
C	£1,415.00	£1.48	£0.74
D	£1,509.00	£3.30	£1.65
E	£1,250.00	£1.06	£0.53
F	£1,250.00	£1.39	£0.70
G	£1,415.00	£1.84	£0.92
H	£1,415.00	£1.91	£0.95
I	£1,415.00	£1.86	£0.92
J	£1,981.00	£3.30	£1.65
K	£1,981.00	£1.84	£0.92
<b>Leading Junior</b>			
A	£1,768.50	£1.90	£0.88
B	£1,131.75	£1.56	£0.78
C	£1,061.25	£1.11	£0.56
D	£1,131.75	£2.48	£1.24
E	£937.50	£0.80	£0.40
F	£937.50	£1.04	£0.53
G	£1,061.25	£1.38	£0.69
H	£1,061.25	£1.43	£0.71
I	£1,061.25	£1.40	£0.69
J	£1,485.75	£2.48	£1.24
K	£1,485.75	£1.38	£0.69
<b>Led Junior</b>			
A	£1,179.00	£1.27	£0.59
B	£754.50	£1.04	£0.52
C	£707.50	£0.74	£0.37
D	£754.50	£1.65	£0.83

E	£625.00	£0.53	£0.27
F	£625.00	£0.70	£0.35
G	£707.50	£0.92	£0.46
H	£707.50	£0.96	£0.48
I	£707.50	£0.93	£0.46
J	£990.50	£1.65	£0.83
K	£990.50	£0.92	£0.46
<b>Junior alone</b>			
A	£1,312.00	£1.08	£0.54
B	£802.00	£0.94	£0.47
C	£519.00	£0.69	£0.35
D	£802.00	£1.37	£0.68
E	£472.00	£0.41	£0.20
F	£472.00	£0.63	£0.31
G	£755.00	£1.18	£0.59
H	£566.00	£0.63	£0.32
I	£660.00	£0.49	£0.25
J	£1,132.00	£1.37	£0.68
K	£1,132.00	£1.18	£0.59

**Table B -Fees and uplifts in trials which crack in the second or final third**

<i>Class of Offence</i>	<i>Basic Fee</i>	<i>Evidence uplift per page of prosecution evidence (pages 1 to 250)</i>		<i>Evidence uplift per page of prosecution evidence (pages 251 to 1,000)</i>		<i>A case that cracks in the second third</i>		<i>A case that cracks in the final third</i>	
		<i>per page of prosecution evidence (pages 1 to 250)</i>	<i>per page of prosecution evidence (pages 251 to 1,000)</i>	<i>per page of prosecution evidence (pages 1,001 to 10,000)</i>	<i>per page of prosecution evidence (pages 1,001 to 10,000)</i>	<i>per page of prosecution evidence (pages 1,001 to 10,000)</i>	<i>per page of prosecution evidence (pages 1,001 to 10,000)</i>		
<b>QC</b>									
A	£3,585.00	£4.70	£1.17	£1.55	£4.70				
B	£2,264.00	£4.16	£1.04	£1.38	£4.16				
C	£1,975.00	£2.95	£0.74	£0.97	£2.95				
D	£2,264.00	£6.59	£1.65	£2.18	£6.59				
E	£1,600.00	£2.11	£0.53	£0.70	£2.11				
F	£1,600.00	£2.77	£0.70	£0.92	£2.77				
G	£2,000.00	£3.68	£0.92	£1.22	£3.68				
H	£2,000.00	£3.80	£0.95	£1.25	£3.80				
I	£2,075.00	£3.72	£0.92	£1.23	£3.72				
J	£3,019.00	£6.59	£1.65	£2.18	£6.59				
K	£3,019.00	£3.68	£0.92	£1.22	£3.68				
<b>Leading Junior</b>									
A	£2,688.75	£3.53	£0.88	£1.16	£3.53				
B	£1,698.00	£3.12	£0.78	£1.04	£3.12				
C	£1,481.25	£2.21	£0.56	£0.73	£2.21				
D	£1,698.00	£4.94	£1.24	£1.64	£4.94				
E	£1,200.00	£1.58	£0.40	£0.53	£1.58				
F	£1,200.00	£2.08	£0.53	£0.69	£2.08				
G	£1,500.00	£2.76	£0.69	£0.92	£2.76				
H	£1,500.00	£2.85	£0.71	£0.94	£2.85				
I	£1,556.25	£2.79	£0.69	£0.92	£2.79				

J	£2,264.25	£4.94	£1.24	£1.64	£4.94
K	£2,264.25	£2.76	£0.69	£0.92	£2.76
<b>Led Junior</b>					
A	£1,792.50	£2.35	£0.59	£0.78	£2.35
B	£1,132.00	£2.08	£0.52	£0.69	£2.08
C	£987.50	£1.48	£0.37	£0.49	£1.48
D	£1,132.00	£3.30	£0.83	£1.09	£3.30
E	£800.00	£1.06	£0.27	£0.35	£1.06
F	£800.00	£1.39	£0.35	£0.46	£1.39
G	£1,000.00	£1.84	£0.46	£0.61	£1.84
H	£1,000.00	£1.90	£0.48	£0.63	£1.90
I	£1,037.50	£1.86	£0.46	£0.62	£1.86
J	£1,509.50	£3.30	£0.83	£1.09	£3.30
K	£1,509.50	£1.84	£0.46	£0.61	£1.84
<b>Junior alone</b>					
A	£1,981.00	£4.63	£2.15	£0.71	£2.15
B	£1,179.00	£4.03	£1.88	£0.62	£1.88
C	£755.00	£2.99	£1.39	£0.46	£1.39
D	£1,050.00	£5.87	£2.73	£0.90	£2.73
E	£660.00	£1.75	£0.82	£0.27	£0.82
F	£660.00	£2.70	£1.25	£0.42	£1.25
G	£1,132.00	£5.08	£2.37	£0.78	£2.37
H	£802.00	£2.71	£1.26	£0.42	£1.26
I	£943.00	£2.11	£0.98	£0.32	£0.98
J	£1,698.00	£5.87	£2.73	£0.90	£2.73
K	£1,604.00	£5.08	£2.37	£0.78	£2.37

## PART 4

### Fixed fees

#### General provisions

8. Except as provided under this Part, all work undertaken by an advocate is included within the basic fee (B) specified in the Table following paragraph 5 as appropriate to—

- (a) the offence for which the assisted person is tried;
- (b) the category of advocate; and
- (c) whether the case is a cracked trial, guilty plea or trial.

#### Fees for plea and case management hearings and standard appearances

9.—(1) The fee payable in respect of—

- (a) an appearance by the trial advocate or substitute advocate at the first plea and case management hearing or pre-trial review; and
- (b) up to four standard appearances by the trial advocate or substitute advocate,

is included within the basic fee (B) specified in paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate.

(2) The fee payable in respect of an appearance by the trial advocate or substitute advocate at a plea and case management hearing or standard appearance not included in sub-paragraph (1) is specified in the Table following paragraph 19 as appropriate to the category of trial advocate or substitute advocate.

(3) The fee payable for preparing and filing the plea and case management questionnaire where no oral hearing takes place is specified in the Table following paragraph 19 as appropriate to the category of trial advocate or substitute advocate.

(4) This paragraph does not apply to a standard appearance which is or forms part of the main hearing in a case or to a hearing for which a fee is payable elsewhere under this Schedule.

### **Fees for abuse of process, disclosure, admissibility and withdrawal of plea hearings**

**10.**—(1) This paragraph applies to—

- (a) the hearing of an application to stay the case on indictment or any count on the ground that the proceedings constitute an abuse of the process of the court;
- (b) any hearing relating to the question of whether any material should be disclosed by the prosecution to the defence or the defence to the prosecution (whether or not any claim to public interest immunity is made);
- (c) the hearing of an application under section 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965<sup>(a)</sup> (issue of witness summons on application to Crown Court) for disclosure of material held by third parties;
- (d) any hearing relating to the question of the admissibility as evidence of any material; and
- (e) the hearing of an application to withdraw a plea of guilty where the application is—
  - (i) made by an advocate other than the advocate who appeared at the hearing at which the plea of guilty was entered; and
  - (ii) unsuccessful.

(2) Where a hearing to which this paragraph applies is held on any day of the main hearing of a case on indictment, no separate fee is payable in respect of attendance at the hearing, but the hearing is included in the length of the main hearing for the purpose of calculating the fees payable.

(3) Where a hearing to which this paragraph applies is held prior to the first or only day of the main hearing, it is not included in the length of the main hearing for the purpose of calculating the fees payable and the trial advocate or substitute advocate must be remunerated for attendance at such a hearing—

- (a) in respect of any day where the hearing begins before and ends after the luncheon adjournment, at the daily rate set out in the Table following paragraph 19 as appropriate to the category of trial advocate or substitute advocate; or
- (b) in respect of any day where the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, at the half-daily rate set out in the Table following paragraph 19 as appropriate to the category of trial advocate or substitute advocate.

### **Fees for confiscation hearings**

**11.**—(1) This paragraph applies to—

- (a) a hearing under Part 2 of the Proceeds of Crime Act 2002<sup>(b)</sup> (confiscation: England and Wales);
- (b) a hearing under section 2 of the Drug Trafficking Act 1994;<sup>(c)</sup> (confiscation orders) and
- (c) a hearing under section 71 of the Criminal Justice Act 1988<sup>(d)</sup> (confiscation orders).

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(a) 1965 c.69.  
(b) 2002 c.29.  
(c) 1994 c.37.  
(d) 1988 c.33.

(2) A hearing to which this paragraph applies is not included in the length of the main hearing or of any sentencing hearing for the purpose of calculating the fees payable, and the trial advocate or substitute advocate must be remunerated for attendance at such a hearing—

- (a) in respect of any day where the hearing begins before and ends after the luncheon adjournment, at the daily rate set out in the Table following paragraph 19 as appropriate to the category of trial advocate or substitute advocate; or
- (b) in respect of any day where the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, at the half-daily rate set out in the Table following paragraph 19 as appropriate to the category of trial advocate or substitute advocate.

### **Fees for sentencing hearings**

12.—(1) This paragraph applies to—

- (a) a sentencing hearing following a case on indictment to which this Schedule applies, where sentence has been deferred under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000<sup>(a)</sup> (deferment of sentence); or
- (b) a sentencing hearing following a case on indictment to which this Schedule applies, other than a hearing within paragraph (a) or a sentencing hearing forming part of the main hearing.

(2) The fee payable to an advocate for appearing at a hearing to which this paragraph applies is that set out in the Table following paragraph 19 as appropriate to the category of trial advocate or substitute advocate and the circumstances of the hearing.

### **Fees for ineffective trials**

13. The fee set out in the Table following paragraph 19 as appropriate to the category of trial advocate will be 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.

### **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

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(a) 2000 c.6.

(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.

### **Fees for wasted preparation**

**15.**—(1) A wasted preparation fee may be claimed where a trial advocate in any case to which this paragraph applies is prevented from representing the assisted person in the main hearing by any of the following circumstances—

- (a) the trial 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 for either the main hearing or the other proceedings;
- (b) the date fixed for the main hearing is changed by the court despite the trial advocate's objection;
- (c) the trial advocate has withdrawn from the case with the leave of the court because of his professional code of conduct or to avoid embarrassment in the exercise of his profession;
- (d) the trial advocate has been dismissed by the assisted person or the litigator; or
- (e) the trial advocate is obliged to attend at any place by reason of a judicial office held by him or other public duty.

(2) This paragraph applies to every case on indictment to which this Schedule applies provided that—

- (a) the case goes to trial, and the trial lasts for five days or more; or
- (b) the case is a cracked trial, and the number of pages of prosecution evidence exceeds 150.

(3) The amount of the wasted preparation fee must be calculated from the number of hours of preparation reasonably carried out by the trial advocate, using the rates for hourly fees set out in the Table following paragraph 19 as appropriate to the category of trial advocate, but no such fee is payable unless the number of hours of preparation is eight or more.

(4) Any claim for a wasted 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 wasted preparation fee must supply such information and documents as may be required by the appropriate officer as proof of the circumstances in which he was prevented from representing the assisted person and of the number of hours of preparation.

### **Fees for conferences and views**

**16.**—(1) This paragraph applies to the following types of work—

- (a) attendance by the trial advocate at pre-trial conferences with prospective or actual expert witnesses not held at court;
- (b) attendance by the trial advocate at views at the scene of the alleged offence;
- (c) attendance by the trial advocate at pre-trial conferences with the assisted person not held at court;
- (d) reasonable travelling time by the trial advocate for the purpose of attending a view at the scene of the alleged offence; or

- (e) reasonable travelling time by the trial advocate for the purpose of attending a pre-trial conference with the assisted person or prospective or actual expert witness, where the appropriate officer is satisfied that the assisted person or prospective or actual expert witness was unable or could not reasonably have been expected to attend a conference at the trial advocate's chambers or office.

(2) The fees payable in respect of attendance at the first three pre-trial conferences or views, as set out in sub-paragraph (1)(a) to (c), are included in the basic fee (B) specified in the Table following paragraph 5 or paragraph 7, as appropriate to the offence for which the assisted person is tried, the category of trial advocate and whether the case is a guilty plea, cracked trial or trial, provided that the trial advocate satisfies the appropriate officer that the work was reasonably necessary.

(3) The fee specified in the Table following paragraph 19 as appropriate to the category of trial advocate will be payable in the following circumstances, provided that the trial advocate satisfies the appropriate officer that the work was reasonably necessary—

- (a) for trials lasting not less than 21 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, one further pre-trial conference or view not exceeding two hours;
- (b) for trials lasting not less than 26 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, two further pre-trial conferences or views each not exceeding two hours; and
- (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 and not more than 40 days, three further pre-trial conferences or views each not exceeding two hours.

