

2001 No. 855

LEGAL SERVICES COMMISSION, ENGLAND AND  
WALES

# The Criminal Defence Service (Funding) Order 2001

<i>Made</i> - - - -	<i>8th March 2001</i>
<i>Laid before Parliament</i>	<i>12th March 2001</i>
<i>Coming into force</i>	<i>2nd April 2001</i>



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The Lord Chancellor, in exercise of the powers conferred on him by sections 13(3), 14(3), and 105 of, and paragraph 9 of Schedule 14 to, the Access to Justice Act 1999<sup>(a)</sup>, having had regard to the matters specified in section 25(3) and having consulted the General Council of the Bar and the Law Society, makes the following Order:

**Citation and commencement**

1. This Order may be cited as the Criminal Defence Service (Funding) Order 2001 and shall come into force on 2nd April 2001.

**Interpretation**

2. In this Order:

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

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

“appropriate category”, in relation to a Very High Cost Case, means the category to which the case is assigned in accordance with article 14;

“appropriate officer” means:

in the case of proceedings in the criminal division of the Court of Appeal, the registrar of criminal appeals (“the registrar”);

in the case of proceedings in the High Court, a Costs Judge;

in the case of proceedings in the Crown Court, an officer appointed by the Lord Chancellor;

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<sup>(b)</sup>) where, on the advice of any representative assigned, notice of appeal is given, or application for leave to appeal is made, whether or not such appeal is later abandoned, the registrar;

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(a) 1999 c. 22.

(b) 1987 c. 38.

in respect of advice or assistance as to an appeal to the Courts-Martial Appeal Court, the registrar;

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

in any other case, the Commission

and, in any case, includes an officer designated by the appropriate officer to act on his behalf in that regard;

“CDS Regulations” means regulations made under Part I of the Act relating to the Criminal Defence Service;

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

“the Contract” means the General Criminal Contract, published by the Commission in February 2001;

“Costs Committee” means a committee appointed under arrangements made by the Commission to deal with, inter alia, applications for appeal against, or review of, assessments of costs;

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

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

“a representative” means a solicitor or a barrister;

“VAT” means Value Added Tax; and

“a Very High Cost Case” is a case with regard to which:

- (a) if the case proceeds to trial, that trial would be likely to last for 25 days or longer; or
- (b) the defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to £150,000 or greater (such sum to include the solicitor’s fees and disbursements, counsel’s fees, and VAT)

and any question as to whether a case fulfills the criteria in (a) or (b) above shall be decided by an officer appointed by the Lord Chancellor in a case which falls within article 6, and by the Commission in a case which falls within article 9.

### **Funding of services—Lord Chancellor**

**3.—**(1) Except as provided in paragraph (2), the duty of the Commission under section 14(1) of the Act shall, until 4th April 2005, have effect as a duty of the Lord Chancellor in relation to representation in:

- (a) criminal proceedings in the House of Lords;
- (b) proceedings in the criminal division of the Court of Appeal; and
- (c) proceedings in the Crown Court.

(2) Paragraph (1) does not apply to:

- (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.

**4.** Other than where the case is remitted back to the magistrates’ court, where a case is sent for trial to the Crown Court under section 51 of the Crime and Disorder Act 1998(a), any fees in

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(a) 1998 c. 37.

relation to work carried out in the magistrates' court shall be assessed and paid together with the Crown Court fees for that case.

5. Remuneration in respect of the proceedings mentioned in article 3(1) shall be in accordance with the provisions of Schedules 1 to 4.

6. Where representation is funded by the Lord Chancellor in a Very High Cost Case, remuneration shall be at rates no higher than those set out for the appropriate category and the appropriate level of fee earner in Schedule 5.

#### **Funding of services—Legal Services Commission**

7. 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 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).

8. Except as provided in article 9, 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 shall be at rates no higher than those set out in Part E of the Specification to the Contract.

9. Where services are provided in a Very High Cost Case which is the subject of an individual contract for the provision of funded services, remuneration for that case shall be at rates no higher than those set out for the appropriate category.

#### **Proceedings for contempt**

10.—(1) Subject to article 11, remuneration in proceedings referred to in section 12(2)(f) of the Act shall be at the rate of £72.75 per day.

(2) Where representation in such proceedings is provided by two legal representatives, remuneration shall be at the rate of £46.50 per day for the representative appearing as an advocate, and £26.25 per day for the other representative.

11.—(1) A representative may, when 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 article 10.

(2) If the appropriate officer decides that there are such exceptional circumstances, he may allow the representative 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.

(3) If the appropriate officer decides that there are no such exceptional circumstances, the standard fee shall apply.

(4) The fee allowed to a representative (other than an advocate) under this article shall 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.

(5) In the application of paragraph (4), the rates appropriate to the Crown Court shall apply to proceedings in all courts other than the magistrates' courts.

(6) Where a court grants representation to a person for the purposes of proceedings for contempt, it may assign to him, for the purposes of those proceedings, any representative who is within the precincts of the court.

(7) Where the fee-earner who did the work was not assigned by the court under sub-paragraph (6), the fee allowed for his work shall not exceed the rate set out in Schedule 2 as appropriate to the lowest grade of fee-earner which the appropriate officer considers would have been competent to do the work.

(8) The total of the fees allowed to an advocate under this article in respect of proceedings covered by any one representation order shall not exceed the amounts set out in Schedule 3 as appropriate to a single junior counsel instructed in an appeal to the Crown Court against conviction.

12. The provisions of Schedule 1 shall apply with the necessary modifications to the remuneration payable to any representative under articles 10 and 11.

13. Where a representation order has been made in respect of any proceedings, the representative shall 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 the Costs Committee.

**Very High Cost Cases—assignment of cases to categories and solicitors to levels**

14.—(1) The Commission or, as the case may be, the appropriate officer shall assign each case which is a Very High Cost Case to one of the four categories referred to in Schedule 5, according to its complexity, importance and subject matter.

(2) The Commission or, as the case may be, the appropriate officer shall assign each solicitor or other fee earner (other than a barrister acting as an advocate) providing funded services in relation to a case which is a Very High Cost Case to one of the three levels referred to in Schedule 5.

Dated 8th March 2001

*Irvine of Lairg, C.*

## SCHEDULE 1

### General

1.—(1) Costs in respect of work done under a representation order to which this Schedule applies shall be determined by the appropriate officer in accordance with this Schedule.

(2) In determining costs, the appropriate officer shall, 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.

### Interim payment of disbursements

2.—(1) A solicitor may submit a claim to the appropriate officer for payment of a disbursement for which he has incurred liability in criminal proceedings in the Crown Court in accordance with the provisions of this paragraph.

(2) A claim for payment may be made where:

- (a) a solicitor 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 paragraph 13(4), a claim under sub-paragraph (1) shall not exceed the maximum fee authorised under the prior authority.

(4) A claim for payment under sub-paragraph (1) may be made at any time before the solicitor submits a claim for costs under paragraph 11(2).

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

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

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

(8) Paragraphs 20 to 22 (redetermination etc.) shall not apply to a payment under this paragraph.

### Interim disbursements and final determination of costs

3.—(1) On a final determination of costs, paragraphs 11(2) and (3)(e) and 13 shall apply notwithstanding that a payment has been made under paragraph 2.

(2) Where the amount found to be due under paragraph 13 in respect of a disbursement is less than the amount paid under paragraph 2 (“the interim disbursement”), the appropriate officer shall deduct the difference from the sum otherwise payable to the solicitor on the determination of costs, and where the amount due under paragraph 13 exceeds the interim disbursement, the appropriate officer shall add the difference to the amount otherwise payable to the solicitor.

### Interim payments in cases awaiting determination

4.—(1) The appropriate officer shall make an interim payment in respect of a claim for costs in criminal proceedings in the Crown Court in accordance with the following provisions of this paragraph.

(2) Entitlement to a payment arises in respect of a claim for costs:

- (a) in the case of a solicitor, where the total claim for costs is £4,000 or more (exclusive of VAT);
- (b) in the case of an advocate, where the basic fee claimed is £4,000 or more (exclusive of VAT); and

(c) where the claim for costs is for less than the amounts mentioned in (a) or (b) but is related to any claim falling under (a) or (b).

(3) Entitlement to a payment under sub-paragraph (1) shall not arise until three months have elapsed from the earlier of:

- (a) the date on which the bill is ready to tax; or
- (b) three months after the conclusion of the last of any related proceedings.

(4) A bill shall be regarded as being ready to tax on the date on which it is received by the appropriate officer for determination except that where there are related claims for costs all the bills relating thereto shall be regarded as ready to tax on the date the last bill is received.

(5) A representative may submit a claim for an interim payment under this paragraph if no payment has been made under sub-paragraph (1) and six months have elapsed from the conclusion of the proceedings against the defendant whom he represented under the representation order.

(6) For the purposes of this paragraph, proceedings are related to each other in the circumstances set out in sub-paragraph (7) and claims for costs are related to each other in the circumstances set out in sub-paragraph (8).

(7) Proceedings are related to each other:

- (a) where different proceedings involving the same defendant are prepared, heard or dealt with together; or
- (b) where proceedings involving more than one defendant arose out of the same incident, so that the defendants are charged, tried or disposed of together.

(8) The following claims for costs are related to each other:

- (a) the claims of representatives acting in the same proceedings for a defendant;
- (b) the claims of any representative acting in any proceedings mentioned in sub-paragraph (7)(a); and
- (c) the claims of all the representatives acting for the defendants in the circumstances mentioned in sub-paragraph (7)(b).

(9) No payment shall be made under this paragraph unless (subject to paragraph 23) the representative has submitted a claim in accordance with the provisions of paragraphs 11(1) and 14(1).

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

5.—(1) Where entitlement to a payment arises under paragraph 4, the amount payable shall be 40 per cent of the total claim for costs, less any sum already paid.

