

## SCHEDULE 2

### Litigators' 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, the assisted person 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;

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- (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;

“PPE Cut-off” means the minimum number of pages of prosecution evidence for use in calculating the fee payable to a litigator under this Schedule, as set out in the tables following paragraph 5(1) and (2).

(2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court must be determined in accordance with sub-paragraphs (3) to (5).

(3) 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.

(4) Subject to sub-paragraph (5), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.

(5) A documentary or pictorial exhibit which—

- (a) has been served by the prosecution in electronic form; and
- (b) has never existed in paper form,

is not included within the number of pages of prosecution evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of prosecution evidence taking into account the nature of the document and any other relevant circumstances.

(6) 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-paragraphs (2) to (5) or as nearly in accordance with those sub-paragraphs as possible as the nature of the case permits.

(7) A reference to the Table of Offences in this Schedule is to the Table of Offences in Part 7 of Schedule 1 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 (7), this Schedule applies to—

- (a) every case on indictment;
- (b) the following proceedings in the Crown Court—
  - (i) an appeal against conviction or sentence from the magistrates’ court;
  - (ii) a sentencing hearing following a committal for sentence to the Crown Court;
  - (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);

- (c) 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(1) (deferment of sentence);
  - (d) any other post-sentence hearing.
- (2) Sub-paragraph (3) 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(2) (transfer of serious fraud cases); or
    - (ii) section 53 of the Criminal Justice Act 1991(3) (transfer of certain cases involving children).
- (3) Where, at any time after proceedings are sent or transferred to the Crown Court as referred to in sub-paragraph (2), they are—
- (a) discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985(4) (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(5) (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 paragraphs 21 and 22 apply.
- (4) 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; and
  - (c) the provisions of this Schedule relating to cracked trials and guilty pleas will not apply.
- (5) 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 (3),
- must be treated as a guilty plea.
- (6) For the purposes of this Schedule, where a trial that is not a Very High Cost Case (in relation to fees claimed by litigators) lasts over 200 days, it must be treated as if it had lasted 200 days.
- (7) For the purposes of this Schedule, where the number of pages of prosecution evidence in a case which is not a Very High Cost Case (in relation to fees claimed by litigators) exceeds—
- (a) the PPE Cut-off figure specified in the table following paragraph 5(2) as appropriate to the offence for which the assisted person is to be tried and the length of trial; and

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(1) 2000 c. 6.

(2) 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.

(3) 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

(4) 1985 c. 23. Section 23A was inserted by section 119 of the Crime and Disorder Act 1998 (c. 37).

(5) 1998 c. 37.

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(b) 10,000,  
the case must be treated as though it had 10,000 pages of prosecution evidence.

### **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 are deemed to fall within Class H;
- (b) conspiracy to commit an indictable offence contrary to section 1 of the Criminal Law Act 1977<sup>(6)</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>(7)</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 litigator making the claim under regulation 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 includes 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 litigator must elect whether that hearing falls within the same Class as the indictable offence to which it relates or within Class D;
- (g) where in a case on indictment a restriction order is made under section 41 of the Mental Health Act 1983<sup>(8)</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 a litigator 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, the litigator may apply to the appropriate officer, when lodging the claim for fees, to reclassify the offence.

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

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

and must notify the litigator of the decision.

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<sup>(6)</sup> 1977 c. 45.

<sup>(7)</sup> 1981 c. 47.

<sup>(8)</sup> 1983 c. 20.