(4) Travel expenses must be paid for all conferences and views set out in sub-paragraph (1)(a) to (c), provided that the trial advocate satisfies the appropriate officer that they were reasonably incurred.

(5) Travelling time must be paid for all conferences and views set out in sub-paragraph (1)(a) to (c), provided that the trial advocate satisfies the appropriate officer that it was reasonable.

### **Fees for appeals, committals for sentence and breach hearings**

17.—(1) Subject to sub-paragraphs (4) and (5) and paragraph 21 the fee payable to a trial advocate in any of the hearings referred to in paragraph 2(1)(b) is the fixed fee specified in the Table following paragraph 19.

(2) Where a hearing referred to in paragraph 2(1)(b) 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, the fee payable to the advocate is the fixed fee specified in the Table following paragraph 19.

(3) Where—

- (a) a bail application;
- (b) a mention hearing; or
- (c) any other application

takes place in the course of a hearing referred to in paragraph 2(1)(b), the fee payable to the advocate is the fixed fee specified in the Table following paragraph 19.

(4) Where it appears to the appropriate officer that the fixed fee allowed under sub-paragraph (1) would be inappropriate taking into account all of the relevant circumstances of the case he may instead allow fees in such amounts as appear to him to be reasonable remuneration for the relevant work in accordance with sub-paragraph (5).



(5) The appropriate officer may allow any of the following classes of fees to an advocate in respect of work allowed by him under this paragraph—

- (a) a fee for preparation including, where appropriate, the first day of the hearing including, where they took place on that day—
  - (i) short conferences;
  - (ii) consultations;
  - (iii) applications and appearances (including bail applications);
  - (iv) views at the scene of the alleged offence; and
  - (v) any other preparation;
- (b) a refresher fee for any day or part of a day for which a hearing continued, including, where they took place on that day—
  - (i) short conferences;
  - (ii) consultations;
  - (iii) applications and appearances (including bail applications);
  - (iv) views at the scene of the alleged offence; and
  - (v) any other preparation; and
- (c) subsidiary fees for—
  - (i) attendance at conferences, consultations and views at the scene of the alleged offence not covered by paragraph (a) or (b);
  - (ii) written advice on evidence, plea, appeal, case stated or other written work; and
  - (iii) attendance at applications and appearances (including bail applications and adjournments for sentence) not covered by paragraph (a) or (b).

#### **Discontinuance or dismissal of sent or transferred proceedings**

**18.**—(1) This paragraph applies to proceedings which are—

- (a) sent for trial to the Crown Court under section 51 of the Crime and Disorder Act 1998 (no committal proceedings for indictable-only offences); or
- (b) transferred to the Crown Court under—
  - (i) section 4 of the Criminal Justice Act 1987 (transfer of serious fraud cases); or
  - (ii) section 53 of the Criminal Justice Act 1991 (transfer of certain cases involving children).

(2) Where proceedings referred to in sub-paragraph (1) are discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985 (discontinuance of proceedings after accused has been sent for trial) at any time before the prosecution serves its evidence in accordance with the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005<sup>(a)</sup> the advocate must be paid 50 percent of the Basic fee (B) for a guilty plea, as specified in the Table following paragraph 7 as appropriate to the offence for which the assisted person is charged and the category of advocate.

(3) Where proceedings referred to in sub-paragraph (1) are discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985 (discontinuance of proceedings after accused has been sent for trial) at any time after the prosecution serves its evidence in accordance with the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005, the advocate must be paid a graduated fee calculated in accordance with paragraph 6, as appropriate for representing an assisted person in a guilty plea.

(4) Where, at the plea and case management hearing or any other hearing after the prosecution serves its evidence,—

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(a) S.I. 2005/902.



- (a) the prosecution offers no evidence and the assisted person is discharged; or
- (b) the assisted person is charged on an indictment which includes no offence that is triable only on indictment and the case is remitted to the magistrates' court in accordance with paragraph 10(3)(a) of Schedule 3 to the Crime and Disorder Act 1998 (procedure where no indictable-only offence remains),

the advocate instructed in the proceedings must be paid a graduated fee calculated in accordance with paragraph 6, as appropriate for representing an assisted person in a guilty plea.

(5) Where an application for dismissal is made under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (applications for dismissal), section 6 of the Criminal Justice Act 1987 (applications for dismissal) or paragraph 5 of Schedule 6 to the Criminal Justice Act 1991 (applications for dismissal), the advocate must be remunerated for attendance at the hearing of the application for dismissal—

- (a) in respect of any day where the hearing begins before and ends after the luncheon adjournment, at the daily rate set out in the Table following paragraph 19 as appropriate to the category of advocate; or
- (b) in respect of any day where the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, at the half-daily rate set out in that Table as appropriate to the category of advocate,

provided that a fee is not payable elsewhere under this Schedule in respect of any day of the hearing.

(6) Where an application for dismissal is made under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998, section 6 of the Criminal Justice Act 1987 or paragraph 5 of Schedule 6 to the Criminal Justice Act 1991, and—

- (a) the charge, or charges, are dismissed and the assisted person is discharged; or
- (b) the charge, or charges, of an offence triable only on indictment are dismissed and the case is remitted to the magistrates' court in accordance with paragraph 10(3)(a) of Schedule 3 to the Crime and Disorder Act 1998,

in respect of the first day of the hearing of the application to dismiss, the advocate instructed in the proceedings must be paid a graduated fee calculated in accordance with paragraph 6, as appropriate for representing an assisted person in a guilty plea.

(7) Where an advocate represents more than one assisted person in proceedings referred to in sub-paragraph (1), the advocate must be paid a fixed fee of 20 percent of —

- (a) the fee specified in sub-paragraph (2) where that sub-paragraph applies; or
- (b) the Basic fee (B) specified in the Table following paragraph 7 where sub-paragraph (3), (4) or (5) applies, as appropriate for the circumstances set out in the relevant sub-paragraph,

in respect of each additional assisted person he represents.

**Noting brief fees**

19. The fee payable to an advocate retained solely for the purpose of making a note of any hearing must be the daily fee set out in the table following this paragraph.

**Fixed Fees**

<i>Category of work</i>	<i>Paragraph providing for fee</i>	<i>Fee for QC</i>	<i>Fee for junior</i>	<i>Fee for led junior or junior alone</i>
Standard appearance	9(2)	£200 per day	£150 per day	£100 per day

Paper plea and case management hearing	9(3)	£30 per case	£30 per case	£30 per case
Abuse of process hearing	10(1)(a)	Half day £300	Half day £225	Half day £150
		Full day £575	Full day £400	Full day £275
Hearings relating to disclosure	10(1)(b) and (c)	Half day £300	Half day £225	Half day £150
		Full day £575	Full day £400	Full day £275
Hearings relating to the admissibility of evidence	10(1)(d)	Half day £300	Half day £225	Half day £150
		Full day £575	Full day £400	Full day £275
Hearings on withdrawal of a plea of guilty	10(1)(e)	Half day £300	Half day £225	Half day £150
		Full day £575	Full day £400	Full day £275
Confiscation hearings	11	Half day £300	Half day £225	Half day £150
		Full day £575	Full day £400	Full day £275
Deferred sentencing hearing	12(1)(a)	£375 per day	£275 per day	£200 per day
Sentencing hearing	12(1)(b)	£300 per day	£200 per day	£125 per day
Ineffective trial payment	13	£325 per day	£225 per day	£150 per day
Special preparation	14	£85 per hour	£65 per hour	£45 per hour
Wasted preparation	15	£85 per hour	£65 per hour	£45 per hour
Conferences and views	16	£85 per hour	£65 per hour	£45 per hour
Appeals to the Crown Court against conviction	17(1)	£300 per day	£225 per day	£150 per day
Appeals to the Crown Court against sentence	17(1)	£250 per day	£175 per day	£125 per day
Proceedings relating to breach of an order of the Crown Court	17(1)	£250 per day	£175 per day	£125 per day

Committal for sentence	17(1)	£300 per day	£225 per day	£150 per day
Adjourned appeals, committals for sentence and breach hearings	17(2)	£200 per day	£150 per day	£100 per day
Bail applications, mentions and other applications in appeals, committals for sentence and breach hearings	17(3)	£200 per day	£150 per day	£100 per day
Second and subsequent days of an application to dismiss	18(6)	Half day £300 Full day £575	Half day £225 Full day £400	Half day £150 Full day £275
Noting brief	19	-	-	£125 per day

## PART 5

### Miscellaneous

#### Identity of instructed advocate

20.—(1) Where an instructed advocate is appointed before the plea and case management hearing, he must notify the Court in writing as soon as he is appointed and, where appropriate, he must confirm whether he is the leading instructed advocate or the led instructed advocate.

(2) Where the representation order provides for a single advocate and no instructed advocate has been notified to the Court in accordance with sub-paragraph (1)—

- (a) the barrister or solicitor advocate who attends the plea and case management hearing will be deemed to be the instructed advocate; and
- (b) the Court will make a written record of this fact.

(3) Where the representation order provides for a single advocate and no barrister or solicitor advocate attends the plea and case management hearing—

- (a) the barrister or solicitor advocate who attends the next hearing in the case will be deemed to be the instructed advocate; and
- (b) the Court will make a written record of this fact.

(4) Where the representation order provides for more than one advocate, and no leading instructed advocate has been notified to the Court in accordance with sub-paragraph (1), the leading advocate who attends—

- (a) the plea and case management hearing; or
- (b) where no leading advocate attends the plea and case management hearing, the next hearing in the case attended by a leading advocate

will be deemed to be the leading instructed advocate, and the Court will make a written record of this fact.

(5) Where the representation order provides for more than one advocate, and no led instructed advocate has been notified to the Court in accordance with sub-paragraph (1), the led advocate who attends—

- (a) the plea and case management hearing; or
- (b) where no led advocate attends the plea and case management hearing, the next hearing in the case attended by a led advocate

will be deemed to be the led instructed advocate, the Court will make a written record of this fact.

(6) Where a representation order is amended after the plea and case management hearing to provide for more than one advocate—

- (a) the additional instructed advocate must notify the Court in writing of his appointment within 7 days of the date on which the representation order is amended; and
- (b) each instructed advocate must notify the Court whether he is the leading instructed advocate or the led instructed advocate.

(7) Where no additional instructed advocate has been notified to the Court in accordance with sub-paragraph (6)(a), the advocate who attends the next hearing in the case will be deemed to be an instructed advocate and the Court will record in writing whether he is the leading instructed advocate or the led instructed advocate, as appropriate to the circumstances of the case.

(8) The Court will attach—

- (a) any notice received under sub-paragraph (1) or sub-paragraph (6); and
- (b) any record made by it under sub-paragraph (2), (3), (4), (5) or (7)

to the representation order.

(9) An instructed advocate must remain as instructed advocate at all times, except where—

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

(10) Where, in accordance with sub-paragraph (9), an instructed advocate withdraws, he must—

- (a) immediately notify the court of his withdrawal—
  - (i) in writing; or
  - (ii) where the withdrawal takes place at a plea and case management hearing, orally; and
- (b) within 7 days of the date of his withdrawal, notify the court in writing of the identity of a replacement instructed advocate, who must fulfil all the functions of an instructed advocate in accordance with this Order.

(11) This paragraph does not apply to a claim for fees under paragraph 27, 28 or 29.

### **Payment of fees to instructed advocate**

**21.**—(1) In accordance with article 23 the appropriate officer must notify each instructed advocate of the total fees payable and authorise payment to him accordingly.

(2) Payment of the fees in accordance with sub-paragraph (1) must be made to each instructed advocate.

(3) Where the representation order provides for a single advocate, the instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who has undertaken work on the case.

(4) Where there are two instructed advocates for an assisted person, payment must be made to each instructed advocate individually, and—

- (a) the leading instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who have undertaken work on the case of a type for which a leading advocate is responsible; and

- (b) the led instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who have undertaken work on the case of a type for which a led advocate is responsible.

(5) This paragraph does not apply to a claim for fees under paragraph 27, 28 or 29.

### **Additional charges and additional cases**

**22.**—(1) Where an assisted person is charged with more than one offence on one indictment, the graduated fee payable to the trial advocate under this Schedule will be based on whichever of those offences the trial advocate selects.

(2) Where two or more cases to which this Schedule applies involving the same trial advocate are heard concurrently (whether involving the same or different assisted persons)—

- (a) the trial advocate must select one case (“the principal case”), which must be treated for the purposes of remuneration in accordance with this Schedule;
- (b) in respect of the main hearing in each of the other cases the trial advocate must be paid a fixed fee of 20 per cent of—
  - (i) the basic fee (B) specified in the Table following paragraph 5 or paragraph 7, as appropriate, for the principal case, where that is a case falling within paragraph 2(1)(a), or
  - (ii) the fixed fee for the principal case, where that is a case falling within paragraph 2(1)(b).

(3) Where a trial advocate or substitute advocate appears at a hearing specified in paragraph 9, 10, 11, 12 or 13, forming part of two or more cases involving different assisted persons, he must be paid—

- (a) in respect of the first such case, the fixed fee for that hearing specified in the Table following paragraph 19; and
- (b) in respect of each of the other cases, 20 per cent of that fee.