(2) Paragraphs 20 to 22 (redetermination etc.) shall not apply to a payment under this paragraph.

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

6.—(1) A representative may submit a claim to the appropriate officer for a staged payment of his fees in relation to criminal proceedings in the Crown Court.

(2) Where a claim is submitted in accordance with the provisions of this paragraph, a staged payment shall 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 representative will, subject to final determination of the costs payable, be entitled to be paid in accordance with this Schedule; and
- (b) that the period from committal or transfer for trial (or from the date of the representation order, if later) to the conclusion of the Crown Court proceedings will be 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 paragraph “preparation” means:

- (a) all work falling within the definition of “preparation” in paragraph 1(1) of Schedule 4;
- (b) attendance at pre-trial reviews and other hearings (other than a pleas and directions hearing) prior to the main hearing;

- (c) preparation of applications, statements or notices for the purposes of section 6 or 9(5) of the Criminal Justice Act 1987<sup>(a)</sup>; and
- (d) all preparation within the meaning of paragraph 12(1)(a) not falling within the preceding sub-paragraphs,

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, 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 to be allowed for preparation falling within sub-paragraph (3)(a), (b) or (c) shall 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 costs payable, has been reasonably done, multiplied by the relevant hourly rate, namely:

- (a) in the case of an advocate who is a Queen's Counsel, the hourly rate for subsidiary fees for Queen's Counsel in the Crown Court prescribed in Table 2 in Schedule 3;
- (b) in the case of an advocate instructed as leading junior counsel pursuant to an order made under CDS Regulations, 75 per cent of the hourly rate for subsidiary fees for Queen's Counsel in the Crown Court prescribed in Table 2 in Schedule 3;
- (c) in the case of any other advocate, the hourly rate for subsidiary fees for junior counsel in the Crown Court prescribed in Table 1 in Schedule 3.

(5) The amount to be allowed for preparation falling within sub-paragraph (3)(d) shall 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 costs payable, has been reasonably done, multiplied by the relevant hourly rate prescribed in Schedule 2 Part 1, applicable to the class of work and the grade and office location of the fee-earner.

(6) A claim shall be submitted in such form and manner as the appropriate officer may direct, including such case plan as he may require for the purposes of sub-paragraph (2)(a).

(7) A representative may claim further staged payments in accordance with this paragraph in respect of further periods of preparation exceeding 100 hours which were not included in an earlier claim.

(8) Paragraphs 20 to 22 (redetermination etc.) shall not apply to a payment under this paragraph.

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

7.—(1) A representative may submit a claim to the appropriate officer for an interim payment in respect of attendance at court or refreshers where a Crown Court trial lasts for a qualifying period.

(2) Where a claim is submitted in accordance with the provisions of this paragraph, an interim payment shall, without prejudice to the final determination of the costs payable, be allowed:

- (a) to a solicitor where he or a fee-earner representing him has attended at court on each day of the qualifying period;
- (b) to an advocate where he has done work falling within paragraph 6(2)(b) or (c) of Schedule 4 on each day of the qualifying period.

(3) The qualifying period for the purposes of this paragraph shall be 20 days (which need not be continuous), and a day shall qualify as part of that period 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 shall be:

- (a) in the case of a solicitor:
  - (i) where the hearing begins before and ends after the luncheon adjournment, five times the hourly rate for a trainee or fee-earner of equivalent experience attending court where more than one representative is assigned as prescribed in Schedule 2 Part 1;

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(a) 1987 c. 38.



- (ii) 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 (i) above;
  - (b) in the case of an advocate who is a Queen’s Counsel, the maximum amount of the full day refresher fee for Queen’s Counsel in the Crown Court prescribed in Table 2 in Schedule 3;
  - (c) in the case of an advocate instructed as leading junior counsel pursuant to an order made under CDS Regulations, 75 per cent of the maximum amount of the full day refresher fee for Queen’s Counsel in the Crown Court prescribed in Table 2 in Schedule 3;
  - (d) in the case of an advocate retained solely for the purpose of making a note of any hearing, one-half of the maximum amount of the full day refresher fee for junior counsel in the Crown Court prescribed in Table 1 in Schedule 3;
  - (e) in the case of any other advocate, the maximum amount of the full day refresher fee for junior counsel in the Crown Court prescribed in Table 1 in Schedule 3.
- (5) A claim for an interim payment may be made in respect of a qualifying period and shall be submitted in such form and manner as the appropriate officer may direct.
- (6) Further interim payments under this paragraph may be claimed if the trial lasts for further qualifying periods.
- (7) A representative 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 paragraph, 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 paragraph).
- (8) A claim under sub-paragraph 7 shall be submitted in such form and manner as the appropriate officer may direct, and shall be supported by such evidence of the expense claimed as he may require.
- (9) Paragraphs 20 to 22 (redetermination etc.) shall not apply to a payment under this paragraph.

#### **Advance payments for early preparation in Crown Court cases**

- 8.—**(1) An advance payment under this paragraph shall be payable in respect of every case in the Crown Court in which:
- (a) a pleas and directions hearing is held;
  - (b) on or before the date of the pleas and directions hearing, a representation order has been made providing for an advocate to represent the assisted person at the trial and a person (“the trial advocate”) has been instructed for that purpose; and
  - (c) the trial advocate satisfies the appropriate officer that, in his capacity as the trial advocate, and at least 5 days before the date of the pleas and directions hearing, he has done work of all the types listed in paragraphs (a) to (d) of the definition of “preparation” in paragraph 1(1) of Schedule 4 (whether or not he also does work of those types afterwards), unless at the pleas and directions hearing the assisted person pleads guilty to all counts or the prosecution declares an intention not to proceed to trial.
- (2) Subject to sub-paragraph (3), the amount of the advance payment under this sub-paragraph in respect of any such case shall be:
- (a) £250 where the trial advocate is a Queen’s Counsel;
  - (b) £170 where the trial advocate is not a Queen’s Counsel but appears as a leader to another trial advocate;
  - (c) £100 for any other trial advocate.
- (3) Where the same trial advocate is instructed in two or more cases which are to be heard concurrently the advance payment shall be the amount specified in sub-paragraph (2) in respect of the first case and twenty per cent of the amount in respect of each of the other cases.
- (4) In this paragraph, a “case” means proceedings against any one assisted person on one or more counts of a single indictment.

## **Hardship payments**

9.—(1) The appropriate officer may allow a hardship payment to a representative in the circumstances set out in sub-paragraph (2), subject to the other provisions of this paragraph.

(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 any related proceedings, if he was instructed in those proceedings earlier than in the proceedings to which the application relates);
- (c) is not, at the date of the application, entitled to any payment under paragraph 4 (interim payments in cases awaiting determination), 6 (staged payments) or 7 (interim payments);
- (d) is unlikely to receive final payment in respect of the proceedings, as determined under paragraph 12 or 15, within the three months following the application for the hardship payment; and
- (e) satisfies the appropriate officer that, by reason of the circumstance in paragraph (d), he is likely to suffer financial hardship.

(3) Every application for a hardship payment shall 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 shall be in the discretion of the appropriate officer, but shall 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) No hardship payment shall 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 any VAT).

(6) Any hardship payment shall be set off against the remuneration finally payable to the representative under paragraph 12 or 15.

(7) The question of whether proceedings are related to each other for the purposes of this paragraph shall be determined in accordance with paragraph 4(7).

## **Computation of final claim**

10.—(1) At the conclusion of a case in which one or more payments have been made to a representative under paragraph 6, 7, 8 or 9, he shall submit a claim under paragraph 11 or 14 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 a representative under paragraph 12 or 15, the appropriate officer shall deduct the amount of any advance payment made under paragraph 6, 7, 8 or 9 in respect of the same case from the amount that would otherwise be payable; and, if the amount of the advance payment is greater than the amount that would otherwise be payable, the appropriate officer shall be entitled to recover the amount of the difference, either by way of repayment by the representative or by way of deduction from any other amount that may be due to him.

## **Claims for costs by solicitors**

11.—(1) Subject to paragraph 23, no claim by a solicitor for costs in respect of work done under a representation order shall 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 costs shall be submitted to the appropriate officer in such form and manner as he may direct and shall be accompanied by the representation order and any receipts or other documents in support of any disbursement claimed.

(3) A claim shall:

- (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 12(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 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 solicitor claims that paragraph 4 of Schedule 2 Part 1 should be applied in relation to an item of work, he shall give full particulars in support of his claim.

(5) The solicitor shall specify any special circumstances which should be drawn to the attention of the appropriate officer.

(6) The solicitor shall supply such further particulars, information and documents as the appropriate officer may require.

(7) Where a representation order has been made in respect of any proceedings where a defendant has been acquitted and granted a defendant's costs order under section 16 of the Prosecution of Offences Act 1985(a), the solicitor shall certify that no claim for costs incurred before the representation order was made has been or will be made from central funds in relation to that work.

#### **Determination of solicitors' fees**

**12.—**(1) The appropriate officer may allow work done by fee-earners in the following classes:

- (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 or case stated;
- (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) dealing with routine letters written and routine telephone calls.

(2) The appropriate officer shall consider the claim, any further particulars, information or documents submitted by the solicitor under paragraph 11 and any other relevant information and shall 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 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) Subject to sub-paragraph 4, in any proceedings which are specified in paragraph 1(2) of Schedule 2 Part 2, the appropriate officer shall proceed in accordance with the provisions of paragraph 3 of that Part of that Schedule.

(4) In any proceedings in the Crown Court:

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(a) 1985 c. 23.

(a) in respect of the classes of work specified in paragraph 6(2) of Schedule 4 (whether or not the proceedings are ones to which that Schedule applies), the appropriate officer shall proceed in accordance with the provisions of paragraph 15 as if the fee-earner who did the work had been a barrister;

(b) in respect of all other classes of work, the provisions of this paragraph shall apply.

(5) Subject to sub-paragraph (2), (3), (4) and (6), the appropriate officer shall allow fees for work allowed by it under this paragraph in accordance with Schedule 2 Part 1.

