

## SCHEDULE 2

Article 6(1)

### Litigators' Fees in the Crown Court

## PART 1

### Application and Determination of Litigators' Fees

#### **Application**

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

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

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

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

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

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

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

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

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

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

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

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

- (a) senior solicitor;

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- (b) solicitor, legal executive or fee earner of equivalent experience; or
  - (c) trainee or fee earner of equivalent experience.
- (6) In relation to hearings specified in sub-paragraph (7), the appropriate officer must only allow work of the class specified in sub-paragraph (1)(b) in any of the following circumstances—
- (a) if the assisted person is charged with a class 1 offence or a class 2 offence;
  - (b) if the proceedings have been instituted or taken over by the Serious Fraud Office, or are before the Crown Court by reason of a notice of transfer given under section 4 of the Criminal Justice Act 1987<sup>(1)</sup> (notices of transfer and designated authorities);
  - (c) if the assisted person was a child or a young person within the meaning of section 107 of the Children and Young Persons Act 1933<sup>(2)</sup> (interpretation) at the time when the Crown Court acquired jurisdiction in the case (by committal, notice of transfer or otherwise);
  - (d) if the assisted person was unable to understand the proceedings or give adequate instructions to his advocate because of his inadequate knowledge of English, mental illness or other mental or physical disability;
  - (e) if the assisted person was likely if convicted to receive a custodial sentence; or
  - (f) if the case has been certified as requiring attendance for the whole or any part of the hearing in accordance with sub-paragraphs (10) and (11).
- (7) The following hearings are specified for the purpose of sub-paragraph (6)—
- (a) trials;
  - (b) hearings of cases listed for pleas of guilty following a plea and case management hearing;
  - (c) sentencing hearings following committals for sentence; and
  - (d) the hearing of appeals against conviction or sentence.
- (8) The circumstances referred to in sub-paragraph (6)(e) only justify the allowing of attendance on—
- (a) a day of a trial on which it was reasonably expected that the assisted person would be sentenced if convicted; and
  - (b) if different, the day on which the assisted person was in fact sentenced
- and where a doubt arises whether attendance should be allowed by reason of that circumstance, the doubt must be resolved in the litigator's favour.
- (9) The circumstances referred to in sub-paragraph (6)(f) only justify the allowing of attendance to the extent specified in the representation order.
- (10) A judge of the Crown Court may certify that attendance on an advocate is required for the whole or any part of a hearing and, in deciding whether a case should be so certified, the judge must have regard to the following factors, in addition to any other factors which he considers to be relevant—
- (a) on which days (if any) the attendance of a significant number of defence witnesses is likely to be required;
  - (b) where the hearing is a trial, the amount of documentary evidence likely to be adduced on behalf of the defence;
  - (c) the likelihood of the assisted person disrupting the proceedings if the advocate were to appear alone;
  - (d) whether the advocate represents more than one assisted person;

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(1) 1987 c.38 Section 4 was inserted by the Crime and Disorder Act 1998 (c.37), section 119, Schedule 8 paragraph 65.

(2) 1933 c.12.

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- (e) on which days (if any) the advocate is likely to require notes of the proceedings to be taken for the proper conduct of the defence.
- (11) An application for a certificate under sub-paragraph (10) may be made, orally or in writing—
- (a) at or at any time after the plea and case management hearing; or
- (b) where there is no plea and case management hearing, at or at any time after the listing of the first hearing in the case;
- (12) This paragraph applies to work in respect of which standard fees are payable under Part 2 only to the extent that that Part specifically so provides.

### Prescribed fee rates

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

**Table 1**

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

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<i>Class of work</i>	<i>Grade of fee earner</i>	<i>Rate</i>	<i>Variations</i>
	Trainee or fee earner of equivalent experience	£12.50 per hour	
Writing routine letters and dealing with 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

#### **Attendance at court where an advocate is instructed**

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART 2

### Standard Fees in the Crown Court

#### Application

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

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

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

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

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

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

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

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

(6) For the purposes of this Part—

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

have the meanings given by paragraph 10(5).

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### **Allowance of standard fees**

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

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

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

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

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

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

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

### **Fees for preparation**

**9.**—(1) Where a litigator—

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

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

(2) If the fees so determined are—

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

### **Standard fees**

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

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

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

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

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

(5) In this Part—

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

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

**Table 2**

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

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<i>Type of proceedings</i>	<i>Area</i>	<i>Lower standard fee</i>	<i>Lower fee limit</i>	<i>fee</i>	<i>Principal standard fee</i>	<i>Upper fee limit</i>
Travelling		£18.50	per	hour		

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

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

- (a) where the client was present at court, 15 minutes after the hearing ended on that day; or
- (b) where the client was not present at court, when the hearing ended on that day

and save in exceptional circumstances, is not payable for the luncheon adjournment.

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

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

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

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

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

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

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

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

(13) Where a fee earner listens to a recording of an interview conducted under a code issued by the Secretary of State under section 60 of the Police and Criminal Evidence Act 1984<sup>(3)</sup> (tape recording of interviews), the standard preparation fee payable after application of any increase required by sub-paragraph (10) or (11) must be further increased by £10.90 for every 10 minutes of the total running time of all recordings or parts thereof listened to and by the same amount for any remaining period.

(3) 1984 c.60.



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

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

### **Disbursements**

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

### **Redetermination of standard fees**

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

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

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

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

### **Review of standard fees**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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