(4) Subject to sub-paragraphs (1) to (3), where a trial advocate or substitute advocate appears at a hearing forming part of two or more cases, he must be paid the fixed fee for that hearing specified in the Table following paragraph 19 in respect of one such case, without any increase in respect of the other cases.

(5) Where a trial advocate selects—

- (a) one offence, in preference to another offence, under sub-paragraph (1); or
- (b) one case as the principal case, in preference to another case, under sub-paragraph (2),

that selection does not affect his right to claim any of the fees set out in the Table following paragraph 19 to which he would otherwise have been entitled.

### **Multiple advocates**

**23.**—(1) Where a representation order provides for three advocates in a case the provisions of this Schedule will apply, and the fees payable to the led juniors in accordance with Part 2 or Part 3 will be payable to each led junior who is instructed in the case.

(2) Where—

- (a) the assisted person is represented by a single trial advocate; and
- (b) another person charged on the same indictment with an offence falling within the same class is represented by two trial advocates,

the single trial advocate must be paid the same fee as if he were appearing as junior to another trial advocate.

(3) Sub-paragraph (2) does not apply where the charge which the single trial advocate is instructed to defend (or, where there is more than one such charge, the charge forming the basis of remuneration in accordance with paragraph 21(1)) is for an offence falling within Class A.

## Non-local appearances

24. Where an advocate is instructed to appear in a court which is not within 40 kilometres of his office or chambers, the appropriate officer may allow an amount for travelling and other expenses incidental to that appearance, provided that the amount must not be greater than the amount, if any, which would be payable to a trial advocate from the nearest local Bar or the nearest advocate's office (whichever is the nearer) unless the advocate instructed to appear has obtained prior approval under CDS Regulations for the incurring of such expenses or can justify his attendance having regard to all the relevant circumstances of the case.

## Trials lasting over 40 days

25. Where a trial exceeds 40 days, but is not a Very High Cost Case which is the subject of an individual contract for the provision of funded services, the trial advocate must be paid a fee as set out in the Table following this paragraph, as appropriate to the category of trial advocate and the class of offence, for each day by which the trial exceeds 40 days.

### Daily rates payable where a trial lasts over 40 days

<i>Class of Offence</i>	<i>Daily rate payable for days 41 to 50</i>	<i>Daily rate payable for days 51 and over</i>
<b>QC</b>		
A	£635	£680
B	£447	£479
C	£447	£479
D	£447	£479
E	£447	£479
F	£447	£479
G	£447	£479
H	£447	£479
I	£447	£479
J	£447	£479
K	£447	£479
<b>Leading Junior</b>		
A	£544	£583
B	£383	£411
C	£383	£411
D	£383	£411
E	£383	£411
F	£383	£411
G	£383	£411
H	£383	£411
I	£383	£411
J	£383	£411
K	£383	£411
<b>Led Junior</b>		
A	£363	£389
B	£256	£274
C	£256	£274
D	£256	£274
E	£256	£274
F	£256	£274
G	£256	£274
H	£256	£274
I	£256	£274

J	£256	£274
K	£256	£274
<b>Junior acting alone</b>		
A	£435	£467
B	£286	£306
C	£286	£306
D	£307	£329
E	£260	£279
F	£260	£279
G	£307	£329
H	£286	£306
I	£286	£306
J	£307	£329
K	£307	£329

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### Assisted person unfit to plead or stand trial

**26.** Where in any case a hearing is held to determine the question of whether the assisted person is unfit to plead or to stand trial (a “fitness hearing”)—

- (a) if a trial on indictment is held, or continues, at any time thereafter, the length of the fitness hearing is included in determining the length of the trial for the calculation of the graduated fee in accordance with Part 2 or Part 3;
- (b) if a trial on indictment is not held, or does not continue, thereafter by reason of the assisted person being found unfit to plead or to stand trial, the trial advocate must be paid—
  - (i) a graduated fee calculated in accordance with paragraph 4 as appropriate to the combined length of—
    - (aa) the fitness hearing; and
    - (bb) any hearing under section 4A of the Criminal Procedure (Insanity) Act 1964<sup>(a)</sup> (finding that the accused did the act or made the omission charged against him); or
  - (ii) a graduated fee calculated in accordance with paragraph 6 as appropriate for representing an assisted person in a cracked trial, whichever the trial advocate elects; and
- (c) if at any time the assisted person pleads guilty to the indictable offence, the trial advocate must be paid either—
  - (i) a graduated fee calculated in accordance with paragraph 4 as appropriate to the length of the fitness hearing; or
  - (ii) a graduated fee calculated in accordance with paragraph 6 as appropriate for representing an assisted person in a guilty plea, whichever the trial advocate elects.

### Cross examination of witness

**27.—(1)** Where in any case on indictment an advocate is retained solely for the purpose of cross-examining a witness under section 38 of the Youth Justice and Criminal Evidence Act 1999<sup>(b)</sup> (defence representation for purposes of cross-examination), he must be paid a graduated fee calculated in accordance with paragraph 4.

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<sup>(a)</sup> 1964 c.84, as amended by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c.25) and the Domestic Violence, Crime and Victims Act 2004 (c.28).  
<sup>(b)</sup> 1999 c.23.

(2) For the purposes of this paragraph the daily attendance fee (D) is as set out in the Table following paragraph 5 as appropriate to the number of days of attendance at court by the advocate.

#### **Provision of written or oral advice**

**28.**—(1) Where in any case on indictment an advocate is assigned under a representation order solely for the purpose of providing written or oral advice, he will be paid for the reasonable number of hours of preparation for that advice using the rates of hourly fees for special preparation set out in the table following paragraph 19 as appropriate to the category of trial advocate.

(2) An advocate claiming a fee for advice under this paragraph may apply to the appropriate officer to redetermine the fee under article 29 and he must supply such information and documents as may be required by the appropriate officer as proof of the number of hours of preparation.

#### **Mitigation of sentence**

**29.**—(1) Where in any case on indictment an advocate is assigned under a representation order to appear at a sentencing hearing solely for the purpose of applying to the court to mitigate the assisted person's sentence, he must be paid in respect of that appearance the fee payable under paragraph 12 together with a fee calculated from the reasonable number of hours of preparation for that appearance using the rates of hourly fees for special preparation set out in the table following paragraph 19 as appropriate to the category of trial advocate.

(2) An advocate claiming an hourly preparation fee under this paragraph may apply to the appropriate officer to redetermine such hourly fee under article 29 and he must supply such information and documents as may be required by the appropriate officer as proof of the number of hours of preparation.

## PART 6

### Table of Offences

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
<b>Class A: Homicide and related grave offences</b>		
Murder	Common law	
Manslaughter	Common law	
Soliciting to commit murder	Offences against the Person Act 1861 s.4	1861 c. 100
Child destruction	Infant Life (Preservation) Act 1929 s.1(1)	1929 c. 34
Infanticide	Infanticide Act 1938 s.1(1)	1938 c. 36
Causing explosion likely to endanger life or property	Explosive Substances Act 1883 s.2	1883 c. 3
Attempt to cause explosion, making or keeping explosive etc.	Explosive Substances Act 1883 s.3	as above
<b>Class B: Offences involving serious violence or damage, and serious drugs offences</b>		
Endangering the safety of an aircraft	Aviation Security Act 1982 s. 2(1)(b)	1982 c. 36
Racially-aggravated arson (not endangering life)	Crime and Disorder Act 1998 s. 30(1)	1998 c. 37
Kidnapping	Common law	
False imprisonment	Common law	
Aggravated criminal damage	Criminal Damage Act 1971 s.1(2)	1971 c. 48
Aggravated arson	Criminal Damage Act 1971 s.1(2), (3)	as above
Arson (where value exceeds £30,000)	Criminal Damage Act 1971 s.1(3)	as above
Possession of firearm with intent to	Firearms Act 1968 s.16	1968 c. 27



endanger life		
Use of firearm to resist arrest	Firearms Act 1968 s.17	as above
Possession of firearm with criminal intent	Firearms Act 1968 s.18	as above
Possession or acquisition of certain prohibited weapons etc.	Firearms Act 1968 s.5	as above
Aggravated burglary	Theft Act 1968 s.10	1968 c. 60
Armed robbery	Theft Act 1968 s.8(1)	as above
Assault with weapon with intent to rob	Theft Act 1968 s.8(2)	as above
Blackmail	Theft Act 1968 s.21	as above
Riot	Public Order Act 1986 s.1	1986 c. 64
Violent disorder	Public Order Act 1986 s.2	as above
Contamination of goods with intent	Public Order Act 1986 s.38	as above
Causing death by dangerous driving	Road Traffic Act 1988 s.1	1988 c. 52
Causing death by careless driving while under the influence of drink or drugs	Road Traffic Act 1988 s.3A	as above
Aggravated vehicle taking resulting in death	Theft Act 1968 s.12A	1968 c. 60
Causing danger to road users	Road Traffic Act 1988 s.22A	1988 c. 52
Attempting to choke, suffocate, strangle etc.	Offences against the Person Act 1861 s.21	1861 c. 100
Causing miscarriage by poison, instrument	Offences against the Person Act 1861 s.58	as above
Making threats to kill	Offences against the Person Act 1861 s.16	as above
Wounding or grievous bodily harm with intent to cause grievous bodily harm etc.	Offences against the Person Act 1861 s.18	as above
Endangering the safety of railway passengers	Offences against the Person Act 1861 ss.32, 33, 34	as above
Impeding persons endeavouring to escape wrecks	Offences against the Person Act 1861 s.17	as above
Administering chloroform, laudanum etc.	Offences against the Person Act 1861 s.22	as above
Administering poison etc. so as to endanger life	Offences against the Person Act 1861 s.23	as above
Cruelty to persons under 16	Children and Young Persons Act 1933 s.1	1933 c. 12
Aiding and abetting suicide	Suicide Act 1961 s.2	1961 c. 60
Prison mutiny	Prison Security Act 1992 s.1	1992 c. 25
Assaulting prison officer whilst possessing firearm etc.	Criminal Justice Act 1991 s.90	1991 c. 53
Producing or supplying a Class A or B drug	Misuse of Drugs Act 1971 s.4	1971 c. 38
Possession of a Class A or B drug with intent to supply	Misuse of Drugs Act 1971 s.5(3)	as above
Manufacture and supply of scheduled substances	Criminal Justice (International Co-operation) Act 1990 s.12	1990 c. 5
Fraudulent evasion of controls on Class A and B drugs	Customs and Excise Management Act 1979 s.170(2)(b), (c)	1979 c. 2
Illegal importation of Class A and B drugs	Customs and Excise Management Act 1979 s.50	as above
Offences in relation to proceeds of	Drug Trafficking Act 1994 ss.49, 50	1994 c. 37

drug trafficking	and 51	
Offences in relation to money laundering investigations	Drug Trafficking Act 1994 ss.52 and 53	as above
Practitioner contravening drug supply regulations	Misuse of Drugs Act 1971 ss.12 and 13	1971 c. 38
Cultivation of cannabis plant	Misuse of Drugs Act 1971 s.6	as above
Occupier knowingly permitting drugs offences etc.	Misuse of Drugs Act 1971 s.8	as above
Activities relating to opium	Misuse of Drugs Act 1971 s.9	as above
Drug trafficking offences at sea	Criminal Justice (International Co-operation) Act 1990 s.18	1990 c. 5
Firing on Revenue vessel	Customs and Excise Management Act 1979 s.85	1979 c. 2
Making or possession of explosive in suspicious circumstances	Explosive Substances Act 1883 s.4(1)	1883 c. 3
Causing bodily injury by explosives	Offences against the Person Act 1861 s.28	1861 c. 100
Using explosive or corrosives with intent to cause grievous bodily harm	Offences against the Person Act 1861 s.29	as above
Hostage taking	Taking of Hostages Act 1982 s.1	1982 c. 28
Offences against international protection of nuclear material	Nuclear Material (Offences) Act 1983 s.2	1983 c. 18
Placing explosives with intent to cause bodily injury	Offences against the Person Act 1861 s.30	1861 c. 100
Membership of proscribed organisations	Terrorism Act 2000 s.11	2000 c. 11
Support or meeting of proscribed organisations	Terrorism Act 2000 s.12	as above
Uniform of proscribed organisations	Terrorism Act 2000 s.13	as above
Fund-raising for terrorism	Terrorism Act 2000 s.15	as above
Other offences involving money or property to be used for terrorism	Terrorism Act 2000 ss.16-18	as above
Disclosure prejudicing, or interference of material relevant to, investigation of terrorism	Terrorism Act 2000 s.39	as above
Weapons training	Terrorism Act 2000 s.54	as above
Directing terrorist organisation	Terrorism Act 2000 s.56	as above
Possession of articles for terrorist purposes	Terrorism Act 2000 s.57	as above
Unlawful collection of information for terrorist purposes	Terrorism Act 2000 s.58	as above
Incitement of terrorism overseas	Terrorism Act 2000 s.59	as above
Concealing criminal property	Proceeds of Crime Act 2002 s.327	2002 c.29
Involvement in arrangements facilitating the acquisition, retention, use or control of criminal property	Proceeds of Crime Act 2002 s.328	As above
Acquisition, use or possession of criminal property	Proceeds of Crime Act 2002 s.329	As above
Failure to disclose knowledge or suspicion of money laundering: regulated sector	Proceeds of Crime Act 2002 s.330	As above
Failure to disclose knowledge or suspicion of money laundering: nominated officers in the regulated sector	Proceeds of Crime Act 2002 s.331	As above