(6) In the case of criminal proceedings in the Crown Court and the Court of Appeal, the fees allowed in accordance with Part 1 of Schedule 2 shall be those appropriate to such of the following grades of fee-earner as the appropriate officer considers reasonable:

(a) senior solicitor;

(b) solicitor, legal executive or fee earner of equivalent experience;

(c) trainee or fee-earner of equivalent experience.

(7) In relation to hearings specified in sub-paragraph (6), work of the class specified in sub-paragraph (1)(c) shall only be allowed in the following circumstances:

(a) if the assisted person is charged with an offence included in Class 1 or Class 2 as determined pursuant to section 75(2) of the Supreme Court Act 1981(a);

(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(b);

(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(c) 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 pursuant to CDS Regulations.

(8) The following hearings in the Crown Court are specified for the purpose of sub-paragraph (7): trials, hearings of cases listed for pleas of guilty following a pleas and direction hearing, sentence hearings following committals for sentence and the hearing of appeals against conviction or sentence.

(9) The circumstances referred to in sub-paragraph (7)(e) shall 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 shall be resolved in the assisted person's favour.

(10) The circumstances referred to in sub-paragraph (7)(f) shall only justify the allowing of attendance to the extent specified in the representation order.

(11) This paragraph applies to work in respect of which standard fees are payable under Part 2 of Schedule 2, or a graduated or fixed fee is payable under Schedule 4 only to the extent that that Part or that Schedule specifically so provide.

(12) In relation to hearings specified in sub-paragraph (11), work of the class specified in sub-paragraph (1)(c) shall only be allowed in the circumstances mentioned in sub-paragraph (7)(a) to (f).

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(a) 1981 c. 54.

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

(c) 1933 c. 12.

(13) The following hearings in the Crown Court are specified for the purposes of subparagraph (10): trials, hearing of cases listed for pleas of guilty following a pleas and directions hearing, sentencing hearings following committals for sentence and the hearing of appeals against conviction or sentence.

#### **Determination of solicitors' disbursements**

**13.—**(1) Subject to the provisions of this paragraph, the appropriate officer shall allow such disbursements claimed under paragraph 11 as appears 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 solicitors' place of business, reimbursement of the expenses may be limited to what otherwise would, having regard to all the circumstances, be a reasonable amount; and
- (b) in the case of an appeal to the Court of Appeal, 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 shall not be allowed except where the appropriate officer considers that it is reasonable in all the circumstances for such disbursement to be allowed.

(2) No question as to the propriety of any step or act in relation to which prior authority has been obtained under CDS Regulations shall be raised on any determination of costs, unless the solicitor 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 costs were incurred.

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

(4) Where costs 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 costs may nevertheless be allowed on a determination of costs.

#### **Claims for fees by an advocate**

**14.—**(1) Subject to paragraph 23, no claim by an advocate for fees for work done under a representation order shall be entertained unless he submits it within three months of the conclusion of the proceedings to which the representation order relates.

(2) A claim for fees shall be submitted to the appropriate officer in such form and manner as he may direct.

(3) A claim shall:

- (a) summarise the items of work in respect of which fees are claimed according to the classes of fee specified in paragraph 15(5);
- (b) state the dates on which the items of work were done, the time taken where appropriate, 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.

(4) Where an advocate claims that:

- (a) it would be inappropriate to allow a standard fee under paragraph 15(2); or
- (b) paragraph 15(6) should be applied in relation to an item of work

he shall give full particulars in support of his claim.

(5) Where there are any special circumstances which should be drawn to the attention of the appropriate officer, the advocate shall specify them.

(6) The advocate shall supply such further particulars, information and documents as the appropriate officer may require.

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

**15.**—(1) The appropriate officer shall consider the claim, any further particulars and information submitted by an advocate under paragraph 14 and any other relevant information and shall allow such work as appears to him to have been reasonably done.

(2) In any proceedings specified in paragraph 2 or 3 of Schedule 4, the appropriate officer shall allow a graduated or fixed fee calculated in accordance with that Schedule in respect of all such work allowed by it as falls into the classes specified in paragraph 6(2) of that Schedule.

(3) Where in any proceedings specified in paragraph 2 of Schedule 4, the trial judge makes adverse observations concerning the advocate's conduct of the case, the appropriate officer may reduce any fee which would otherwise be payable in accordance with that Schedule by such proportion as he shall see fit, having first given the advocate the opportunity to make representations about the extent to which the fee should be reduced.

(4) Where it appears to the appropriate officer that the fixed fee allowed by Schedule 4 in respect of any proceedings specified in paragraph 3 of that Schedule would be inappropriate taking into account all of the relevant circumstances of the case, he may instead allow fees in accordance with sub-paragraphs (5) and (6) below.

(5) The appropriate officer may, except in relation to work for which a graduated or fixed fee is allowed under subparagraph (2), 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 and any other preparation;
- (c) subsidiary fees for:
  - (i) attendance at conferences, consultations and views not covered by (a) or (b);
  - (ii) written advice on evidence, plea, appeal, case stated or other written work; and
  - (iii) attendance at pre-trial reviews, applications and appearances (including bail applications and adjournments for sentence) not covered by (a) or (b).

(6) In the case of proceedings in the Crown Court, the appropriate officer shall, except in relation to work for which a graduated or fixed fee is allowed under sub-paragraph (2), allow such fees in respect of such work as he considers reasonable in such amounts as he may determine in accordance with Schedule 3, provided that 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 Part 2 of Schedule 3 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.

(7) In the case of proceedings in the Court of Appeal, the appropriate officer shall allow such fees in respect of such work as he considers reasonable in such amount as appears to him to be reasonable remuneration for such work.

(8) Where prior authority has been obtained to instruct a Queen's Counsel alone no question as to the propriety of that act shall be raised on any determination of the advocate's fees, unless the solicitor knew or ought reasonably to have known that the purpose for which the authority was given had failed or become irrelevant or unnecessary before the fees were incurred.

(9) Where:

- (a) a representation order provides for representation by a sole advocate other than a Queen's Counsel, and a Queen's Counsel agrees to appear as the sole advocate; or
- (b) a representation order provides for representation by two advocates other than Queen's Counsel, and a Queen's Counsel agrees to appear as a leading junior

that Queen's Counsel shall be treated for all the purposes of this Schedule as having been instructed under that order, and his remuneration shall be determined as if he were not a Queen's Counsel.

**16.—(1)** Subject to sub-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<sup>(a)</sup> the appropriate officer, in determining costs in respect of work done by the representatives against whom the wasted costs order was made, shall deduct the amount of the order from the amount otherwise payable in accordance with this Schedule.

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

### **Payment of costs**

**17.—(1)** Having determined the costs payable to a representative in accordance with this Schedule, the appropriate officer shall notify the representative of the costs payable and authorise payment accordingly.

(2) Where the costs payable under sub-paragraph (1) are varied as a result of any review, redetermination or appeal made or brought pursuant to this Schedule:

- (a) where the costs are increased, the appropriate officer shall authorise payment of the increase;
- (b) where the costs are decreased, the representative shall repay the amount of such decrease; and
- (c) where the payment of any costs of the representative is ordered under paragraph 21(14) or 22(8) or Schedule 2 Part 2 paragraph 8(4), the appropriate officer shall authorise payment.

### **Recovery of overpayments**

**18.—(1)** This paragraph applies where a representative is entitled to be paid a certain sum ("the amount due") by virtue of the provisions of this Schedule and, for whatever reason, he is paid an amount greater than that sum.

(2) Where the circumstances in sub-paragraph (1) arise, the appropriate officer may:

- (a) require immediate repayment of the amount in excess of the amount due ("the excess amount") and the representative shall on demand 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 this Schedule.

(3) The appropriate officer may proceed under sub-paragraph (2)(b) without first proceeding under sub-paragraph (2)(a).

(4) Sub-paragraph (2) shall apply notwithstanding that the representative to whom the excess amount was paid is exercising, or may exercise, a right under paragraphs 20 to 22.

### **Notification of costs**

**19.** For the purposes of an order which may be made under section 17 of the Act, other than where the proceedings are in the magistrates' court only, having determined the costs payable to a representative in accordance with this Schedule, the appropriate officer shall notify the court before which the proceedings are heard of the amount determined in each case.

### **Redetermination of costs by appropriate officer**

**20.—(1)** Where:

- (a) a representative is dissatisfied with the costs (other than the standard fees allowed under Schedule 2 Part 2 or graduated or fixed fees allowed under Schedule 4) determined in accordance with the provisions of this Schedule by the appropriate officer;

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<sup>(a)</sup> 1985 c. 23. Section 19A was inserted by the Courts and Legal Services Act 1990 (c. 41), section 111.

- (b) an advocate in proceedings in the Crown Court is dissatisfied with the decision that Schedule 4 does or does not apply to those proceedings or with the calculation of the remuneration payable under that Schedule; or
- (c) an advocate in proceedings in the Crown Court is dissatisfied with the decision not to allow one 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 17 of Schedule 4;
  - (ii) a wasted preparation fee under paragraph 18 of Schedule 4; or
  - (iii) an hourly fee under either sub-paragraph of paragraph 19(1) of Schedule 4

he may apply to the appropriate officer to redetermine those costs or to review that decision as the case may be.

(2) Subject to paragraph 23, the application shall be made within 21 days of the receipt of notification of the costs payable under paragraph 17, 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 shall be made in such form and manner as the appropriate officer may direct.

(3) The notice of application shall be accompanied by the particulars, information and documents supplied under paragraph 11 or 14, as appropriate.

(4) The notice of application shall state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the appropriate officer shall notify the applicant of the time at which he is prepared to hear him or his representative.

(5) The applicant shall supply such further particulars, information and documents as the appropriate officer may require.

