

SCHEDULE 2

Litigators' Graduated Fee Scheme

PART 4

Defendant Uplifts, Retrials and Transfers

Defendant uplifts

12.—(1) The defendant uplift payable to a litigator is calculated in accordance with the table following this paragraph.

(2) Only one defendant uplift is payable in each case.

(3) In the table following this paragraph, the total fee means—

- (a) in a cracked trial or guilty plea where the number of pages of prosecution evidence does not exceed the PPE Cut-off specified in the table following paragraph 5(1), the basic fee specified in the table following paragraph 6(2);
- (b) in a trial where the number of pages of prosecution evidence does not exceed the PPE Cut-off specified in the table following paragraph 5(2), the basic fee specified in the table following paragraph 7(2) plus the length of trial proxy specified in the table following paragraph 7(3);
- (c) in a cracked trial or guilty plea where the number of pages of prosecution evidence exceeds the PPE Cut-off specified in the table following paragraph 5(1), the final fee, as calculated in accordance with paragraph 8(2); and
- (d) in a trial where the number of pages of prosecution evidence exceeds the PPE Cut-off specified in the table following paragraph 5(2), the final fee, as calculated in accordance with paragraph 9(2);

^{F1}(e)

(4) ^{F2}...

Defendant uplifts

<i>Total number of defendants represented by litigator</i>	<i>Percentage uplift to total fee</i>
2-4	20%
5+	30%

F1 Sch. 2 para. 12(3)(e) omitted (30.9.2022) by [The Criminal Legal Aid \(Remuneration\) \(Amendment\) Regulations 2022 \(S.I. 2022/848\)](#), reg. 1(1), **Sch. 2 para. 8** (with reg. 3) (as amended (31.10.2022) by [The Criminal Legal Aid \(Remuneration\) \(Amendment\) \(Amendment\) \(No. 2\) Regulations 2022 \(S.I. 2022/1035\)](#), regs. 1(1), **2(1)**) (which affecting provision is amended so that the increases to certain fees apply to a wider range of cases (23.12.2022) by [The Criminal Legal Aid \(Remuneration\) \(Amendment\) \(No. 2\) Regulations 2022 \(S.I. 2022/1267\)](#), regs. 1(1), 3, **Sch.**)

F2 Sch. 2 para. 12(4) omitted (30.9.2022) by [The Criminal Legal Aid \(Remuneration\) \(Amendment\) Regulations 2022 \(S.I. 2022/848\)](#), reg. 1(1), **Sch. 2 para. 9** (with reg. 3) (as amended (31.10.2022) by [The Criminal Legal Aid \(Remuneration\) \(Amendment\) \(Amendment\) \(No. 2\) Regulations 2022 \(S.I. 2022/1035\)](#), regs. 1(1), **2(1)**) (which affecting provision is amended so that the increases to certain fees

apply to a wider range of cases (23.12.2022) by [The Criminal Legal Aid \(Remuneration\) \(Amendment\) \(No. 2\) Regulations 2022 \(S.I. 2022/1267\)](#), regs. 1(1), 3, [Sch.](#))

Retrials and Transfers

13.—(1) Where following a trial an order is made for a retrial and the same litigator acts for the assisted person at both trials the fee payable to that litigator is—

- (a) in respect of the first trial, a fee calculated in accordance with the provisions of this Schedule; and
- (b) in respect of the retrial, 25% of the fee, as appropriate to the circumstances of the retrial, in accordance with the provisions of this Schedule.

(2) Where—

- (a) a case is transferred to a new litigator; or
- (b) a retrial is ordered and a new litigator acts for the assisted person at the retrial,

the fee payable to the original litigator and the new litigator is a percentage of the total fee, calculated in accordance with the table following this paragraph, as appropriate to the circumstances and timing of the retrial, transfer or withdrawal of the section 16 determination.

(3) In sub-paragraph (2), “transfer” includes the making of a section 16 determination in favour of an individual who, immediately before the making of the section 16 determination—

- (a) had represented themselves; or
- (b) had been represented (otherwise than pursuant to a section 16 determination) by the litigator named in the order,

and for the purposes of that sub-paragraph the litigator is to be treated as a new litigator.

(4) For the purposes of sub-paragraph (2), a case is not transferred to a new litigator where—

- (a) a firm of solicitors is named as litigator in the representation order and the solicitor or other appropriately qualified person with responsibility for the case moves to another firm;
- (b) a firm of solicitors is named as litigator in the representation order and the firm changes (whether by merger or acquisition or in some other way), but so that the new firm remains closely related to the firm named in the order; or
- (c) a solicitor or other appropriately qualified person is named as litigator in the representation order and responsibility for the case is transferred to another solicitor or appropriately qualified person in the same firm or a closely related firm.

(5) For the purposes of sub-paragraph (2), where a case which has been transferred to a new litigator is transferred again, that new litigator—

- (a) must be treated as the original litigator, where the transfer takes place at any time before the trial or any retrial;
- (b) must be treated as a new litigator, where the transfer takes place during the trial or any retrial; and
- (c) must not receive any fee, where the transfer takes place after the trial or any retrial but before the sentencing hearing.