Failure to disclose knowledge or suspicion of money laundering: other nominated officers	Proceeds of Crime Act 2002 s.332	As above
Tipping off	Proceeds of Crime Act 2002 s.333	As above
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)	As above
Causing or allowing the death of a child	Domestic Violence, Crime and Victims Act 2004 s.5	2004 c.28
<b>Class C: Lesser offences involving violence or damage, and less serious drugs offences</b>		
Racially-aggravated assault	Crime and Disorder Act 1998 s. 29(1)	1998 c.37
Racially-aggravated criminal damage	Crime and Disorder Act 1998 s. 30(1)	1998 c.37
Robbery (other than armed robbery)	Theft Act 1968 s.8(1)	1968 c. 60
Unlawful wounding	Offences against the Person Act 1861 s.20	1861 c. 100
Assault occasioning actual bodily harm	Offences against the Person Act 1861 s.47	as above
Concealment of birth	Offences against the Person Act 1861 s.60	as above
Abandonment of children under two	Offences against the Person Act 1861 s.27	as above
Arson (other than aggravated arson) where value does not exceed £30,000	Criminal Damage Act 1971 s.1(3)	1971 c. 48
Criminal damage (other than aggravated criminal damage)	Criminal Damage Act 1971 s.1(1)	as above
Possession of firearm without certificate	Firearms Act 1968 s.1	1968 c. 27
Carrying loaded firearm in public place	Firearms Act 1968 s.19	as above
Trespassing with a firearm	Firearms Act 1968 s.20	as above
Shortening of shotgun or possession of shortened shotgun	Firearms Act 1968 s.4	as above
Shortening of smooth bore gun	Firearms Amendment Act 1988 s.6(1)	1988 c. 45
Possession or acquisition of shotgun without certificate	Firearms Act 1968 s.2	1968 c. 27
Possession of firearms by person convicted of crime	Firearms Act 1968 s.21(4)	as above
Acquisition by or supply of firearms to person denied them	Firearms Act 1968 s.21(5)	as above
Dealing in firearms	Firearms Act 1968 s.3	as above
Failure to comply with certificate when transferring firearm	Firearms Act 1968 s.42	as above
Permitting an escape	Common law	
Rescue	Common law	
Escaping from lawful custody without force	Common law	
Breach of prison	Common law	
Harbouring escaped prisoners	Criminal Justice Act 1961 s.22	1961 c. 39
Assisting prisoners to escape	Prison Act 1952 s.39	1952 c. 52
Fraudulent evasion of agricultural levy	Customs and Excise Management Act 1979 s.68A(1) and (2)	1979 c. 2
Offender armed or disguised	Customs and Excise Management Act 1979 s.86	as above

Making threats to destroy or damage property	Criminal Damage Act 1971 s.2	1971 c. 48
Possessing anything with intent to destroy or damage property	Criminal Damage Act 1971 s.3	as above
Child abduction by connected person	Child Abduction Act 1984 s.1	1984 c. 37
Child abduction by other person	Child Abduction Act 1984 s.2	as above
Bomb hoax	Criminal Law Act 1977 s.51	1977 c. 45
Producing or supplying Class C drug	Misuse of Drugs Act 1971 s.4	1971 c. 38
Possession of a Class C drug with intent to supply	Misuse of Drugs Act 1971 s.5(3)	as above
Fraudulent evasion of controls on Class C drugs	Customs and Excise Management Act 1979 s.170(2)(b), (c)	1979 c. 2
Illegal importation of Class C drugs	Customs and Excise Management Act 1979 s.50	as above
Possession of Class A drug	Misuse of Drugs Act 1971 s.5(2)	1971 c. 38
Failure to disclose knowledge or suspicion of money laundering	Drug Trafficking Offences Act 1986 s.26B	1986 c. 32
Tipping-off in relation to money laundering investigations	Drug Trafficking Offences Act 1986 s.26C	as above
Assaults on officers saving wrecks	Offences against the Person Act 1861 s.37	1861 c. 100
Attempting to injure or alarm the Sovereign	Treason Act 1842 s.2	1842 c. 51
Assisting illegal entry or harbouring persons	Immigration Act 1971 s.25	1971 c. 77
Administering poison with intent to injure etc.	Offences against the Person Act 1861 s.24	1861 c. 100
Neglecting to provide food for or assaulting servants etc.	Offences against the Person Act 1861 s.26	as above
Setting spring guns with intent to inflict grievous bodily harm	Offences against the Person Act 1861 s.31	as above
Supplying instrument etc. to cause miscarriage	Offences against the Person Act 1861 s.59	as above
Failure to disclose information about terrorism	Terrorism Act 2000 s.19	2000 c. 11
Circumcision of females	Prohibition of Female Circumcision Act 1985 s.1	1985 c. 38
Breaking or injuring submarine telegraph cables	Submarine Telegraph Act 1885 s.3	1885 c. 49
Failing to keep dogs under proper control resulting in injury	Dangerous Dogs Act 1991 s.3	1991 c. 65
Making gunpowder etc. to commit offences	Offences against the Person Act 1861 s.64	1861 c. 100
Stirring up racial hatred	Public Order Act 1986 ss.18-23	1986 c. 64
<b>Class D: Sexual offences and offences against children</b>		
Administering drugs to obtain intercourse	Sexual Offences Act 1956 s.4	1956 c.69
Procurement of a defective	Sexual Offences Act 1956 s.9	as above
Incest other than by man with a girl under 13	Sexual Offences Act 1956 ss.10 and 11	as above
Gross indecency between male of 21 or over and male under 16	Sexual Offences Act 1956 s.13	as above
Indecent assault on a woman	Sexual Offences Act 1956 s.14	as above
Indecent assault on a man	Sexual Offences Act 1956 s.15	as above

Abuse of position of trust	Sexual Offences (Amendment) Act 2000 s.3	2000 c. 44
Man living on earnings of prostitution	Sexual Offences Act 1956 s.30	1956 c.69
Woman exercising control over prostitute	Sexual Offences Act 1956 s.31	as above
Living on earnings of male prostitution	Sexual Offences Act 1967 s.5	1967 c. 60
Incitement to commit incest	Criminal Law Act 1977 s.54	1977 c. 45
Ill-treatment of persons of unsound mind	Mental Health Act 1983 s.127	1983 c. 20
Abduction of unmarried girl under 18 from parent	Sexual Offences Act 1956 s.19	1956 c. 69
Abduction of defective from parent	Sexual Offences Act 1956 s.21	as above
Procurator of girl under 21	Sexual Offences Act 1956 s.23	as above
Permitting defective to use premises for intercourse	Sexual Offences Act 1956 s.27	as above
Causing or encouraging prostitution of defective	Sexual Offences Act 1956 s.29	as above
Sexual assault	Sexual Offences Act 2003 s.3	2003 c. 42
Causing sexual activity without penetration	Sexual Offences Act 2003 s. 4	As above
Engaging in sexual activity in the presence of a child	Sexual Offences Act 2003 s. 11	As above
Causing a child to watch a sexual act	Sexual Offences Act 2003 s. 12	As above
Child sex offence committed by person under 18	Sexual Offences Act 2003 s. 13	As above
Meeting child following sexual grooming	Sexual Offences Act 2003 s. 15	As above
Abuse of trust: sexual activity with a child	Sexual Offences Act 2003 s. 16	As above
Abuse of position of trust: causing a child to engage in sexual activity	Sexual Offences Act 2003 s. 17	As above
Abuse of trust: sexual activity in the presence of a child	Sexual Offences Act 2003 s. 18	As above
Abuse of position of trust: causing a child to watch sexual activity	Sexual Offences Act 2003 s. 19	As above
Engaging in sexual activity in the presence of a person with a mental disorder	Sexual Offences Act 2003 s. 32	As above
Causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003 s. 33	As above
Engaging in sexual activity in the presence of a person with a mental disorder	Sexual Offences Act 2003 s. 36	As above
Causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003 s. 37	As above
Care workers: sexual activity in presence of a person with a mental disorder	Sexual Offences Act 2003 s. 40	As above
Care workers: causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003 s. 41	As above
Causing or inciting prostitution for gain	Sexual Offences Act 2003 s. 52	As above
Controlling prostitution for gain	Sexual Offences Act 2003 s. 53	As above
Administering a substance with intent	Sexual Offences Act 2003 s. 61	As above

Committing offence with intent to commit sexual offence	Sexual Offences Act 2003 s. 62	As above
Trespass with intent to commit sexual offence	Sexual Offences Act 2003 s. 63	As above
Sex with adult relative	Sexual Offences Act 2003 s. 64, 65	As above
Exposure	Sexual Offences Act 2003 s. 66	As above
Voyeurism	Sexual Offences Act 2003 s. 67	As above
Intercourse with an animal	Sexual Offences Act 2003 s. 69	As above
Sexual penetration of a corpse	Sexual Offences Act 2003 s. 70	As above
<b>Class E: Burglary etc</b>		
Burglary (domestic)	Theft Act 1968 s.9(3)(a)	1968 c. 60
Going equipped to steal	Theft Act 1968 s.25	as above
Burglary (non-domestic)	Theft Act 1968 s.9(3)(b)	as above
<b>Classes F, G and K: Other offences of dishonesty</b>		
<i>The following offences are always in class F</i>		
Destruction of registers of births etc.	Forgery Act 1861 s.36	1861 c. 98
Making false entries in copies of registers sent to register	Forgery Act 1861 s.37	as above
Possession (with intention) of false identity documents	Identity Cards Act 2006 s.25(1)	2006 c.15
Possession (with intention) of apparatus or material for making false identity documents	Identity Cards Act 2006 s.25(3)	As above
Possession (without reasonable excuse) of false identity documents or apparatus or material for making false identity documents	Identity Cards Act 2006 s.25(5)	As above
<i>The following offences are always in class G</i>		
Undischarged bankrupt being concerned in a company	Insolvency Act 1986 s. 360	1986 c.45
Counterfeiting notes and coins	Forgery and Counterfeiting Act 1981 s.14	1981 c. 45
Passing counterfeit notes and coins	Forgery and Counterfeiting Act 1981 s.15	as above
Offences involving custody or control of counterfeit notes and coins	Forgery and Counterfeiting Act 1981 s.16	as above
Making, custody or control of counterfeiting materials etc.	Forgery and Counterfeiting Act 1981 s.175	as above
Illegal importation: counterfeit notes or coins	Customs and Excise Management Act 1979 s.50	1979 c. 2
Fraudulent evasion: counterfeit notes or coins	Customs and Excise Management Act 1979 s.170(2)(b), (c)	as above
<i>The following offences are in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise</i>		
VAT offences	Value Added Tax Act 1994 s. 72(1-8)	1994 c.23
Fraudulent evasion of duty	Customs and Excise Management Act 1979 s. 170(1)(b)	1979 c. 2
Theft	Theft Act 1968 s.1	1968 c. 60
Removal of articles from places open to the public	Theft Act 1968 s.11	as above



Abstraction of electricity	Theft Act 1968 s.13	as above
Obtaining property by deception	Theft Act 1968 s.15	as above
Obtaining pecuniary advantage by deception	Theft Act 1968 s.16	as above
False accounting	Theft Act 1968 s.17	as above
Handling stolen goods	Theft Act 1968 s.22	as above
Obtaining services by deception	Theft Act 1978 s.1	1978 c. 31
Evasion of liability by deception	Theft Act 1978 s.2	as above
Illegal importation: not elsewhere specified	Customs and Excise Management Act 1979 s.50	1979 c. 2
Counterfeiting Customs documents	Customs and Excise Management Act 1979 s.168	as above
Fraudulent evasion: not elsewhere specified	Customs and Excise Management Act 1979 s.170(2)(b), (c)	as above
Forgery	Forgery and Counterfeiting Act 1981 s.1	1981 c. 45
Copying false instrument with intent	Forgery and Counterfeiting Act 1981 s.2	as above
Using a false instrument	Forgery and Counterfeiting Act 1981 s.3	as above
Using a copy of a false instrument	Forgery and Counterfeiting Act 1981 s.4	as above
Custody or control of false instruments etc.	Forgery and Counterfeiting Act 1981 s.5	as above
Offences in relation to dies or stamps	Stamp Duties Management Act 1891 s.13	1891 c. 38
Counterfeiting of dies or marks	Hallmarking Act 1973 s.6	1973 c. 43
Fraud by false representation	Fraud Act 2006 s.2	2006 c.35
Fraud by failing to disclose information	Fraud Act 2006 s.3	As above
Fraud by abuse of position	Fraud Act 2006 s.4	As above
Possession etc of articles for use in frauds	Fraud Act 2006 s.6	As above
Making or supplying articles for use in frauds	Fraud Act 2006 s.7	As above
Participating in fraudulent business carried on by sole trader etc.	Fraud Act 2006 s.9	As above
Obtaining services dishonestly	Fraud Act 2006 s.11	As above
<b>Class H: miscellaneous other offences</b>		
Breach of anti-social behaviour order	Crime and Disorder Act 1998 s. 1(10)	1998 c. 37
Breach of sex offender order	Crime and Disorder Act 1998 s. 2(8)	As above
Racially-aggravated public order offence	Crime and Disorder Act 1998 s. 31(1)	As above
Racially aggravated harassment/putting another in fear of violence	Crime and Disorder Act 1998 s. 32(1)	As above
Having an article with a blade or point in a public place	Criminal Justice Act 1988 s. 139	1988 c. 33
Breach of harassment injunction	Protection from Harassment Act 1997 s. 3(6)	1997 c. 40
Putting people in fear of violence	Protection from Harassment Act 1997 s. 4(1)	As above
Breach of restraining order	Protection from Harassment Act 1997 s. 5(5)	As above