(6) The appropriate officer shall:

- (a) redetermine the costs, whether by way of increase or decrease in the amount previously determined; or
- (b) review the decision to allow standard fees under paragraph 15(2), and confirm it, or allow fees in accordance with paragraph 15(5) and (6),

in the light of the objections made by the applicant or on his behalf and shall notify the applicant of his decision.

(7) The applicant may request the appropriate officer to give reasons in writing for his decision and the appropriate officer shall comply with any such request.

(8) Subject to paragraph 23, any request under sub-paragraph (7) shall be made within 21 days of receiving notification of the decision.

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

**21.—**(1) Where the appropriate officer has given his reasons for his decisions under paragraph 20, a representative who is dissatisfied with that decision may appeal to a Costs Judge.

(2) Subject to paragraph 23, an appeal shall 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 shall send a copy of any notice given under sub-paragraph (2) to the appropriate officer.

(4) The notice of appeal shall be accompanied by:

- (a) a copy of the written representations given under paragraph 20(2);
- (b) the appropriate officer's reasons for his decision given under paragraph 20(7); and
- (c) the particulars, information and documents supplied to the appropriate officer under paragraph 20.

(5) The notice of appeal shall:

- (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 shall, 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 shall inform the Senior Costs Judge and the appellant.

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

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

(10) The Costs Judge shall inform the appellant (or his representative) 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 paragraph, 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 shall be received on the hearing of the appeal and no ground of objection shall be valid which was not raised under paragraph 20.

(12) The Costs Judge shall have the same powers as the appropriate officer under this Schedule and, in the exercise of such powers, may:

- (a) alter the redetermination of the appropriate officer in respect of any sum allowed, whether by increase or decrease as he thinks fit;
- (b) confirm the decision to allow standard fees under paragraph 15(2) or allow fees in accordance with paragraph 15(5) and (6).

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

(14) Except where he confirms or decreases the sums redetermined under paragraph 20 or confirms a decision to allow standard fees, the Costs Judge may allow the appellant a sum in respect of part or all of any reasonable costs (including any fee payable in respect of an appeal) incurred by him in connection with the appeal.

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

**22.**—(1) A representative who is dissatisfied with the decision of a Costs Judge on an appeal under paragraph 21 may apply to a Costs Judge to certify a point of principle of general importance.

(2) Subject to paragraph 23, an application under sub-paragraph (1) shall be made within 21 days of notification of a Costs Judge's decision under sub-paragraph 21(13).

(3) Where a Costs Judge certifies a point of principle of general importance, the representative may appeal to the High Court against the decision of a Costs Judge on an appeal under paragraph 21, and the Lord Chancellor shall be a respondent to such an appeal.

(4) Subject to paragraph 23, an appeal under sub-paragraph (3) shall be instituted within 21 days of receiving a Costs Judge's certificate under sub-paragraph (1).

(5) Where the Lord Chancellor is dissatisfied with the decision of a Costs Judge on an appeal under paragraph 21, he may, if no appeal has been made by the representative under sub-paragraph (3), appeal to the High Court against that decision, and the representative shall be a respondent to the appeal.

(6) Subject to paragraph 23, an appeal under sub-paragraph (5) shall be instituted within 21 days of receiving notification of the Costs Judge's decision under paragraph 21(13).

(7) An appeal under sub-paragraph (3) or (5) shall be brought in the Queen’s Bench Division, follow the procedure set out in Part 8 of the Civil Procedure Rules 1998(a), and shall be heard and determined by a single judge whose decision shall be final.

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

### Time limits

**23.**—(1) Subject to sub-paragraph (2), the time limit within which any act is required or authorised to be done may, for good reason, be extended:

- (a) in the case of acts required or authorised to be done under paragraph 21 or 22, 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 paragraph, 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 shall consider whether it is reasonable in the circumstances to reduce the costs; provided that the costs shall not be reduced unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.

(3) A representative may appeal to a Costs Judge against a decision made under this paragraph by an appropriate officer and such an appeal shall 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.

### House of Lords

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

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

## SCHEDULE 2

### SOLICITORS’ FEES

#### PART 1

#### FEES DETERMINED UNDER PARAGRAPH 12 OF SCHEDULE 1

**1.** Subject to paragraphs 2 and 3, for proceedings in the Crown Court and Court of Appeal the appropriate officer shall allow fees for work allowed by it under paragraph 12 of Schedule 1 at the following prescribed rates:

<i>Class of work</i>	<i>Grade of fee-earner</i>	<i>Rate</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)

(a) S.I. 1998/3132.

<i>Class of work</i>	<i>Grade of fee-earner</i>	<i>Rate</i>	
	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)
Advocacy (other than in the Crown Court)	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	
Travelling and waiting	Trainee or fee-earner of equivalent experience	£20.50 per hour	
	Senior solicitor	£24.75 per hour	
	Solicitor, legal executive or fee-earner of equivalent experience	£24.75 per hour	
	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)

2. In relation to any hearing specified in paragraph 12(8) of Schedule 1, the fee specified in paragraph 1 for attendance at court where an advocate is assigned shall only be payable in the circumstances and to the extent provided by paragraphs 12(7) to (10) of that Schedule.

3. In respect of any item of work, the appropriate officer may allow fees at less than the relevant prescribed rate specified in paragraph 1 where it appears to him reasonable to do so having regard to the competence and despatch with which the work was done.

4.—(1) Upon a determination the appropriate officer may allow fees at more than the relevant prescribed rate specified in paragraph 1 subject to the provisions of this paragraph 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 circumstances or complexity.

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

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

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

(4) Except in proceedings to which sub-paragraph (5) applies, the percentage above the relevant prescribed rate by which fees for work may be enhanced shall not exceed 100 per cent.

(5) Where the proceedings related to serious or complex fraud, the percentage above the prescribed rate by which fees for work done may be enhanced shall not exceed 200 per cent.

(6) 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

1.—(1) Subject to sub-paragraphs (3) and (4), this Part of this Schedule 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 an offence which is classified as a Class 3 or 4 offence in accordance with directions given by the Lord Chief Justice under section 75 of the Supreme Court Act 1981<sup>(a)</sup> 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 solicitor's conduct of the case; or

(b) considers that, for exceptional reasons, the fees should be determined under paragraph 12 of Schedule 1

he may direct that the fees should be determined under paragraph 12 and in that event this Part of this Schedule shall not apply.

(4) If a solicitor so elects, he may claim standard fees under this Part of this Schedule 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 of this Schedule shall apply to such a claim with the necessary modifications, save that, where a solicitor 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 4(2)) and paragraph 2 shall not apply.

(5) In relation to any hearing specified in paragraph 12(6) of Schedule 1, the fee specified in the Table for attendance at court where an advocate was assigned shall only be payable in the circumstances and to the extent provided by paragraph 12(5) to 12(7) of Schedule 1.

(6) For the purposes of this Part of this Schedule, the standard fees which are payable and the classes of work for which such fees may be paid are specified in paragraph 4 and the "lower fee limit" and the "higher fee limit" have the meanings given by paragraph 4(3).

#### Allowance of standard fees

2.—(1) The appropriate officer shall allow the standard fee for preparation which has been claimed by a solicitor (together with the appropriate standard fees for the other classes of work specified in paragraph 4(2)) unless, where the principal standard fee for preparation has been claimed, such a fee is considered to be excessive, in which case the lower standard fee shall be allowed.

(2) A solicitor who has been allowed the lower standard fee instead of the principal fee claimed may:

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(a) 1981 c. 54.

- (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 12 of Schedule 1.

(3) Where the appropriate officer is requested to review his decision under sub-paragraph (2)(b), the officer shall either:

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

(4) Where a solicitor fails to make a request under sub-paragraph (2)(b) or to supply a detailed claim for the purposes of sub-paragraph (2)(c) or (3)(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.

**3.—(1)** Where a solicitor:

- (a) submits a claim for determination under paragraph 12 of Schedule 1 in a case to which paragraph 1(2) applies; or
- (b) disputes the allowance of the lower standard fee and provides a detailed claim under paragraph 2(2)(c) or (3)(b)

the appropriate officer shall first determine fees for preparation work within the meaning of paragraph 4(2)(a) of this Part of this Schedule.

(2) If the fees so determined are:

- (a) less than the lower fee limit, the appropriate officer shall allow and pay the lower standard fee together with the standard fees for all other classes of work specified in paragraph 4(2);
- (b) not less than the lower fee limit and not more than the upper fee limit, the appropriate officer shall allow and pay the principal standard fee together with the standard fees for all other classes of works specified in paragraph 4(2);
- (c) more than the upper fee limit, no standard fees shall be payable and all fees shall be determined in accordance with paragraph 12 of Schedule 1.

### **Standard fees**

**4.—(1)** The classes of work for which standard fees shall be payable are those specified in sub-paragraph (2) and the fees for classes of work which are not so specified shall be determined in accordance with paragraph 12 of Schedule 1.

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

- (a) preparation within the meaning of paragraph 12(1)(a) of Schedule 1 but including routine letters written and telephone calls, within the meaning of paragraph 12(1)(e) of that Schedule;
- (b) attendance at court (including waiting) where more than one representative is assigned;
- (c) travelling, other than to undertake work for which standard fees are not payable. For the purpose of this paragraph, “travelling” shall be deemed to include waiting in connection with preparation work, within the meaning of sub-paragraph (2)(a) above.

(3) The standard fees payable under this Part of this Schedule are the fees specified in the Table below and in this Part of this Schedule the “lower fee limit” and the “upper fee limit” mean the lower and upper fee limits specified in the Table.

