

SCHEDULE 1

Advocates' Graduated Fee Scheme

PART 1

Definitions and Scope

Application

- 2.—(1) Subject to sub-paragraphs (2) to (11), 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) Sub-paragraphs (3) and (4) apply where, following a trial, an order is made for a new trial and the same trial advocate appears at both trials where—
- (a) the defendant is an assisted person at both trials; or
 - (b) the defendant is an assisted person at the new trial only; or
 - (c) the new trial is a cracked trial or guilty plea.
- (3) Subject to sub-paragraph (4), in respect of a new trial, or if the trial advocate so elects, in respect of the first trial, the graduated fee payable to the trial advocate must be calculated in accordance with Part 2 or Part 3, as appropriate, except that the fee must be reduced by—
- (a) 30%, where the new trial started within one month of the conclusion of the first trial;
 - (b) 20%, where the new trial did not start within one month of the conclusion of the first trial;
 - (c) 40%, where the new trial becomes a cracked trial or guilty plea within one month of the conclusion of the first trial; or
 - (d) 25% where the new trial becomes a cracked trial or guilty plea more than one month after the conclusion of the first trial.
- (4) Where—
- (a) in relation to the first trial, the case was committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court had determined the case to be suitable for summary trial; and
 - (b) the new trial becomes a cracked trial or guilty plea,
- the fee payable to the trial advocate must be—
- (i) the graduated fee calculated in accordance with Part 2, in respect of the first trial; and
 - (ii) the fixed fee set out in paragraph 10 in respect of the new trial.
- (5) Sub-paragraphs (6) and (7) apply in the circumstances set out in sub-paragraph (2) but where a different trial advocate appears for the assisted person at each trial.
- (6) Subject to sub-paragraph (7), in respect of each trial, the graduated fee payable to the trial advocate must be calculated in accordance with Part 2 or Part 3 as appropriate.
- (7) Where—

Status: This is the original version (as it was originally made).

- (a) in relation to the first trial, the case was committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court had determined the case to be suitable for summary trial; and
- (b) the new trial becomes a cracked trial or guilty plea,

the fee payable to the trial advocate at the first trial must be the graduated fee, calculated in accordance with Part 2 and the fee payable to the trial advocate at the new trial must be the fixed fee set out in paragraph 10.

- (8) Where following a case on indictment a Newton hearing takes place—
 - (a) for the purposes of this Schedule the case is to be treated as having gone to trial;
 - (b) the length of the trial is to 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 do not apply; and
 - (d) no fee is payable under paragraph 15 in respect of the Newton hearing.
- (9) Sub-paragraph (10) applies where proceedings are—
 - (a) sent for trial to the Crown Court; or
 - (b) transferred to the Crown Court under—
 - (i) section 4 of the Criminal Justice Act 1987⁽¹⁾ (transfer of serious fraud cases); or
 - (ii) section 53 of the Criminal Justice Act 1991⁽²⁾ (transfer of certain cases involving children).

(10) Where, at any time after proceedings are sent or transferred to the Crown Court as referred to in sub-paragraph (9), they are—

- (a) discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985⁽³⁾ (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⁽⁴⁾ (applications for dismissal);
 - (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 22 apply.

(11) For the purposes of this Schedule, a case on indictment which discontinues at or before the plea and case management hearing otherwise than—

- (a) by reason of a plea of guilty being entered; or
- (b) in accordance with sub-paragraph (10),

must be treated as a guilty plea.

(1) 1987 c. 38. Section 4 was repealed by the Criminal Justice Act 2003 (c. 44), sections 41, 332, Schedule 3, Part 2, Paragraphs 58(1) and (2) and Schedule 37, Part 4, which repeal is in force for certain purposes and will take effect in full from a date to be appointed.

(2) 1991 c. 53. Section 53 was repealed by the Criminal Justice Act 2003 (c. 44), sections 41, 332, Schedule 3, Part 2, Paragraphs 62(1) and (2) and Schedule 37, Part 4, which repeal is in force for certain purposes and will take effect in full from a date to be appointed.

(3) 1985 c. 23. Section 23A was inserted by section 119 of the Crime and Disorder Act 1998 (c. 37).

(4) 1998 c. 37.