Being drunk on an aircraft	Air Navigation Order 2005, article 75	S.I. 2005/1970
Possession of offensive weapon	Prevention of Crime Act 1953 s.1	1953 c. 14
Affray	Public Order Act 1986 s.3	1986 c. 64
Assault with intent to resist arrest	Offences against the Person Act 1861 s.38	1861 c. 100
Unlawful eviction and harassment of occupier	Protection from Eviction Act 1977 s.1	1977 c. 43
Obscene articles intended for publication for gain	Obscene Publications Act 1964 s.1	1964 c. 74
Gross indecency between males (other than where one is 21 or over and the other is under 16)	Sexual Offences Act 1956 s.13	1956 c. 69
Solicitation for immoral purposes	Sexual Offences Act 1956 s.32	as above
Buggery of males of 16 or over otherwise than in private	Sexual Offences Act 1956 s.12	as above
Acts outraging public decency	Common law	
Offences of publication of obscene matter	Obscene Publications Act 1959 s.2	1959 c. 66
Keeping a disorderly house	Common law; Disorderly Houses Act 1751 s.8	1751 c. 36
Indecent display	Indecent Displays (Control) Act 1981 s.1	1981 c. 42
Presentation of obscene performance	Theatres Act 1968 s.2	1968 c. 54
Procurement of intercourse by threats etc.	Sexual Offences Act 1956 s.2	1956 c. 69
Causing prostitution of women	Sexual Offences Act 1956 s.22	as above
Detention of woman in brothel or other premises	Sexual Offences Act 1956 s.24	as above
Procurement of a woman by false pretences	Sexual Offences Act 1956 s.3	as above
Procuring others to commit homosexual acts	Sexual Offences Act 1967 s.4	1967 c. 60
Trade description offences (9 offences)	Trade Descriptions Act 1968 ss.1, 8, 9, 12, 13, 14	1968 c. 29
Misconduct endangering ship or persons on board ship	Merchant Shipping Act 1970 s.27	1970 c. 36
Obstructing engine or carriage on railway	Malicious Damage Act 1861 s.36	1861 c. 97
Offences relating to the safe custody of controlled drugs	Misuse of Drugs Act 1971 s.11	1971 c. 38
Possession of Class B or C drug	Misuse of Drugs Act 1971 s.5(2)	as above
Wanton or furious driving	Offences against the Person Act 1861 s.35	1861 c. 100
Dangerous driving	Road Traffic Act 1988 s.2	1988 c. 52
Forgery and misuse of driving documents	Public Passenger Vehicles Act 1981 s.65	1981 c. 14
Forgery of driving documents	Road Traffic Act 1960 s.233	1960 c. 16
Forgery etc. of licences and other documents	Road Traffic Act 1988 s.173	1988 c. 52
Mishandling or falsifying parking documents etc.	Road Traffic Regulation Act 1984 s.115	1984 c. 27
Aggravated vehicle taking	Theft Act 1968 s.12A	1968 c. 60
Forgery, alteration, fraud of licences etc.	Vehicle Excise and Registration Act 1994 s.44	1994 c.22
Making off without payment	Theft Act 1978 s.3	1978 c. 31

Agreeing to indemnify sureties	Bail Act 1976 s.9(1)	1976 c. 63
Sending prohibited articles by post	Post Office Act 1953 s.11	1953 c. 36
Impersonating Customs officer	Customs and Excise Management Act 1979 s.13	1979 c. 2
Obstructing Customs officer	Customs and Excise Management Act 1979 s.16	as above
<b>Class I: Offences against public justice and similar offences</b>		
Conspiring to commit offences outside the United Kingdom	Criminal Justice (Terrorism and Conspiracy) Act 1998 s. 5	1998 c.40
Perverting the course of public justice	Common law	
Perjuries (7 offences)	Perjury Act 1911 ss.1-7(2)	1911 c. 6
Corrupt transactions with agents	Prevention of Corruption Act 1906 s.1	1906 c. 34
Corruption in public office	Public Bodies Corrupt Practices Act 1889 s.1	1889 c. 69
Embracery	Common law	
Fabrication of evidence with intent to mislead a tribunal	Common law	
Personation of jurors	Common law	
Concealing an arrestable offence	Criminal Law Act 1967 s.5	1967 c. 58
Assisting offenders	Criminal Law Act 1967 s.4(1)	as above
False evidence before European Court	European Communities Act 1972 s.11	1972 c. 68
Personating for purposes of bail etc.	Forgery Act 1861 s.34	1861 c. 98
Intimidating a witness, juror etc.	Criminal Justice and Public Order Act 1994 s.51(1)	1994 c. 33
Harming, threatening to harm a witness, juror etc.	Criminal Justice and Public Order Act 1994 s.51(2)	as above
Prejudicing a drug trafficking investigation	Drug Trafficking Act 1994 s.58(1)	1994 c. 37
Giving false statements to procure cremation	Cremation Act 1902 s.8(2)	1902 c. 8
False statement tendered under section 9 of the Criminal Justice Act 1967	Criminal Justice Act 1967 s.89	1967 c. 80
Making a false statement to obtain interim possession order	Criminal Justice and Public Order Act 1994 s.75(1)	1994 c. 33
Making false statement to resist making of interim possession order	Criminal Justice and Public Order Act 1994 s.75(2)	as above
False statement tendered under section 5B of the Magistrates' Courts Act 1980	Magistrates' Courts Act 1980 s.106	1980 c. 43
Making false statement to authorised officer	Trade Descriptions Act 1968 s.29(2)	1968 c. 29
<b>Class J: Serious Sexual Offences</b>		
Rape	Sexual Offences Act 1956 s.1(1)	1956 c. 69
Sexual intercourse with girl under 13	Sexual Offences Act 1956 s.5	as above
Sexual intercourse with girl under 16	Sexual Offences Act 1956 s.6	as above
Sexual intercourse with defective	Sexual Offences Act 1956 s.7	as above
Incest by man with a girl under 13	Sexual Offences Act 1956 s. 10	as above
Buggery of person under 16	Sexual Offences Act 1956 s.12	as above
Indecency with children under 14	Indecency with Children Act 1960 s.1(1)	1960 c. 33
Taking, having etc. indecent photographs of children	Protection of Children Act 1978 s.1	1978 c. 37

Assault with intent to commit buggery	Sexual Offences Act 1956 s.16	1956 c. 69
Abduction of woman by force	Sexual Offences Act 1956 s.17	as above
Permitting girl under 13 to use premises for sexual intercourse	Sexual Offences Act 1956 s.25	as above
Allowing or procuring child under 16 to go abroad to perform	Children and Young Persons Act 1933 ss.25, 26	1933 c. 12
Sexual intercourse with patients	Mental Health Act 1959 s.128	1959 c. 72
Abduction of unmarried girl under 16 from parent	Sexual Offences Act 1956 s.20	1956 c.69
Permitting girl under 16 to use premises for intercourse	Sexual Offences Act 1956 s.26	as above
Causing or encouraging prostitution of girl under 16	Sexual Offences Act 1956 s.28	as above
Rape	Sexual Offences Act 2003 s. 1	2003 c. 42
Assault by penetration	Sexual Offences Act 2003 s. 2	As above
Causing sexual activity with penetration	Sexual Offences Act 2003 s. 4	As above
Rape of child under 13	Sexual Offences Act 2003 s. 5	As above
Assault of child under 13 by penetration	Sexual Offences Act 2003 s. 6	As above
Sexual assault of child under 13	Sexual Offences Act 2003 s. 7	As above
Causing a child under 13 to engage in sexual activity	Sexual Offences Act 2003 s. 8	As above
Sexual activity with a child	Sexual Offences Act 2003 s. 9	As above
Causing a child to engage in sexual activity	Sexual Offences Act 2003 s. 10	As above
Arranging child sex offence	Sexual Offences Act 2003 s. 14	As above
Sexual activity with a child family member, with penetration	Sexual Offences Act 2003 s. 25	As above
Inciting a child family member to engage in sexual activity	Sexual Offences Act 2003 s. 26	As above
Sexual activity with a person with a mental disorder	Sexual Offences Act 2003 s. 30	As above
Causing or inciting a person with a mental disorder to engage in sexual activity	Sexual Offences Act 2003 s. 31	As above
Offering inducement to procure sexual activity with a person with a mental disorder	Sexual Offences Act 2003 s. 34	As above
Inducing person with mental disorder to engage in sexual activity	Sexual Offences Act 2003 s. 35	As above
Care workers: sexual activity with a person with a mental disorder	Sexual Offences Act 2003 s. 38	As above
Care workers: inciting person with mental disorder to engage in sexual act	Sexual Offences Act 2003 s. 39	As above
Paying for sexual services of a child	Sexual Offences Act 2003 s. 47	As above
Causing or inciting child prostitution or pornography	Sexual Offences Act 2003 s. 48	As above
Controlling a child prostitute	Sexual Offences Act 2003 s. 49	As above
Facilitating child prostitution	Sexual Offences Act 2003 s. 50	As above
Trafficking into UK for sexual exploitation	Sexual Offences Act 2003 s. 57	As above
Trafficking within UK for sexual	Sexual Offences Act 2003 s. 58	As above

exploitation  
Trafficking out of UK for sexual exploitation      Sexual Offences Act 2003 s. 59      As above

**Class K: Other offences of dishonesty (high value)**

*Class K offences are listed under  
Class F and G.*

## SCHEDULE 2

Article 6(1)

### Litigators' Fees in the Crown Court

#### PART 1

#### Application and Determination of Litigators' Fees

##### **Application**

1.—(1) The provisions of this Schedule apply to the fees of litigators instructed in proceedings in the Crown Court.

(2) In determining such fees, the appropriate officer must, subject to this Schedule—

- (a) take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and
- (b) allow a reasonable amount in respect of all work actually and reasonably done.

(3) This Schedule does not apply to a Very High Cost Case which is the subject of an individual contract for the provision of funded services.

##### **Determination of litigators' fees**

2.—(1) The appropriate officer may allow work done in the following classes by fee earners—

- (a) preparation, including taking instructions, interviewing witnesses, ascertaining the prosecution case, advising on plea and mode of trial, preparing and perusing documents, dealing with letters and telephone calls which are not routine, instructing an advocate and expert witnesses, conferences, consultations, views at the scene of the alleged offence and work done in connection with advice on appeal;
- (b) attending at court where an advocate is instructed, including conferences with the advocate at court;
- (c) travelling and waiting; and
- (d) writing routine letters and dealing with routine telephone calls.

(2) The appropriate officer must consider the claim, any further particulars, information or documents submitted by the litigator under article 6 and any other relevant information and must allow—

- (a) such work as appears to him to have been reasonably done under the representation order (including any representation or advice which is deemed to be work done under that order) by a fee earner, classifying such work according to the classes specified in subparagraph (1) as he considers appropriate; and
- (b) such time in each class of work allowed by him (other than writing routine letters and dealing with routine telephone calls) as he considers reasonable.

(3) In any proceedings which are specified in paragraph 7(2), the appropriate officer must proceed in accordance with the provisions of paragraph 9.

(4) Subject to sub-paragraphs (2), (3) and (5), the appropriate officer must allow fees under this paragraph in accordance with paragraphs 3 to 6.

(5) The appropriate officer must allow fees in accordance with paragraphs 3 to 6 as appropriate to such of the following grades of fee earner as he considers reasonable—

- (a) senior solicitor;
- (b) solicitor, legal executive or fee earner of equivalent experience; or
- (c) trainee or fee earner of equivalent experience.

(6) In relation to hearings specified in sub-paragraph (7), the appropriate officer must only allow work of the class specified in sub-paragraph (1)(b) in any of the following circumstances—

- (a) if the assisted person is charged with a class 1 offence or a class 2 offence;
- (b) if the proceedings have been instituted or taken over by the Serious Fraud Office, or are before the Crown Court by reason of a notice of transfer given under section 4 of the Criminal Justice Act 1987<sup>(a)</sup> (notices of transfer and designated authorities);
- (c) if the assisted person was a child or a young person within the meaning of section 107 of the Children and Young Persons Act 1933<sup>(b)</sup> (interpretation) at the time when the Crown Court acquired jurisdiction in the case (by committal, notice of transfer or otherwise);
- (d) if the assisted person was unable to understand the proceedings or give adequate instructions to his advocate because of his inadequate knowledge of English, mental illness or other mental or physical disability;
- (e) if the assisted person was likely if convicted to receive a custodial sentence; or
- (f) if the case has been certified as requiring attendance for the whole or any part of the hearing in accordance with sub-paragraphs (10) and (11).

(7) The following hearings are specified for the purpose of sub-paragraph (6)—

- (a) trials;
- (b) hearings of cases listed for pleas of guilty following a plea and case management hearing;
- (c) sentencing hearings following committals for sentence; and
- (d) the hearing of appeals against conviction or sentence.

(8) The circumstances referred to in sub-paragraph (6)(e) only justify the allowing of attendance on—

- (a) a day of a trial on which it was reasonably expected that the assisted person would be sentenced if convicted; and
- (b) if different, the day on which the assisted person was in fact sentenced

and where a doubt arises whether attendance should be allowed by reason of that circumstance, the doubt must be resolved in the litigator's favour.

(9) The circumstances referred to in sub-paragraph (6)(f) only justify the allowing of attendance to the extent specified in the representation order.