**TABLE****PREPARATION**

<i>Type of proceedings</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)	London rate	£129.50 £139.00	£179 £186	£249.50 £261.50	£312 £326
Guilty pleas	London rate	£81.50 £87.50	£110 £114	£175.00 £185.50	£226 £235
Appeals against conviction	London rate	£51.00 £54.50	£68 £70	£153.00 £159.00	£233 £244
Appeals against sentence	London rate	£36.25 £39.25	£52 £54	£93.00 £98.00	£131 £135
Committals for sentence	London rate	£42.50 £45.00	£51 £53	£97.75 £103.00	£141 £145
<b>ATTENDANCE AT COURT (INCLUDING WAITING) WHERE MORE THAN ONE REPRESENTATIVE ASSIGNED</b>		£21.40	per hour		
<b>TRAVELLING</b>		£18.50	per hour		

(4) A solicitor shall be entitled to the “London rate” of the standard fees specified in the Table where his office is situated within the London region of the Commission.

(5) The hourly rate specified in the Table for attendance at court shall, subject to subparagraph (6), be paid 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, shall not be payable during the luncheon adjournment.

(6) Where a fee-earner attends a court centre for the purpose of more than one case, the solicitor 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 subparagraph (5).

(7) The hourly rate specified in the Table shall be paid for time spent travelling (within the meaning of sub-paragraph (2)(c)).

(8) Where a solicitor acts for more than one defendant, the appropriate officer shall 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 shall be made to the standard fees for attendance at court and travelling.

(9) Where a solicitor 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 (a) to (d) above, the appropriate officer shall 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.

(10) Where a solicitor prepares a case with a view to an advocate appearing at the substantive hearing without the solicitor or his representative attending court, the standard preparation fee payable after any increase required by paragraphs (8) or (9) shall be further increased by:

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

(11) 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>, the standard preparation fee payable after application of any increase required by paragraph 8 or 9 shall 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.

(12) Where the standard fee payable is increased by virtue of sub-paragraph (8), (9), (10) or (11), then for the purposes of paragraphs 3, 6 and 8:

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

### **Disbursements**

5. Nothing in this Part of this Schedule applies to disbursements, which shall be determined in accordance with paragraph 13 of Schedule 1.

### **Re-determinations and appeals**

6.—(1) A solicitor who is dissatisfied with a decision on a determination under paragraph 3 may apply for the costs to be re-determined and, subject to sub-paragraph (2), the provisions of paragraph 20(2) to (8) of Schedule 1 shall apply with the necessary modifications to an application under this paragraph as they apply to an application under paragraph 20 of Schedule 1.

(2) On a re-determination under this paragraph, the appropriate officer shall determine the fees for preparation work within the meaning of paragraph 4(2)(a) and if the fees as so determined are:

- (a) less than the lower fee limit, the lower standard fee shall be allowed together with the standard fees for all other classes of work specified in paragraph 4(2);
- (b) not less than the lower fee limit and not more than the upper fee limit, the principal standard fee shall be allowed together with the standard fees for all other classes of work specified in paragraph 4(2);
- (c) more than the upper fee limit, the fees for all classes of work shall be determined in accordance with paragraph 12 of Schedule 1.

7. Irrespective of any dispute under paragraph 2 as to whether the principal standard fee should have been allowed instead of the lower standard fee, where a solicitor is satisfied with a decision to allow a standard fee but contends that:

- (a) a standard fee which is not apt for the type of work done has been allowed; or
- (b) the provisions of paragraph 4(4) to (12) have been incorrectly applied

he may, within six weeks of receipt of notification of the decision, make a written request setting out his reasons why the decision should be reviewed and, if the appropriate officer confirms his decision, written reasons shall be given.

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(a) 1984 c. 60.

8.—(1) A solicitor may appeal to a Costs Judge where he is dissatisfied with:

- (a) a decision on a re-determination under paragraph 6; or
- (b) a decision on a review under paragraph 7.

(2) Where a solicitor appeals to a Costs Judge in respect of a decision under paragraph 6, the Costs Judge shall determine the fees for preparation within the meaning of paragraph 4(2)(a) and if the fees so determined are:

- (a) less than the lower fee limit, the lower standard fee shall be allowed by the Costs Judge together with the standard fees for all other classes of work specified in paragraph 4(2);
- (b) not less than the lower fee limit and not more than the upper fee limit, the principal standard fee shall be allowed by the Costs Judge together with the standard fees for all other classes of work specified in paragraph 4(2);
- (c) more than the upper fee limit, the fees for all classes of work shall be determined by the Costs Judge in accordance with paragraph 12 of Schedule 1.

(3) Where a solicitor appeals to a Costs Judge in respect of a decision made on a review under paragraph 7, the Costs Judge shall allow whichever standard fee he considers to be apt for the type of work done or, as the case may be, re-apply the provisions of paragraph 4(4) to (12).

(4) Where a Costs Judge allows an appeal in whole or in part, he may allow the solicitor 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.

(5) This paragraph only applies to appeals in proceedings for which standard fees are payable and the provisions of paragraph 21 of Schedule 1 shall apply to appeals in proceedings for which standard fees are not payable.

(6) Subject to the foregoing provisions of this paragraph, the provisions of paragraphs 21 to 23 of Schedule 1 relating to appeals by solicitors shall apply with the necessary modifications to appeals in proceedings for which standard fees are payable under this Part of this Schedule as they apply to appeals in proceedings for which standard fees are not payable.

### SCHEDULE 3

#### COUNSEL'S FEES

1. The appropriate officer shall allow such fee in respect of an item of work allowed under paragraph 15(6) of Schedule 1, not exceeding the maximum amount specified in respect of that item of work, as appears to it to provide reasonable remuneration.

2. Where an hourly rate is specified in a Table in this part of this Schedule in respect of an item of work allowed under paragraph 15(6) of Schedule 1, the appropriate officer shall determine any fee for such work in accordance with that hourly rate; provided that the fee determined shall not be less than the minimum amount specified.

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

4. The fees allowed to junior counsel for proceedings in the Crown Court arising out of a breach of an order of the Crown Court or other similar matter shall not exceed the maximum amounts specified for "committals for sentence".

5. Paragraph 24 of Schedule 4 shall apply where an advocate's fees are determined in accordance with this Part of this Schedule as it applies where a graduated or fixed fee is allowed in accordance with Schedule 4.



**TABLE 1: JUNIOR COUNSEL**

Type of proceedings	Basic fee	Full day refresher	Subsidiary fees		
			Attendance at consultation, conferences & views	Written work	Attendance at pre-trial reviews, applications and other appearances
Jury trials	Maximum amount: £545.50				
Cases prepared for trial in which no jury is sworn	Maximum amount: £317.75				
Guilty pleas	Maximum amount: £192.25		£33.50 per hour Minimum amount: £16.75	Maximum amount: £58.25	Maximum amount: £110.00
Appeals against conviction	Maximum amount: £210.00	Maximum amount: £178.75			
Appeals against sentence	Maximum amount: £107.50				
Committals for sentence	Maximum amount: £107.50				

**TABLE 2: QUEEN'S COUNSEL**

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

## SCHEDULE 4

### FEEES FOR ADVOCACY IN THE CROWN COURT

#### PART 1

#### DEFINITION AND SCOPE

**1.—(1)** In this Schedule:

“trial advocate” means a person instructed in accordance with a representation order to represent the assisted person at the main hearing in any case;

“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) shall be treated as a separate case from the proceedings in which the order was made;

“cracked trial” and “guilty plea” have the meaning given in paragraph 9(3), (4) and (5) of this Schedule;

“main hearing” means:

- (a) in relation to a case which goes to trial, the trial;
- (b) in relation to a guilty plea or cracked trial, the hearing at which pleas are taken or, where there is more than one such hearing, the last such hearing;
- (c) in relation to an appeal against conviction or sentence, the hearing of the appeal;
- (d) in relation to proceedings arising out of a committal for sentence, the sentencing hearing; and
- (e) in relation to proceedings arising out of an alleged breach of an order of the Crown Court, the final hearing;

“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*;

“preparation” means work of any of the following types when done by a trial advocate:

- (a) reading the papers in the case;
- (b) the first conference with the assisted person;
- (c) contact with prosecution representatives;
- (d) written or oral advice on plea;
- (e) researching the law, preparation for examination of witnesses and preparation of oral submissions for the main hearing;
- (f) viewing exhibits or undisclosed material at police stations;
- (g) conferences with the assisted person, after the first such conference;
- (h) written advice on evidence;
- (i) written and oral advice on appeal (where covered under the same representation order as the main hearing);
- (j) preparation of written submissions, notices or other documents for use at the main hearing; and
- (k) views.

(2) For the purpose of this Schedule, the number of pages of prosecution evidence shall include all witness statements, documentary and pictorial exhibits and records of interview with the assisted person and with other defendants forming part of the committal documents or included in any notice of additional evidence.

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

(4) A reference to a Class of Offence in this Schedule refers to the Class in which that offence is listed in the Table of Offences following paragraph 25.

**2.—(1)** Subject to the following sub-paragraphs of this paragraph and to paragraph 4, this Schedule applies to every case on indictment in which:

- (a) every count (apart from any count which is withdrawn before the pleas and directions hearing) is for an offence referred to in paragraph 5 below; or
- (b) one or more counts is for an offence referred to in paragraph 5 below, and the trial advocate elects that the remaining counts should be disregarded for the purposes of calculating his remuneration.