(10) A judge of the Crown Court may certify that attendance on an advocate is required for the whole or any part of a hearing and, in deciding whether a case should be so certified, the judge must have regard to the following factors, in addition to any other factors which he considers to be relevant—

- (a) on which days (if any) the attendance of a significant number of defence witnesses is likely to be required;
- (b) where the hearing is a trial, the amount of documentary evidence likely to be adduced on behalf of the defence;
- (c) the likelihood of the assisted person disrupting the proceedings if the advocate were to appear alone;

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(a) 1987 c.38 Section 4 was inserted by the Crime and Disorder Act 1998 (c.37), section 119, Schedule 8 paragraph 65.  
(b) 1933 c.12.

- (d) whether the advocate represents more than one assisted person;
- (e) on which days (if any) the advocate is likely to require notes of the proceedings to be taken for the proper conduct of the defence.

(11) An application for a certificate under sub-paragraph (10) may be made, orally or in writing—

- (a) at or at any time after the plea and case management hearing; or
- (b) where there is no plea and case management hearing, at or at any time after the listing of the first hearing in the case;

(12) This paragraph applies to work in respect of which standard fees are payable under Part 2 only to the extent that that Part specifically so provides.

### Prescribed fee rates

3. Subject to paragraphs 4 and 5, for proceedings in the Crown Court the appropriate officer must allow fees for work under paragraph 2 at the following prescribed rates—

**Table 1**

<i>Class of work</i>	<i>Grade of fee earner</i>	<i>Rate</i>	<i>Variations</i>
Preparation	Senior solicitor	£53.00 per hour	£55.75 per hour for a fee earner whose office is situated within the London region of the Commission
	Solicitor, legal executive or fee earner of equivalent experience	£45.00 per hour	£47.25 per hour for a fee earner whose office is situated within the London region of the Commission
	Trainee or fee earner of equivalent experience	£29.75 per hour	£34.00 per hour for a fee earner whose office is situated within the London region of the Commission
Attendance at court where more than one representative instructed	Senior solicitor	£42.25 per hour	-
	Solicitor, legal executive or fee earner of equivalent experience	£34.00 per hour	-
	Trainee or fee earner of equivalent experience	£20.50 per hour	-
Travelling and waiting	Senior solicitor	£24.75 per hour	-
	Solicitor, legal executive or fee earner of equivalent experience	£24.75 per hour	-
	Trainee or fee earner	£12.50 per hour	-

Writing routine letters and dealing with routine telephone calls	of equivalent experience	£3.45 per item	£3.60 per item for a fee earner whose office is situated within the London region of the Commission
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**Attendance at court where an advocate is instructed**

4. In relation to any hearing specified in paragraph 2(7), the fee specified in paragraph 3 for attendance at court where an advocate is instructed is only payable in the circumstances and to the extent provided by paragraph 2(6) to 2(9).

**Allowing fees at less than the prescribed rates**

5. In respect of any item of work, the appropriate officer may allow fees at less than the relevant prescribed rate specified in paragraph 3 where it appears to him reasonable to do so having regard to the competence and despatch with which the work was done.

**Allowing fees at more than the prescribed rates**

6.—(1) Upon a determination the appropriate officer may, subject to the provisions of this paragraph, allow fees at more than the relevant prescribed rate specified in paragraph 3 for preparation, attendance at court where more than one representative is instructed, routine letters written and routine telephone calls, in respect of offences in Class A, B, C, D, G, I, J or K in the Table of Offences in Part 6 of Schedule 1.

(2) The appropriate officer may allow fees at more than the prescribed rate where it appears to him, taking into account all the relevant circumstances of the case, that—

- (a) the work was done with exceptional competence, skill or expertise;
- (b) the work was done with exceptional despatch; or
- (c) the case involved exceptional complexity or other exceptional circumstances.

(3) Paragraph 3 of Schedule 1 applies to litigators in respect of proceedings in the Crown Court as it applies to advocates.

(4) Where the appropriate officer considers that any item or class of work should be allowed at more than the prescribed rate, he must apply to that item or class of work a percentage enhancement in accordance with the following provisions of this paragraph.

(5) In determining the percentage by which fees should be enhanced above the prescribed rate the appropriate officer must have regard to—

- (a) the degree of responsibility accepted by the fee earner;
- (b) the care, speed and economy with which the case was prepared; and
- (c) the novelty, weight and complexity of the case.

(6) The percentage above the relevant prescribed rate by which fees for work may be enhanced must not exceed 100 per cent.

(7) The appropriate officer may have regard to the generality of proceedings to which this Order applies in determining what is exceptional within the meaning of this paragraph.



## PART 2

### Standard Fees in the Crown Court

#### Application

7.—(1) Subject to sub-paragraphs (3) and (4), this Part applies to the fees for work done by a fee earner regardless of his grade in relation to the proceedings in the Crown Court specified in sub-paragraph (2).

(2) The following proceedings are specified for the purpose of sub-paragraph (1)—

- (a) committals for trial in which the indictment consisted of counts in respect of a class 3 offence and
  - (i) where the trial (including any case prepared for trial in which no jury was sworn) lasted two days or less and at the time of listing was reasonably expected to last two days or less; or
  - (ii) where the case was listed and disposed of as a plea of guilty;
- (b) appeals against conviction;
- (c) appeals against sentence; and
- (d) committals for sentence (including proceedings which arose out of a breach of an order of the Crown Court, proceedings in which a sentence was deferred and other similar matters).

(3) Where in any proceedings specified in sub-paragraph (2), the trial judge—

- (a) is dissatisfied with the litigator's conduct of the case; or
- (b) considers that, for exceptional reasons, the fees should be determined under paragraph 2,

he may direct that the fees be determined under paragraph 2 and in that event this Part does not apply.

(4) If a litigator so elects, he may claim standard fees under this Part in respect of work done by him notwithstanding that the proceedings in relation to which the work was done are not specified in sub-paragraph (2), and the provisions of this Part apply to such a claim with the necessary modifications, save that, where a litigator elects to claim the principal standard fee for preparation in respect of a trial which lasted more than two days, he shall be paid that fee (together with the appropriate standard fee for the other classes of work specified in paragraph 10(2)) and paragraph 8 does not apply.

(5) In relation to any hearing specified in paragraph 2(7), the fee specified in the Table following paragraph 10(5) for attendance at court where an advocate was instructed is only payable in the circumstances and to the extent provided by paragraph 2(6) to (9).

(6) For the purposes of this Part—

- (a) the standard fees which are payable and the classes of work for which such fees may be paid are specified in paragraph 10; and—
- (b) the terms—
  - (i) “principal standard fee”;
  - (ii) “lower fee limit”; and
  - (iii) “higher fee limit”have the meanings given by paragraph 10(5).

#### Allowance of standard fees

8.—(1) The appropriate officer must allow the standard fee for preparation which has been claimed by a litigator (together with the appropriate standard fees for the other classes of work specified in paragraph 10(2)) unless, where the principal standard fee for preparation has been

claimed, the appropriate officer considers such a fee to be excessive, in which case the lower standard fee must be allowed.

(2) The appropriate officer must notify the litigator of his decision under sub-paragraph (1).

(3) A litigator who has been allowed the lower standard fee instead of the principal standard fee claimed may—

- (a) accept that lower fee;
- (b) request the appropriate officer in writing to review his decision; or
- (c) provide the appropriate officer with a detailed claim in the form directed by him requesting that the fees for preparation be determined under paragraph 2.

(4) Where the appropriate officer is requested to review his decision under sub-paragraph (3)(b), the appropriate officer must either—

- (a) allow the principal standard fee; or
- (b) request the litigator to provide a detailed claim in the form directed by him.

(5) Where a litigator fails to make a request under sub-paragraph (3)(b) or to supply a detailed claim for the purposes of sub-paragraph (3)(c) or (4)(b) within six weeks of the decision to allow the lower fee or the request to supply a detailed claim, whichever is the later, the decision to allow the lower standard fee shall be deemed to be confirmed.

### **Fees for preparation**

**9.**—(1) Where a litigator—

- (a) submits a claim for determination under paragraph 2 in a case to which paragraph 7(2) applies; or
- (b) disputes the allowance of the lower standard fee and provides a detailed claim under paragraph 8(3)(c) or 8(4)(b),

the appropriate officer must first determine fees for preparation within the meaning of paragraph 10(2)(a).

(2) If the fees so determined are—

- (a) less than the lower fee limit, the appropriate officer must allow and pay the lower standard fee together with the standard fees for all other classes of work specified in paragraph 10(2);
- (b) not less than the lower fee limit and not more than the upper fee limit, the appropriate officer must allow and pay the principal standard fee together with the standard fees for all other classes of works specified in paragraph 10(2);
- (c) more than the upper fee limit, no standard fees are payable and all fees must be determined in accordance with paragraph 2.

### **Standard fees**

**10.**—(1) The classes of work for which standard fees are payable are those specified in sub-paragraph (2) and the fees for classes of work which are not so specified must be determined in accordance with paragraph 2.

(2) The classes of work specified for the purposes of sub-paragraph (1) are—

- (a) preparation within the meaning of paragraph 2(1)(a) but including routine letters written and telephone calls, within the meaning of paragraph 2(1)(d);
- (b) attendance at court (including waiting) where more than one representative is instructed;
- (c) travelling, other than to undertake work for which standard fees are not payable.

(3) For the purpose of this paragraph, “travelling” is deemed to include waiting in connection with preparation, within the meaning of sub-paragraph (2)(a).

(4) The standard fees payable under this Part are the fees specified in the Table following sub-paragraph (5).

(5) In this Part—

- (a) the “lower fee limit”;
- (b) the “principal standard fee”; and
- (c) the “upper fee limit”

mean the fees specified in the Table following this sub-paragraph.

**Table 2**

<i>Type of proceedings</i>	<i>Area</i>	<i>Lower standard fee</i>	<i>Lower fee limit</i>	<i>Principal standard fee</i>	<i>Upper fee limit</i>
Jury trials (including any case prepared for trial in which no jury was sworn)	Non London rate	£129.50 per case	£179.00 per case	£249.50 per case	£312.00 per case
	London rate	£139.00 per case	£186.00 per case	£261.50 per case	£326.00 per case
Guilty pleas	Non London rate	£81.50 per case	£110.00 per case	£175.00 per case	£226.00 per case
	London rate	£87.50 per case	£114.00 per case	£185.50 per case	£235.00 per case
Appeals against conviction	Non London rate	£51.00 per case	£68.00 per case	£153.00 per case	£233.00 per case
	London rate	£54.50 per case	£70.00 per case	£159.00 per case	£244.00 per case
Appeals against sentence	Non London rate	£36.25 per case	£52.00 per case	£93.00 per case	£131.00 per case
	London rate	£39.25 per case	£54.00 per case	£98.00 per case	£135.00 per case
Committals for sentence	Non London rate	£42.50 per case	£51.00 per case	£97.75 per case	£141.00 per case
	London rate	£45.00 per case	£53.00 per case	£103.00 per case	£145.00 per case
Attendance at Court (including waiting) where more than one representative assigned		£21.40 per hour			
Travelling		£18.50 per hour			

(6) A litigator is entitled to the “London rate” of the standard fees specified in the Table following sub-paragraph (5) where his office is situated within the London region of the Commission.

(7) The hourly rate specified in the Table following sub-paragraph (5) for attendance at court, subject to sub-paragraph (8), is payable in respect of the period of time beginning 30 minutes before the case was listed, and ending—

- (a) where the client was present at court, 15 minutes after the hearing ended on that day; or

(b) where the client was not present at court, when the hearing ended on that day and save in exceptional circumstances, is not payable for the luncheon adjournment.

(8) Where a fee earner attends a court centre for the purpose of more than one case, the litigator may claim the attendance fee in respect of the second or subsequent case only for the time actually spent in attendance in addition to the time for which payment is made under sub-paragraph (7).

(9) The appropriate officer must allow the hourly rate specified in the Table following sub-paragraph (5) for time spent travelling (within the meaning of sub-paragraphs (2)(c) and (3)).

(10) Where a litigator acts for more than one defendant, the appropriate officer must allow whichever of the appropriate standard preparation fees is the greater and increase that fee by 20 per cent for each additional defendant, but no percentage increase must be made to the standard fees for attendance at court or travelling.

(11) Where a litigator acts for a defendant in respect of more than one—

- (a) indictment;
- (b) appeal against conviction;
- (c) appeal against sentence; or
- (d) committal for sentence

or in respect of any combination of paragraphs (a) to (d), the appropriate officer must allow whichever of the appropriate standard preparation fees is the greater and increase that fee by 20 per cent for each additional indictment, appeal or committal for sentence as the case may be.

(12) Where a litigator prepares a case in anticipation of an advocate appearing at the substantive hearing without the litigator attending court, the standard preparation fee payable after any increase required by sub-paragraphs (10) or (11) must be further increased by—

- (a) £60.00 in a case which is prepared for trial, whether or not a trial takes place (or £64.00 for a litigator whose office is situated within the London region of the Commission); and
- (b) £30.00 in every other case (or £32.00 for a litigator whose office is situated within the London region of the Commission).

(13) Where a fee earner listens to a recording of an interview conducted under a code issued by the Secretary of State under section 60 of the Police and Criminal Evidence Act 1984<sup>(a)</sup> (tape recording of interviews), the standard preparation fee payable after application of any increase required by sub-paragraph (10) or (11) must be further increased by £10.90 for every 10 minutes of the total running time of all recordings or parts thereof listened to and by the same amount for any remaining period.

(14) Where the standard fee payable is increased by virtue of sub-paragraph (10), (11), (12) or (13), then for the purposes of paragraphs 9, 12 and 14—

- (a) the upper fee limit must be increased by the same amount by which the principal standard fee has been increased; and
- (b) the lower fee limit must be increased by the same amount by which the standard fee has been increased.