- (2) This Schedule does not apply to a case which goes to trial where:
- (a) the prosecution evidence exceeds 1,000 pages;
  - (b) the number of prosecution witnesses exceeds 80; or
  - (c) it was accepted at the pleas and directions hearing that the trial would exceed 10 days (or 5 days where one of the counts is for an offence falling within Class I), and the trial did not exceed that length by reason only that it came to an end without the jury being required to consider their verdict.
- (3) This Schedule does not apply to a guilty plea where:
- (a) the prosecution evidence exceeds 400 pages; or
  - (b) the number of prosecution witnesses exceeds 80.
- (4) This Schedule does not apply to a cracked trial where:
- (a) at the pleas and directions hearing, it was accepted by the court that the trial would exceed 10 days in length (or 5 days where one of the counts is for an offence falling within Class I);
  - (b) the prosecution evidence exceeds 250 pages; or
  - (c) the number of prosecution witnesses exceeds 80.
- (5) Where following a trial an order was made for a new trial, and the same trial advocate appeared for an assisted person at both trials, this Schedule shall not apply in relation to the remuneration of that trial advocate for:
- (a) the original trial, unless remuneration for that trial has been paid in full prior to the making of the order for a new trial; or
  - (b) a new trial, in any event.
- (6) Where following a case on indictment a Newton hearing takes place:
- (a) the case shall for all the purposes of this Schedule be treated as having gone to trial;
  - (b) the length of trial shall be taken to be the combined length of the main hearing and of the Newton hearing;
  - (c) the provisions of this Schedule relating to cracked trials and guilty pleas shall not apply; and
  - (d) no fee shall be payable under paragraph 15 in respect of that hearing.
- (7) A case on indictment which is discontinued at the pleas and directions hearing other than by reason of pleas of guilty being entered shall for all purposes of this Schedule be treated as a guilty plea.
- 3.** This Schedule also applies to the following proceedings in the Crown Court, subject to paragraph 4:
- (a) an appeal against conviction or sentence;
  - (b) a sentence hearing following a committal for sentence to the Crown Court; and
  - (c) 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).
- 4.** This Schedule does not apply to any case where:
- (a) the representation order provides for the services of more than two trial advocates;
  - (b) (without prejudice to anything in CDS Regulations) any of the trial advocate's work in connection with the case is done or remunerated otherwise than under a representation order;
  - (c) a hearing is held to determine the question of whether the assisted person is unfit to plead or unfit to be tried;
  - (d) one or more registered medical practitioners has given oral evidence for the purposes of section 37(2)(a) of the Mental Health Act 1983<sup>(a)</sup>; or

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(a) 1983 c. 20.

- (e) the length of the main hearing, or the combined length of the main hearing and of any hearing to which paragraph 2(6), 13 or 14 applies, exceeds 10 days (or 5 days where one of the counts is for an offence falling within Class I).

5.—(1) The offences to which this paragraph refers are:

- (a) those listed in the Table of Offences following paragraph 25 of this Schedule;
- (b) conspiracy to commit any of the offences in the Table of Offences, contrary to section 1 of the Criminal Law Act 1977(a);
- (c) incitement to commit any of the offences in the Table of Offences; and
- (d) attempts to commit any of the offences in the Table of Offences, contrary to section 1 of the Criminal Attempts Act 1981(b).

(2) For the purposes of this Schedule:

- (a) every offence within sub-paragraph (1)(a) falls within the Class under which it is listed in the Table of Offences;
- (b) every offence within sub-paragraph (1)(b), (c) or (d) falls within the same Class as the substantive offence to which it relates;
- (c) where the Table specifies that the Class within which an offence falls depends on whether that value involved exceeds a stated limit, the value shall be presumed not to exceed that limit unless the person claiming remuneration 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 shall be taken to be the total value involved in all those offences, so however that where two or more counts relate to the same property the value of that property shall be taken into account once only; and
- (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 shall include every offence contrary to that statutory provision whether or not the words of description in the entry are apt to cover all such offences.

6.—(1) The classes of work for which a graduated or fixed fee calculated in accordance with the following paragraphs of this Schedule shall be allowed in accordance with paragraph 15(2) are those specified in sub-paragraph (2), and the fees for classes of work which are not so specified shall be determined in accordance with paragraph 15.

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

- (a) all preparation not falling within sub-paragraph (c) below;
- (b) advocacy on the first day of the main hearing;
- (c) preparation and advocacy on the second and subsequent days of the main hearing;
- (d) appearing at the pleas and directions hearing, if any;
- (e) appearing at any other hearings and applications;
- (f) listening to or viewing evidence recorded on disc, tape or video cassette;
- (g) attending conferences with expert witnesses.

## PART 2

### GRADUATED FEES FOR TRIAL

7.—(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 shall be calculated according to the following formula:

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

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(a) 1977 c. 45.

(b) 1981 c. 47.

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

G is the amount of the graduated fee;

B is the basic fee specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed;

d is the number of days or parts of a day by which the trial exceeds one day;

e is the number of pages of prosecution evidence excluding the first 50;

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

D is the length of trial uplifts specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed;

E is the evidence uplift specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed;

W is the witness uplift specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed;

R is the refresher specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed.

8. For the purposes of paragraph 7 the basic fee, refresher, length of trial uplift, evidence uplift and witness uplift appropriate to any offence shall be those specified in the Table below as appropriate to the Class within which that offence falls according to paragraph 5 and the category of trial advocate instructed.

### TABLE OF FEES AND UPLIFTS

#### (a) Trials—Queen’s Counsel

Offence falling within	Basic fee	Refresher	Length of trial uplift: per day	Evidence uplift: per page	Witnesses uplift: per witness
Class A	£1,616.50	£413.50	£835.50	£1.44	£6.12
Class B	£1,091.00	£510.00	£636.50	£4.93	£46.47
Class C	£839.50	£431.50	£581.00	£8.47	£55.12
Class D	£1,550.50	£413.50	£574.50	£2.75	£18.13
Class E	£875.00	£431.50	£345.50	£3.55	£23.45
Class F	£847.50	£431.50	£467.00	£5.00	£17.12
Class G	£1,561.50	£510.00	£929.00	£7.71	£63.30
Class H	£1,000.50	£431.50	£637.00	£6.91	£60.18
Class I	£1,032.00	£510.00	£462.00	£10.83	£71.45

#### (b) Trials—other trial advocates

Offence falling within	Basic fee	Refresher	Length of trial uplift: per day	Evidence uplift: per page	Witnesses uplift: per witness
Class A	£808.50	£207.00	£418.00	£0.72	£3.06
Class B	£311.50	£145.50	£182.00	£1.41	£13.28
Class C	£240.00	£123.50	£166.00	£2.42	£15.75
Class D	£446.00	£145.50	£282.00	£1.08	£7.14
Class E	£250.00	£123.50	£98.50	£1.02	£6.70
Class F	£242.00	£123.50	£133.50	£1.43	£4.89
Class G	£446.00	£145.50	£265.50	£2.20	£18.09
Class H	£286.00	£123.50	£182.00	£1.97	£17.19
Class I	£295.00	£145.50	£132.00	£3.09	£20.41

## PART 3

### GRADUATED FEES FOR GUILTY PLEAS AND CRACKED TRIALS

9.—(1) The amount of the graduated fee for a single trial advocate representing one assisted person in a guilty plea or cracked trial shall be the basic fee specified in paragraph 10 as

appropriate to the offence with which the assisted person is charged, the category of trial advocate instructed and whether the case is a guilty plea or a cracked trial, increased by the evidence uplift.

(2) The evidence uplift shall be calculated as follows:

- (a) there shall be no uplift in respect of the first 10 pages;
- (b) the uplift set out in the third column of the applicable Table in paragraph 10 shall be payable in respect of each page from the 11th to the 50th;
- (c) the uplift set out in the fourth column of the applicable Table in paragraph 10 shall be payable in respect of each page from the 51st to the 100th; and
- (d) the uplift set out in the fifth column of the applicable Table in paragraph 10 shall be payable in respect of each page from and after the 101st.

(3) A case on indictment in which a pleas and directions hearing takes place is a cracked trial if it fulfils the following conditions:

- (a) the matter did not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offered no evidence, and
- (b)
  - (i) in respect of one or more counts to which the assisted person pleaded guilty, he did not so plead at the pleas and directions hearing; or
  - (ii) in respect of one or more counts which were not proceeded with, the prosecution did not, before or at the pleas and directions hearing, declare an intention of not proceeding with them.

(4) A case on indictment in which no pleas and directions hearing takes place is a cracked trial if it was listed for trial but the case was disposed of without a trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offered no evidence.

(5) A case on indictment is a guilty plea if it was disposed of without a trial because the assisted person pleaded guilty to one or more counts and is not a cracked trial.

**10.** For the purposes of paragraph 9 the basic fee and evidence uplifts appropriate to any offence shall be those specified in the Table below as appropriate to the class within which that offence falls according to paragraph 5 and the category of trial advocate instructed.

#### **TABLE OF FEES AND UPLIFTS**

**(a) Guilty plea—Queen’s Counsel**

Offence falling within	Basic fee	Evidence uplift Per page (pages 11 to 50)	Evidence uplift Per page (pages 51 to 100)	Evidence uplift Per page (pages 101 to 400)
Class A	£1,619.50	£6.14	£3.06	£2.04
Class B	£715.50	£6.03	£4.02	£2.68
Class C	£595.00	£6.03	£4.02	£2.68
Class D	£998.00	£6.03	£4.02	£2.68
Class E	£446.00	£4.02	£2.68	£1.79
Class F	£438.50	£3.22	£2.14	£1.43
Class G	£1,242.00	£8.04	£5.36	£3.57
Class H	£504.00	£8.04	£5.36	£3.57
Class I	£403.50	£8.04	£5.36	£3.57

**(b) Guilty plea—other trial advocate**

Offence falling within	Basic fee	Evidence uplift Per page (pages 11 to 50)	Evidence uplift Per page (pages 51 to 100)	Evidence uplift Per page (pages 101 to 400)
Class A	£810.00	£3.07	£1.53	£1.02
Class B	£204.50	£1.72	£1.15	£0.77
Class C	£170.00	£1.72	£1.15	£0.77

Offence falling within	Basic fee	Evidence uplift Per page (pages 11 to 50)	Evidence uplift Per page (pages 51 to 100)	Evidence uplift Per page (pages 101 to 400)
Class D	£285.00	£1.72	£1.15	£0.77
Class E	£127.50	£1.15	£0.77	£0.51
Class F	£125.50	£0.92	£0.61	£0.41
Class G	£355.00	£2.30	£1.53	£1.02
Class H	£144.00	£2.30	£1.53	£1.02
Class I	£115.00	£2.30	£1.53	£1.02