## **Disbursements**

11. Nothing in this Part applies to disbursements, which must be determined in accordance with article 16.

## **Redetermination of standard fees**

12.—(1) A litigator who is dissatisfied with a decision on a determination under paragraph 9 may apply to the appropriate officer to redetermine those fees.

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(a) 1984 c.60.

(2) Subject to sub-paragraph (3), the provisions of article 29(3) to (9) apply, with the necessary modifications, to an application under this paragraph as they apply to an application under article 29(1).

(3) On a redetermination under this paragraph, the appropriate officer must determine the fees for preparation work within the meaning of paragraph 10(2)(a) and if the fees as so determined are—

- (a) less than the lower fee limit, the lower standard fee must be allowed together with the standard fees for all other classes of work specified in paragraph 10(2);
- (b) not less than the lower fee limit and not more than the upper fee limit, the principal standard fee must be allowed together with the standard fees for all other classes of work specified in paragraph 10(2); or
- (c) more than the upper fee limit, the fees for all classes of work must be determined in accordance with paragraph 2.

### **Review of standard fees**

**13.—**(1) Irrespective of any dispute under paragraph 8(3) as to whether the principal standard fee should have been allowed instead of the lower standard fee, where a litigator is satisfied with a decision to allow a standard fee but contends that—

- (a) a standard fee which is not appropriate for the type of work done has been allowed; or
- (b) the provisions of paragraph 10(6) to (14) have been incorrectly applied

he may make a written request to the appropriate officer to review the decision.

(2) A written request under sub-paragraph (1) must—

- (a) be made within six weeks of receipt of the notification of the decision under paragraph 8(2); and
- (b) set out the reasons why the litigator considers the appropriate officer should review the decision.

(3) Where the appropriate officer confirms his decision under paragraph 8(1) he must give written reasons for this confirmation.

### **Appeal to a Costs Judge – standard fees**

**14.—**(1) This paragraph only applies to appeals in proceedings for which standard fees are payable and the provisions of article 30 apply to appeals in proceedings for which standard fees are not payable.

(2) Subject to the provisions of this paragraph, the provisions of articles 30 and 31 relating to appeals by litigators apply, with the necessary modifications, to appeals in proceedings for which standard fees are payable under this Part as they apply to appeals in proceedings for which standard fees are not payable.

(3) A litigator may appeal to a Costs Judge where he is dissatisfied with—

- (a) a decision on a re-determination under paragraph 12; or
- (b) a decision on a review under paragraph 13.

(4) Where a litigator appeals to a Costs Judge in respect of a decision under paragraph 12, the Costs Judge must determine the fees for preparation within the meaning of paragraph 10(2)(a) and if the fees so determined are—

- (a) less than the lower fee limit, the lower standard fee must be allowed by the Costs Judge together with the standard fees for all other classes of work specified in paragraph 10(2);
- (b) not less than the lower fee limit and not more than the upper fee limit, the principal standard fee must be allowed by the Costs Judge together with the standard fees for all other classes of work specified in paragraph 10(2);

(c) more than the upper fee limit, the fees for all classes of work must be determined by the Costs Judge in accordance with paragraph 2.

(5) Where a litigator appeals to a Costs Judge in respect of a decision made on a review under paragraph 13, the Costs Judge must allow whichever standard fee he considers to be appropriate for the type of work done or, as the case may be, re-apply the provisions of paragraph 10(6) to (14).

(6) Where a Costs Judge allows an appeal under this paragraph, in whole or in part, he may allow the litigator a sum in respect of part or all of any reasonable costs (including any fee payable in respect of the appeal) incurred by him in connection with the appeal.

## SCHEDULE 3

Article 7

### Very High Cost Cases

#### Application

1. This Schedule applies to Very High Cost Cases which are the subject of individual contracts for funded services.

#### Interpretation

2. In this Schedule—

“Category 1” means—

- (a) in relation to a Very High Cost Fraud Case, a case—
  - (i) which is likely to give rise to national publicity and widespread public concern;
  - (ii) which requires highly specialist knowledge;
  - (iii) which involves a significant international dimension;
  - (iv) which requires legal, accountancy and investigative skills to be brought together;
  - (v) in which the value of the fraud exceeds £10million;
  - (vi) in which the number of pages of prosecution evidence (excluding unused material) exceeds 30,000;
  - (vii) in which the total cost of representing the assisted person is likely to exceed £500,000; and
  - (viii) in which the trial is likely to last over 20 weeks;
- (b) in relation to a Non-Fraud Very High Cost Case, a case in which the offence or the main offence with which the assisted person is charged, whether at common law or under any enactment, is primarily, or substantially, founded on allegations of terrorism.

“Category 2” means—

- (a) in relation to a Very High Cost Fraud Case, a case which fulfils—
  - (i) at least three of the following criteria—
    - (aa) the case is likely to give rise to national publicity and widespread public concern;
    - (bb) the case requires highly specialist knowledge;
    - (cc) the case involves a significant international dimension;
    - (dd) the case requires legal, accountancy and investigative skills to be brought together; and
  - (ii) at least two of the following criteria—
    - (aa) the value of the fraud exceeds £2million;

- (bb) the number of pages of prosecution evidence (excluding unused material) exceeds 10,000;
- (cc) the total cost of representing the assisted person is likely to exceed £250,000; and
- (dd) the trial is likely to last over 20 weeks;
- (b) in relation to a Non-Fraud Very High Cost Case,—
  - (i) a case which is a class 1 offence, a class 2 offence or a serious drug offence;
  - (ii) a case for which the maximum sentence for the offence is imprisonment for life or over 30 years;
  - (iii) a case which is likely to attract national interest;
  - (iv) where the case involves an offence of a violent or sexual nature, there are multiple victims or, if there is a sole victim, there is something significant about the crime;
  - (v) where the case involves a drugs offence, their total value is estimated to exceed £10million;
  - (vi) a case in which the number of pages of prosecution evidence (excluding unused material) exceeds 10,000; and
  - (vii) a case in which the total cost of representing the assisted person is likely to exceed £400,000.

“Category 3” means—

- (a) a Very High Cost Fraud Case which does not fall within Category 1 or Category 2; or
- (b) a Non-Fraud Very High Cost Case—
  - (i) which fulfils at least three of the following criteria—
    - (aa) the case involves a class 1 offence, a class 2 offence or a serious drug offence;
    - (bb) the maximum sentence for the offence is imprisonment for life or over 30 years;
    - (cc) the case is likely to attract national interest;
    - (dd) where the case involves an offence of a violent or sexual nature, there are multiple victims or, if there is a sole victim, there is something significant about the crime; and
    - (ee) where the case involves a drugs offence, their total value is estimated to exceed £10million; and
  - (ii) in which—
    - (aa) the number of pages of prosecution evidence (excluding unused material) exceeds 5,000; or
    - (bb) the total cost of representing the assisted person is likely to exceed £200,000.

“Category 4” means a Non-Fraud Very High Cost Case which does not fall within Category 1, Category 2 or Category 3;

“Level A” means a fee earner who—

- (a) is a solicitor or employed barrister;
- (b) has not less than eight years post qualification experience; and—
  - (i) in relation to a Very High Cost Fraud Case—
    - (aa) has conducted a total of not less than 700 hours of work on cases involving allegations of fraud or serious financial impropriety in any two of the preceding three years; or
    - (bb) has a recognised qualification in, or is able to demonstrate clear specialist experience in, a particular field which is relevant to a significant aspect of the case; or



- (ii) in relation to a Non-Fraud Very High Cost Case—
  - (aa) has conducted a total of not less than 1,050 hours of work on other serious criminal cases over the preceding three years;
  - (bb) has conducted a total of not less than 700 hours of work on other serious criminal cases in any two of the preceding three years; or
  - (cc) has a recognised qualification in, or is able to demonstrate clear specialist experience in, a particular field which is relevant to a significant aspect of the case;

“Level B” means a fee earner who—

- (a) is a solicitor, employed barrister or fellow of the Institute of Legal Executives; and
- (b) has substantial knowledge and experience of criminal defence work;

“Level C” means a fee earner who—

- (a) is a trainee solicitor; or
- (b) is a Fellow of the Institute of Legal Executives, or any other fee earner, who does not fall within Level A or Level B;

“Non-Fraud Very High Cost Case” means a Very High Cost Case which is not a Very High Cost Fraud Case;

“pupil or other junior” means an advocate other than an advocate instructed under the representation order;

“terrorism” has the meaning given in section 1 of the Terrorism Act 2000<sup>(a)</sup> (terrorism: interpretation); and

“Very High Cost Fraud Case” means a Very High Cost Case in which the offence with which the assisted person is charged is primarily, or substantially, founded on—

- (a) allegations of fraud or other serious financial impropriety; or
- (b) involves complex financial transactions or records.

### Categories of case

3.—(1) The Commission must determine whether a case is a Very High Cost Fraud Case or a Non-Fraud Very High Cost Case.

(2) The Commission must assign each Very High Cost Case to Category 1, Category 2, Category 3 or Category 4.

(3) The Commission may review and amend its decision under sub-paragraph (1) or sub-paragraph (2) at any stage during the case.

### Levels of fee earner

4.—(1) The Commission must assign each fee earner providing funded services under a representation order in a Very High Cost Case to Level A, Level B or Level C.

(2) In order to be assigned to Level A, a fee earner must provide evidence that he meets the requirements of Level A.

(3) Where the Commission considers that—

- (a) the prosecution evidence in a Very High Cost Case is particularly voluminous or complex; and
- (b) the Very High Cost Case involves preparatory work of a routine nature,

it may authorise a pupil or other junior to undertake, and be remunerated for, such work on the Very High Cost Case as the Commission considers reasonable.

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<sup>(a)</sup> 2000 c.11.

(4) Any question as to whether a fee earner fulfils the criteria for a particular level must be determined by the Commission, which must consider the circumstances of the individual case.

### Rates for preparation

5.—(1) The hourly rates for preparation payable under this Schedule are the rates specified in the Table following this paragraph.

(2) In circumstances where the Commission considers the preparation undertaken not to be of the exceptional nature appropriate to a Very High Cost Case, the standard rates of pay set out in column 6 of the Table following this paragraph will apply.

### Hourly rates for preparation

	<i>Category 1 cases</i>	<i>Category 2 cases</i>	<i>Category 3 cases</i>	<i>Category 4 cases</i>	<i>Standard rates</i>
	<i>£ per hour</i>	<i>£ per hour</i>	<i>£ per hour</i>	<i>£ per hour</i>	<i>£ per hour</i>
<b>Litigator</b>					
Level A	160	125	100	100	55.75
Level B	140	110	90	90	47.25
Level C	100	80	70	70	34.00
<b>Barrister</b>					
QC	160	125	100	100	
Leading junior	140	110	90	90	
Led junior	100	80	70	70	
Junior acting alone	110	90	80	80	
Second led junior	70	55	50	—	
Pupil or other junior	50	40	35	35	
<b>Solicitor Advocate</b>					
Leading level A	160	125	100	100	
Led level A	140	110	90	90	
Leading level B	140	110	90	90	
Led level B	115	95	75	75	
Level A alone	145	120	100	100	
Level B alone	125	105	85	85	
Second led solicitor advocate	70	55	50	50	

### Rates for non-preparatory work by litigators

6.—(1) The hourly rates for non-preparatory work payable under this Schedule are the rates specified in the Table following this paragraph.

(2) The Commission may enhance by up to 100%—

- (a) in exceptional circumstances, the applicable rate for attendance at court in the Table following this paragraph; and
- (b) in very exceptional circumstances, the applicable rate for travel and waiting in the Table following this paragraph.

### Hourly rates for non-preparatory work by litigators

<i>Type of work</i>	<i>Level of fee earner</i>	<i>Rate (£ per hour)</i>
Attendance at court	A	42.25
	B	34.00
	C	20.50
Travel and waiting	A	25.00
	B	25.00

**Daily rates for advocates**

7.—(1) The daily rates payable to advocates under this Schedule are the rates specified in the Table following this paragraph.

(2) Solicitor advocates will be paid the appropriate rate for a leading junior, a led junior, or a junior alone, as appropriate, as set out in the Table following this paragraph.

(3) The full daily rate in the Table following this paragraph may be allowed if the advocate is in court for more than 3 hours 30 minutes; and half that rate will be allowed if he is in court for 3 hours 30 minutes or less.

**Daily rates for advocates**

	<i>Category 1 cases (£ per day)</i>	<i>Category 2 cases (£ per day)</i>	<i>Category 3 cases (£ per day)</i>	<i>Category 4 cases (£ per day)</i>
QC	525	525	525	525
Leading junior	450	450	450	450
Led junior	300	300	300	300
Junior alone	330	330	330	330
Second led junior	150	150	150	—
Noter	125	125	125	125

**Rates for preliminary hearings**

8.—(1) The rates payable to advocates for attendance at preliminary hearings are the rates specified in the Table following this paragraph.

(2) The rates in the Table following this paragraph will only apply where the hearing lasts two hours or less; otherwise the daily or half-daily rate payable under the Table following this paragraph and paragraph 7(3) will apply.

**Preliminary hearings**

	<i>Amount payable for hearing (£)</i>
QC	125
Leading junior	100
Led junior	70
Junior alone	80
Second led junior	40
Noter	35

**SCHEDULE 4**

Article 8

**Proceedings in the Court of Appeal****General Provisions**

1.—(1) The provisions of this Schedule apply to proceedings in the Court of Appeal.

(2) In determining fees the appropriate officer must, subject to the provisions of this Schedule—

- (a) take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and
- (b) allow a reasonable amount in respect of all work actually and reasonably done.

## **Claims for fees and disbursements by litigators**

2.—(1) Subject to article 32, no claim by a litigator for fees and disbursements in respect of work done in proceedings in the Court of Appeal under a representation order must be entertained unless he submits it within three months of the conclusion of the proceedings to which it relates.

(2) Subject to sub-paragraph (3), a claim for fees in proceedings in the Court of Appeal must be submitted to the appropriate officer in such form and manner as he may direct and must be accompanied by the representation order and any receipts or other documents in support of any disbursement claimed.

(3) A claim must—

- (a) summarise the items of work done by a fee earner in respect of which fees are claimed according to the classes specified in paragraph 3(1);
- (b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person;
- (c) specify, where appropriate, the level of fee earner who undertook each of the items of work claimed;
- (d) give particulars of any work done in relation to more than one indictment or a retrial; and
- (e) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.

(4) Where the litigator claims that paragraph 9(1) applies in relation to an item of work, he must give full particulars in support of his claim.

(5) The litigator must specify any special circumstances which the litigator considers should be drawn to the attention of the appropriate officer.

(6) The litigator must supply such further information and documents as the appropriate officer may require.

(7) Where a retrospective representation order has been made under regulation 10(6) of the Criminal Defence Service (General) (No.2) Regulations 2001<sup>(a)</sup> in respect of any proceedings where an appellant has been successful on appeal and granted a defendant's costs order under section 16(4) of the Prosecution of Offences Act 1985<sup>(b)</sup> (defence costs), the litigator must certify that no claim for fees incurred before the retrospective representation order was made has been or will be made from central funds in relation to that work.

## **Determination of litigators' fees**

3.—(1) The appropriate officer may allow work done in the following classes by fee earners—

- (a) preparation, including taking instructions, interviewing witnesses, ascertaining the prosecution case, advising on plea and mode of trial, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing an advocate and expert witnesses, conferences, consultations, views and work done in connection with advice on appeal;
- (b) advocacy, including applications for bail and other applications to the court;
- (c) attending at court where an advocate is assigned, including conferences with the advocate at court;
- (d) travelling and waiting; and
- (e) writing routine letters and dealing with routine telephone calls.

(2) The appropriate officer must consider the claim, any further information or documents submitted by the fee earner under paragraph 2 and any other relevant information and must allow—

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(a) S.I. 2001/1437.

(b) 1985 c.23.

- (a) such work as appears to him to have been reasonably done under the representation order (including any representation or advice which is deemed to be work done under that order) by a fee earner, classifying such work according to the classes specified in sub-paragraph (1) as he considers appropriate; and
  - (b) such time in each class of work allowed by him (other than routine letters written and routine telephone calls) as he considers reasonable.
- (3) The fees allowed in accordance with this Schedule are those appropriate to such of the following grades of litigator as the appropriate officer considers reasonable—
- (a) senior solicitor;
  - (b) solicitor, legal executive or fee earner of equivalent experience; or
  - (c) trainee or fee earner of equivalent experience.

#### **Determination of litigators' disbursements**

4. The appropriate officer must allow such disbursements claimed under paragraph 2 as appear to him to have been reasonably incurred, provided that—
- (a) if they are abnormally large by reason of the distance of the court or the assisted person's residence or both from the litigator's place of business, the appropriate officer may limit reimbursement of the disbursements to what otherwise would, having regard to all the circumstances, be a reasonable amount; and
  - (b) the cost of a transcript, or any part thereof, of the proceedings in the court from which the appeal lies obtained otherwise than through the registrar must not be allowed except where the appropriate officer considers that it is reasonable in all the circumstances for such disbursement to be allowed.

#### **Claims for fees by advocates**

- 5.—(1) Subject to article 32, a claim by an advocate for fees for work done in proceedings in the Court of Appeal under a representation order must not be entertained unless he submits it within three months of the conclusion of the proceedings to which the representation order relates.
- (2) Where the advocate claims that paragraph 13 applies in relation to an item of work he must give full particulars in support of his claim.
- (3) Subject to sub-paragraph (4), a claim for fees by an advocate in proceedings in the Court of Appeal must be submitted to the appropriate officer in such form and manner as he may direct.
- (4) A claim must—
- (a) summarise the items of work done by an advocate in respect of which fees are claimed according to the classes specified in paragraph 6(2);
  - (b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person;
  - (c) give particulars of any work done in relation to more than one indictment or a retrial.
- (5) The advocate must specify any special circumstances which the advocate considers should be drawn to the attention of the appropriate officer.
- (6) The advocate must supply such further information and documents as the appropriate officer may require.

#### **Determination of advocate's fees**

- 6.—(1) The appropriate officer must consider the claim, any further particulars and information submitted by an advocate under paragraph 5 and any other relevant information and must allow such work as appears to him to have been reasonably done.
- (2) The appropriate officer may allow any of the following classes of fee to an advocate in respect of work allowed by him under this paragraph—

- (a) a basic fee for preparation including preparation for a pre-trial review and, where appropriate, the first day's hearing including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications), views and any other preparation;
  - (b) a refresher fee for any day or part of a day during which a hearing continued, including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications), views at the scene of the alleged offence and any other preparation;
  - (c) subsidiary fees for—
    - (i) attendance at conferences, consultations and views at the scene of the alleged offence not covered by paragraph (a) or (b);
    - (ii) written advice on evidence, plea or appeal or other written work; and
    - (iii) attendance at pre-trial reviews, applications and appearances (including bail applications and adjournments for sentence) not covered by paragraph (a) or (b).
- (3) Where a representation order provides for representation by—
- (a) a single advocate other than a QC and a QC agrees to appear as the single advocate; or
  - (b) two advocates other than QC, and a QC agrees to appear as a leading junior,

that QC must be treated for all the purposes of this Schedule as having been instructed under that representation order, and his remuneration must be determined as if he were not a QC.

**Litigators' fees for proceedings in the Court of Appeal**

7. For proceedings in the Court of Appeal the appropriate officer must allow fees for work by litigators at the following prescribed rates—

<i>Class of work</i>	<i>Grade of fee earner</i>	<i>Rate</i>	<i>Variations</i>
Preparation	Senior solicitor	£53.00 per hour	£55.75 per hour for a litigator whose office is situated within the London region of the Commission £47.25 per hour for a litigator whose office is situated within the London region of the Commission £34.00 per hour for a litigator whose office is situated within the London region of the Commission
	Solicitor, legal executive or fee earner of equivalent experience	£45.00 per hour	
	Trainee or fee earner of equivalent experience	£29.75 per hour	
Advocacy	Senior solicitor	£64.00 per hour	
	Solicitor	£56.00 per hour	
Attendance at court where more than one representative assigned	Senior solicitor	£42.25 per hour	
	Solicitor, legal executive or fee earner of equivalent experience	£34.00 per hour	
	Trainee or fee earner of equivalent experience	£20.50 per hour	

Travelling and waiting	experience		
	Senior solicitor	£24.75 per hour	
	Solicitor, legal executive or fee earner of equivalent experience	£24.75 per hour	
Travelling and waiting	Trainee or fee earner of equivalent experience	£12.50 per hour	
	Routine letters written and routine telephone calls	£3.45 per item	£3.60 per item for a fee earner whose office is situated within the London region of the Commission

8. In respect of any item of work, the appropriate officer may allow fees at less than the relevant prescribed rate specified in paragraph 7 where it appears to him reasonable to do so having regard to the competence and despatch with which the work was done.

9.—(1) Upon a determination of fees the appropriate officer may, subject to the provisions of this paragraph, allow fees at more than the relevant prescribed rate specified in paragraph 7 for preparation, advocacy, attendance at court where more than one representative is assigned, routine letters written and routine telephone calls, in respect of offences in Class A, B, C, D, G, I, J or K in the Table of Offences in Part 6 of Schedule 1.

(2) The appropriate officer may allow fees at more than the prescribed rate where it appears to him, taking into account all the relevant circumstances of the case, that—

- (a) the work was done with exceptional competence, skill or expertise;
- (b) the work was done with exceptional despatch; or
- (c) the case involved exceptional complexity or other exceptional circumstances.

(3) Paragraph 3 of Schedule 1 applies to litigators in respect of proceedings in the Court of Appeal as it applies to advocates.

(4) Where the appropriate officer considers that any item or class of work should be allowed at more than the prescribed rate, he must apply to that item or class of work a percentage enhancement in accordance with the following provisions of this paragraph.

(5) In determining the percentage by which fees should be enhanced above the prescribed rate the appropriate officer may have regard to—

- (a) the degree of responsibility accepted by the fee earner;
- (b) the care, speed and economy with which the case was prepared; and
- (c) the novelty, weight and complexity of the case.

(6) The percentage above the relevant prescribed rate by which fees for work may be enhanced must not exceed 100 per cent.

(7) The appropriate officer may have regard to the generality of proceedings to which this Order applies in determining what is exceptional within the meaning of this paragraph.

### Advocates' fees for proceedings in the Court of Appeal

10. Subject to paragraph 13, for proceedings in the Court of Appeal the appropriate officer must allow fees for work by advocates at the following prescribed rates—

#### Junior counsel

<i>Type of proceedings</i>	<i>Basic fee</i>	<i>Full day refresher</i>	<i>Subsidiary fees</i>
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			<i>Attendance at consultation, conferences and views</i>	<i>Written work</i>	<i>Attendance at pre-trial reviews, applications and other appearances</i>
All appeals	Maximum amount: £545.00 per case	Maximum amount: £178.75 per day	£33.50 per hour, minimum amount: £16.75	Maximum amount: £58.25 per item	Maximum amount: £110 per appearance

## QC

<i>Type of proceedings</i>	<i>Basic fee</i>	<i>Full day refresher</i>	<i>Subsidiary fees</i>	<i>Attendance at consultation, conferences and views</i>	<i>Written work</i>	<i>Attendance at pre-trial reviews, applications and other appearances</i>
All appeals	Maximum amount: £5,400.00 per case	Maximum amount: £330.50 per day	£62.50 per hour, Minimum amount: £32.00	Maximum amount: £119.50 per item	Maximum amount: £257.50 per appearance	

11. Where an hourly rate is specified in the Table following paragraph 10, the appropriate officer must determine any fee for such work in accordance with that hourly rate; provided that the fee determined must not be less than the minimum amount specified.

12. Where a refresher fee is claimed in respect of less than a full day, the appropriate officer must allow such fee as appears to him reasonable having regard to the fee which would be allowable for a full day.

13. Where it appears to the appropriate officer, taking into account all the relevant circumstances of the case, that owing to the exceptional circumstances of the case the amount payable by way of fees in accordance with the Table following paragraph 10 would not provide reasonable remuneration for some or all of the work he has allowed, he may allow such amounts as appear to him to be reasonable remuneration for the relevant work.

### Payment of fees

14.—(1) Having determined the fees payable to a representative in accordance with the terms of this Schedule, the appropriate officer must notify the representative of the fees payable and authorise payment accordingly.

(2) Where, as a result of any redetermination or appeal made or brought pursuant to paragraph 15—

- (a) the fees payable under sub-paragraph (1) are increased, the appropriate officer must authorise payment of the increase; and
- (b) the fees payable under sub-paragraph (1) are decreased, the representative must repay the amount of such decrease.

(3) Where the payment of any fees of the representative is ordered under article 30(12), paragraph 14(5) of Schedule 2 or article 31(8), the appropriate officer must authorise payment.

## **Redeterminations and appeals**

**15.**—(1) Where a representative is dissatisfied with—

- (a) the fees determined in accordance with the provisions of this Schedule; or
- (b) the decision of the appropriate officer under paragraph 3(3) of Schedule 1

he may apply to the appropriate officer to redetermine those fees or reclassify the offence, in accordance with the provisions of article 29(3) to (9).

(2) Where—

- (a) a representative has made an application to the appropriate officer under sub-paragraph (1); and
- (b) the appropriate officer has given his reasons for a decision under article 29(7)

a representative who is dissatisfied with that decision may appeal to a Costs Judge, in accordance with the provisions of article 30(2) to (14).

(3) A representative who is dissatisfied with the decision of a Costs Judge on an appeal under sub-paragraph (2) may apply to a Costs Judge to certify a point of principle of general importance, and the provisions of article 31(2) to (8) will apply.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision for the funding and remuneration of services provided under Part 1 of the Access to Justice Act 1999 as part of the Criminal Defence Service. It provides that in proceedings in the Crown Court and Court of Appeal the Legal Services Commission shall fund representation in accordance with its duty under that Act.

Articles 5 to 28 deal with the manner in which fees are to be claimed, determined and paid, including provisions permitting interim payments.

Articles 29 to 31 provide for an appeal mechanism to challenge, in certain circumstances, the appropriate officer's determination of the fees payable to a representative. The provisions deal with the redetermination of fees by an appropriate officer, appeals from the appropriate officer to a Costs Judge, and appeals from the Costs Judge to the High Court.

Schedule 1 sets out the graduated fees and fixed fees payable to advocates for proceedings in the Crown Court.

Schedule 2 sets out the fees payable to solicitors (and other appropriately qualified persons) for proceedings in the Crown Court.

Schedule 3 sets out the maximum rates payable to solicitors and advocates in Very High Cost Cases.

Schedule 4 sets out the manner in which fees are to be claimed, determined and paid in proceedings in the Court of Appeal.

A copy of the General Criminal Contract, including the Specification to the Contract, which was published by the Commission in February 2001, is available from [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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