**(c) Cracked trial—Queen’s Counsel**

Offence falling within	Basic fee	Evidence uplift Per page (pages 11 to 50)	Evidence uplift Per page (pages 51 to 100)	Evidence uplift Per page (pages 101 to 250)
Class A	£1,694.50	£50.72	£17.04	£4.26
Class B	£1,143.50	£22.29	£8.39	£5.59
Class C	£880.00	£21.96	£8.39	£5.59
Class D	£1,625.00	£34.62	£12.78	£3.19
Class E	£917.00	£10.38	£8.39	£5.59
Class F	£888.50	£12.66	£8.39	£5.59
Class G	£1,637.00	£68.65	£16.77	£11.18
Class H	£1,048.50	£24.78	£8.39	£5.59
Class I	£1,081.50	£17.84	£8.39	£5.59

**(d) Cracked trial—other trial advocate**

Offence falling within	Basic fee	Evidence uplift Per page (pages 11 to 50)	Evidence uplift Per page (pages 51 to 100)	Evidence uplift Per page (pages 101 to 250)
Class A	£847.00	£25.36	£8.52	£2.13
Class B	£326.50	£6.37	£2.40	£1.60
Class C	£251.50	£6.27	£2.40	£1.60
Class D	£467.50	£10.51	£2.40	£1.60
Class E	£262.00	£2.97	£2.40	£1.60
Class F	£254.00	£3.62	£2.40	£1.60
Class G	£467.50	£19.61	£4.79	£3.19
Class H	£299.50	£7.08	£2.40	£1.60
Class I	£309.00	£5.10	£2.40	£1.60

**PART 4**

**FIXED AND HOURLY FEES**

**11.—(1)** The basic fee payable for any person for appearing at a pleas and directions hearing or a pre-trial review shall be that set out in the Table following paragraph 22 as appropriate to the category of trial advocate but where a fee is also payable under sub-paragraph (2), an amount equal to that fee shall be deducted from the fee payable under this sub-paragraph.

(2) The basic fee payable to any person for entering a paper plea and directions shall be that set out in the Table following paragraph 22.

(3) This paragraph does not apply to a pleas and directions hearing which is or forms part of the main hearing in a case.

**12.—(1)** The fixed fee set out in the Table following paragraph 22 as appropriate to the category of trial advocate shall be payable where:

- (a) the assisted person fails to attend any hearing at which the trial advocate appears;
- (b) at that hearing a bench warrant is issued for the arrest of the assisted person; and
- (c) that warrant is not executed within the three months beginning on the date on which it was issued.

(2) The fixed fee set out in the Table following paragraph 22 as appropriate to the category of trial advocate shall be payable in respect of each occasion on which the case was listed for trial but did not proceed on the day for which it was listed (other than by reason of an application for postponement by the prosecution or the defence).

**13.—**(1) This paragraph applies to:

- (a) the hearing of an application to stay the 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); and
- (c) the hearing of an application under section 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965**(a)** for disclosure of material held by third parties.

(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 shall be payable in respect of attendance at the hearing, but the hearing shall be included in the length of the main hearing for the purpose of calculating remuneration.

(3) Where a hearing to which this paragraph applies is held prior to the first or only day of the main hearing, it shall not be included in the length of the main hearing for the purpose of calculating remuneration and the trial advocate shall 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 22 as appropriate to the category of trial advocate;
- (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 22 as appropriate to the category of trial advocate.

**14.—**(1) This paragraph applies to:

- (a) a hearing to which the court proceeds under section 2 of the Drug Trafficking Act 1994**(b)**; and
- (b) a hearing to which the court proceeds under section 71 of the Criminal Justice Act 1988**(c)**.

(2) A hearing to which this paragraph applies shall not be included in the length of the main hearing or of any sentencing hearing for the purpose of calculating remuneration, and the trial advocate shall 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 22 as appropriate to the category of trial advocate; and
- (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 22 as appropriate to the category of trial advocate.

**15.—**(1) The fee payable to any person for appearing at a hearing to which this paragraph applies shall be that set out in the Table following paragraph 22 as appropriate to the category of person appearing and the circumstances of the hearing.

(2) This paragraph applies to the following hearings:

- (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**(d)**;

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**(a)** 1965 c. 69.  
**(b)** 1994 c. 37.  
**(c)** 1988 c. 33.  
**(d)** 2000 c. 6.



- (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.

**16.** A fee under this paragraph, of the amount set out in the Table following paragraph 22 as appropriate to the category of the person appearing, shall be payable to any person (whether the trial advocate or not) for appearing in the following hearings in a case on indictment, when not forming part of the main hearing or a hearing for which a fee is provided elsewhere in this Schedule:

- (a) the hearing of a case listed for plea which is adjourned for trial;
- (b) any hearing (other than a trial) 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;
- (c) bail and other applications; and
- (d) the hearing of the case listed for mention only.

**17.—(1)** Where this paragraph applies, a special preparation fee may be claimed in addition to the graduated fee payable under this Schedule.

(2) This paragraph applies where, in any case or indictment in the Crown Court in respect of which a graduated fee is payable under this Schedule, it has been necessary for the trial 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.

(3) The amount of the special preparation fee shall be calculated from the number of hours' preparation in excess of the amount normally done for cases of the same type, using the rates of hourly fees set out in the table following paragraph 22 as appropriate to the category of trial advocate.

(4) A trial advocate claiming a special preparation fee shall supply such information and documents as may be required by the appropriate officer as proof of the unusual nature or novelty of the point of law or factual issue and of the number of hours of preparation.

**18.—(1)** A wasted preparation fee may be claimed where a trial advocate instructed 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 his client;
- (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 shall 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 22; but no such fee shall be payable unless the number of hours of preparation is eight or more.

(4) A trial advocate claiming a wasted preparation fee shall 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.

**19.—**(1) The hourly fee set out in the Table following paragraph 22 as appropriate to the category of trial advocate shall be payable in respect of work of the following types, provided that the trial advocate satisfies the appropriate officer that the work was reasonably necessary, namely:

- (a) attendance by the trial advocate at conferences with prospective or actual expert witnesses; or
- (b) travel for the purpose of attending a conference with the assisted person, where the appropriate officer is satisfied that the assisted person was unable or could not reasonably have been expected to attend a conference at the trial advocate's office or chambers;

and where that fee is allowed the trial advocate shall also be paid the reasonable expenses of travelling to and from the conference.

(2) In any case on indictment, a trial advocate shall be entitled to a fee in accordance with the Table following paragraph 22 for the number of periods or parts of a period of 10 minutes of running time of any disc, tape or video cassette or part thereof which he listens to or views as part of the evidence in the case.

**20.** The additional fee set out in the Table following paragraph 22 shall be payable in respect of each day of the main hearing in any case mentioned in paragraph 2 on which the trial advocate appears unattended by the representative.

**21.—**(1) Subject to paragraph 15(4) of Schedule 1, and to paragraph 23(2), the remuneration payable to a trial advocate instructed in any case mentioned in paragraph 3 shall be the fixed fee set out in the Table following paragraph 22.

(2) Where the trial advocate appears in any case mentioned in paragraph 3 unattended by a representative, he shall be entitled to the additional fee set out in that Table.

**22.** The remuneration payable to a representative retained solely for the purpose of making a note of any hearing shall be the daily fee set out in the Table following this paragraph.

TABLE

<i>Type of work</i>	<i>Paragraph providing for fee</i>	<i>Fee for Queen's Counsel</i>	<i>Fee for leading advocate (other than Queen's Counsel)</i>	<i>Fee for Junior or sole advocate (other than Queen's Counsel)</i>
		£	£	£
Paper Pleas and directions basic fee		30.00	30.00	30.00
Pleas and directions hearing or pre-trial review—basic fee	11(1)	188.00	127.00	75.00
Attendance where bench warrant issued	12(1)	250.00	170.00	100.00
Appearing at listed trial that did not proceed—basic fee	12(2)	275.00	187.00	110.00
Work for which daily or half daily fee is payable	13, 14	330.00 per day 185.00 per half day	250.00 per day 140.00 per half day	178.25 per day 99.50 per half day
Appearing at deferred sentencing hearing	15(2)(a)	300.00	204.00	120.00
Appearing at other sentencing hearing	15(2)(b)	150.00	102.00	60.00
Other appearances	16	116.00	79.00	46.50

<i>Type of work</i>	<i>Paragraph providing for fee</i>	<i>Fee for Queen's Counsel</i>	<i>Fee for leading advocate (other than Queen's Counsel)</i>	<i>Fee for Junior or sole advocate (other than Queen's Counsel)</i>
		£	£	£
Work for which hourly fee is payable	17, 18, 19(1)	62.50 per hour	47.00 per hour	33.50 per hour
Listening to or viewing tapes etc	19(2)	27.15 per 10 minutes	18.50 per 10 minutes	10.90 per 10 minutes
Additional fee for unattended advocate, case within paragraph 2	20	38.50 per day	38.50 per day	38.50 per day
Appearing in appeal against conviction	21(1)	292.25	199.00	117.00
Appearing within other cases within paragraph 3	21(1)	184.50	125.00	73.50
Additional fee for unattended advocate	21(2)	19.25	19.25	19.25
Noting brief	22	—	—	100.00 per day

## PART 5

### MISCELLANEOUS

**23.—(1)** Where an assisted person is charged with more than one offence on one indictment, the graduated fee payable to the trial advocate shall be based on whichever of those offences he shall select for the purposes.

(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 shall select one case (“the principal case”), which shall be treated for the purposes of remuneration in accordance with the previous paragraphs of this Schedule;
- (b) in respect of the main hearing in each of the other cases the trial advocate shall be paid a fixed fee of twenty per cent of:
  - (i) the basic fee for the principal case, where that is a case falling within paragraph 2, or
  - (ii) the fixed fee for the principal case, where that is a case falling within paragraph 3.

(3) Where a person appears at a hearing specified in paragraph 11, 12(2), 13, 14, 15 or 16(a) or (b), forming part of two or more cases involving different assisted persons, he shall be paid:

- (a) in respect of the first such case, the fixed fee for that hearing specified in the Table following paragraph 22; and
- (b) in respect of each of the other cases, twenty per cent of that fee.

(4) Subject to sub-paragraphs (1) to (3), where a person appears at a hearing forming part of two or more cases, he shall be paid the fixed fee for that hearing specified in the Table following paragraph 22 in respect of one such case, without any increase in respect of the other cases.

**24.—(1)** Where in any case on indictment two trial advocates are instructed to represent the same assisted person:

- (a) if the leading advocate is a Queen's Counsel, he shall receive the same graduated fee as if he were appearing alone;
- (b) if the leading advocate is not a Queen's Counsel, he shall receive seventy-five per cent of the graduated fee payable to Queen's Counsel appearing alone;

(c) in either case, the junior advocate shall receive one-half of the graduated fee payable to a Queen's Counsel appearing alone.

(2) Where the assisted person is represented by a single trial advocate and 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 shall receive the same graduated fee as if he were appearing as junior to another trial advocate.

(3) Sub-paragraph (2) shall 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 23(1)) is for an offence falling within Class A.

25. Where a person is instructed to appear in 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 shall 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 person 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.

#### 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 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>		
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 endanger life	Firearms Act 1968 s.16	1968 c. 27
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	1968 c. 27
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

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
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
Placing wood etc. on railway	Malicious Damage Act 1861 s.35	1861 c. 97
Exhibiting false signals etc.	Malicious Damage Act 1861 s.47	as above
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
Acquiring, possessing etc. the proceeds of criminal conduct	Criminal Justice Act 1988 s.93	1988 c. 33
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 ss.1, 70(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	Drug Trafficking Act 1994 ss.49, 50 and 51	1994 c. 37
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

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
Assisting another to retain proceeds of terrorist activities	Northern Ireland (Emergency Provisions) Act 1991 s.53	1991 c. 24
Concealing or transferring proceeds of terrorist activities	Northern Ireland (Emergency Provisions) Act 1991 s.54	as above
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 prescribed organisations	Terrorism Act 2000 s.11	2000 c. 11
Support or meeting of prescribed organisations	Terrorism Act 2000 s.12	as above
Uniform of prescribed 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
<b>Class C: Lesser offences involving violence or damage, and less serious drugs offences</b>		
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	

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
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
Cutting away buoys etc.	Malicious Damage Act 1861 s.48	1861 c. 97
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

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
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: Serious sexual offences, offences against children</b>		
Rape	Sexual Offences Act 1956 s.1(1)	1956 c. 69
Administering drugs to obtain intercourse	Sexual Offences Act 1956 s.4	as above
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
Procurement of a defective	Sexual Offences Act 1956 s.9	as above
Incest	Sexual Offences Act 1956 ss.10 and 11	as above
Buggery of person under 16 or animal	Sexual Offences Act 1956 s.12	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
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
Man living on earnings of prostitution	Sexual Offences Act 1956 s.30	as above
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
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
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 unmarried girl under 16 from parent	Sexual Offences Act 1956 s.20	as above
Abduction of defective from parent	Sexual Offences Act 1956 s.21	as above
Procuration of girl under 21	Sexual Offences Act 1956 s.23	as above
Permitting girl under 16 to use premises for intercourse	Sexual Offences Act 1956 s.26	as above
Permitting defective to use premises for intercourse	Sexual Offences Act 1956 s.27	as above
Causing or encouraging prostitution of girl under 16	Sexual Offences Act 1956 s.28	as above
Causing or encouraging prostitution of defective	Sexual Offences Act 1956 s.29	as above
<b>Class E: Burglary etc.</b>		
Burglary (domestic)	Theft Act 1968 s.9(3)(a)	1968 c. 60



<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
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 and G: 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
<i>The following offences are always in Class G</i>		
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 and in Class F otherwise</i>		
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
Fraudulent application of trade mark	Trade Marks Act 1938 s.58A	1938 c. 22
<b>Class H: Miscellaneous lesser offences</b>		
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

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
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	25 Geo. 2 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, 18	1968 c. 29
Absconding by person released on bail	Bail Act 1976 s.6(1), (2)	1976 c. 63
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. 59
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) Act 1971 s.26	1971 c. 10
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.3	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>		
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

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
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. 45
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. 60
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 102 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

**SCHEDULE 5**  
**VERY HIGH COST CASES**

**Table 1. Hourly rates for preparation**

<i>Column 1</i> <b>Solicitor, employed barrister, legal executive or other fee earner</b>	<i>Column 2</i> <b>Category 1 cases (fraud only)</b>  <b>£ per hour</b>	<i>Column 3</i> <b>Category 2 cases</b>  <b>£ per hour</b>	<i>Column 4</i> <b>Category 3 cases</b>  <b>£ per hour</b>	<i>Column 5</i> <b>Category 4 cases (non- fraud only)</b>  <b>£ per hour</b>	<i>Column 6</i> <b>Standard Rates</b>  <b>£ per hour</b>
Level A	180	140	110	100	55.75
Level B	140	110	90	80	47.25
Level C	100	80	70	60	34.00
<b>Counsel</b>					
Queen's Counsel	180	140	110	100	
Leading junior	140	110	90	80	
Led junior—5 years' post qualification or more experience	100	80	70	60	

<i>Column 1</i> <b>Solicitor, employed barrister, legal executive or other fee earner</b>	<i>Column 2</i> <b>Category 1 cases (fraud only)</b>  <b>£ per hour</b>	<i>Column 3</i> <b>Category 2 cases</b>  <b>£ per hour</b>	<i>Column 4</i> <b>Category 3 cases</b>  <b>£ per hour</b>	<i>Column 5</i> <b>Category 4 cases (non- fraud only)</b>  <b>£ per hour</b>	<i>Column 6</i> <b>Standard Rates</b>  <b>£ per hour</b>
Led junior— less than 5 years' post qualification experience	75	60	55	50	
Junior alone	110	90	80	70	
Second led junior	70	55	50	—	
<b>Solicitor Advocate</b>					
Leading level A	180	140	110	100	
Led level A	140	110	90	80	
Leading level B	140	110	90	80	
Led level B	115	95	75	65	
Level A alone	145	120	100	85	
Level B alone	125	105	85	75	
Second advocate	70	55	50	—	

**1.1** In circumstances where the Commission or (as the case may be) the appropriate officer considers the work 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 Table 1 in this Schedule will apply.

**Table 2. Hourly rates for non-preparatory work**

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

**2.1** The Commission or (as the case may be) the appropriate officer may enhance by up to 100%:

- (a) in exceptional circumstances, the applicable rate for attendance at court in Table 2 in this Schedule; and

(b) in very exceptional circumstances, the applicable rate for travel and waiting in Table 2 in this Schedule.

**Table 3. Daily rates for advocacy**

<i>Column 1</i>	<i>Column 2</i> Category 1 cases (fraud only) £ per day	<i>Column 3</i> Category 2 cases £ per day	<i>Column 4</i> Category 3 cases £ per day	<i>Column 5</i> Category 4 cases (non-fraud only) £ per day
Queen's Counsel	600	480	430	400
Leading junior	450	360	320	300
Led junior—5 years' post qualification or more experience	300	240	215	200
Led junior—less than 5 years' post qualification experience	200	170	160	155
Junior alone	330	260	230	215
Noter	125	105	95	90

**3.1** Solicitor advocates will be paid the appropriate rate for a leading junior, a led junior, or a junior alone, as set out in Table 3 of this Schedule.

**3.2** The full daily rate in Table 3 of this Schedule will be allowed if the advocate is in court for more than 3½ hours; half that rate will be allowed if he is in court for 3½ hours or less.

**Table 4. Preliminary hearings**

	Amount payable for hearing £
Queen's Counsel	140
Leading junior	100
Led junior—5 years' post qualification or more experience	70
Led junior—less than 5 years' post qualification experience	50
Junior alone	80
Noter	35

**4.1** The rates in Table 4 of this Schedule will only apply where the hearing lasts two hours or less; otherwise the daily or half daily rate payable under Table 3 of this Schedule and paragraphs 3.1 and 3.2.

## EXPLANATORY NOTE

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

This Order makes provision for the funding and remuneration of services provided under Part I of the Access to Justice Act 1999 as part of the Criminal Defence Service.

It provides that, subject to some exceptions, the Lord Chancellor (rather than the Legal Services Commission) shall fund representation in criminal proceedings in the House of Lords, Court of Appeal and Crown Court until 4th April 2005 as part of the Criminal Defence Service.

It makes provision, in Schedules 1 to 4, for the remuneration of those supplying those services. Those provisions draw to a large extent on the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989, which related to criminal representation provided under Part V of the Legal Aid Act 1988, and which are being superseded by this Order.

Schedule 1 deals with the manner in which costs are to be determined and paid. There are specific provisions dealing with interim payments and staged payments in long trials. There are also provisions dealing with the redetermination of costs by an appropriate officer, appeals from the appropriate officer to a Costs Judge, and appeals from the Costs Judge to the High Court.

Schedules 2 and 3 deal respectively with solicitors' fees, and counsel's fees to which the fees in Schedule 4 do not apply. Schedule 4 deals with fees for advocacy in the Crown Court.

The Order provides that the Commission may fund services by making payments in respect of the provision of those services only where representation is provided in proceedings for contempt, and special provision is made for remuneration in respect of proceedings for contempt.

Where services are provided under the Criminal Defence Service under contract remuneration is limited to the rates set out in Part E of the Specification to the Legal Services Commission's General Criminal Contract. Special maximum rates are provided for services in very high cost cases, funded by the Lord Chancellor, or provided under individual contracts.









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