(6) Where a section 16 determination is withdrawn before the case ends, a litigator must receive a percentage of the total fee, in accordance with the table following this paragraph, as appropriate to the circumstances and timing of a transfer.

(7) In the table following this paragraph, the total fee means—

- [^{F3}(a) in a case to which Part 1A applies, the fixed fee determined in accordance with paragraph 3AA;]
- (b) in a trial [^{F4}in a case to which Part 2 applies,] where the number of pages of prosecution evidence is less than or equal to the PPE Cut-off specified in the table following [^{F5}paragraph 5], the basic fee specified in the table following paragraph 7(2) plus the length of trial proxy specified in the table following paragraph 7(3);
- (c) in a cracked trial or guilty plea in a case to which Part 2 applies, ^{F6}... the final fee as calculated in accordance with paragraph 8(2);
- (d) in a trial [^{F7}in a case to which Part 2 applies,] where the number of pages of prosecution evidence exceeds the PPE Cut-off specified in the table following [^{F5}paragraph 5], the final fee, as calculated in accordance with paragraph 9(2);

^{F8}(e)

(8) Where a case becomes a Very High Cost Case after a section 16 determination has been made and is transferred from the litigator named on the representation order to a new litigator—

- (a) the original litigator must be remunerated in accordance with the individual Very High Cost Case contract entered into by that litigator; and
- (b) the new litigator must be remunerated in accordance with the individual Very High Cost Case contract entered into by that litigator.

(9) Where a case becomes a Very High Cost Case after a section 16 determination has been made and the section 16 determination is withdrawn before the end of the case, the litigator must be remunerated in accordance with the table following this paragraph as appropriate to the circumstances and timing of the withdrawal.

^{F9}(10)

^{F10}(11)

(12) A litigator may not be treated both as an original litigator and as a new litigator in a case.

Retrials and Transfers

<i>Scenario</i>	<i>Percentage of the total fee</i>	<i>Case type to be used to determine total fee</i>	<i>Claim period [^{F11}(where Part 2 applies)]</i>
Cracked trial before retrial, where there is no change of litigator	25%	Cracked trial	
Retrial where there is no change of litigator	25%	Trial	
[^{F12} Transfer at or before the first hearing at which the assisted person enters a plea] (original litigator)	25%	Cracked trial	
[^{F12} Transfer at or before the first hearing at which the assisted person enters a plea] – guilty plea (new litigator)	100%	Guilty plea	
[^{F12} Transfer at or before the first hearing at which the assisted person	100%	Cracked trial	

Changes to legislation: There are currently no known outstanding effects for the *The Criminal Legal Aid (Remuneration) Regulations 2013, PART 4.* (See end of Document for details)

enters a plea] – cracked trial (new litigator)			
[^{F12} Transfer at or before the first hearing at which the assisted person enters a plea] – trial (new litigator)	100%	Trial	
Before trial transfer (original litigator)	75%	Cracked trial	
Before trial transfer – cracked trial (new litigator)	100%	Cracked trial	
Before trial transfer – trial (new litigator)	100%	Trial	
During trial transfer (original litigator)	100%	Trial	Claim up to and including the day before the transfer
During trial transfer (new litigator)	50%	Trial	Claim for the full trial length
Transfer after trial or guilty plea and before sentencing hearing (original litigator)	100%	Trial, Cracked trial or appropriate	Claim for the full trial length, excluding the length of the plea as sentencing hearing
Transfer after trial or guilty plea and before sentencing hearing (new litigator)	10%	Trial	Claim for one day or for the length of the sentencing hearing if longer than one day
Transfer before retrial (original litigator)	25%	Cracked trial	
Transfer before cracked retrial (new litigator)	50%	Cracked trial	
Transfer before retrial (new litigator)	50%	Trial	Claim for the full retrial length
Transfer during retrial (original litigator)	25%	Trial	Claim up to and including the day before the transfer
Transfer during retrial (new litigator)	50%	Trial	Claim for the full retrial length
Transfer after retrial or cracked retrial and before sentencing hearing (original litigator)	25%	Trial or Cracked trial as appropriate	Claim for the full retrial length, excluding the length of the sentencing hearing
Transfer after retrial or cracked retrial and before sentencing hearing (new litigator)	10%	Trial	Claim for one day or for the length of the sentencing hearing if longer than one day.

F3 Sch. 2 para. 13(7)(a) substituted (1.4.2016) by [The Criminal Legal Aid \(Remuneration etc.\) \(Amendment\) Regulations 2015 \(S.I. 2015/1369\)](#), regs. 1(2)(b), **6(7)(n)(i)** (with reg. 2(2)) (as amended by S.I. 2015/2049, **reg. 2**)

F4 Words in Sch. 2 para. 13(7)(b) inserted (1.4.2016) by [The Criminal Legal Aid \(Remuneration etc.\) \(Amendment\) Regulations 2015 \(S.I. 2015/1369\)](#), regs. 1(2)(b), **6(7)(n)(iii)** (with reg. 2(2)) (as amended by S.I. 2015/2049, **reg. 2**)

- F5** Words in Sch. 2 para. 13(7)(b)(d) substituted (1.4.2016) by The Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015 (S.I. 2015/1369), regs. 1(2)(b), **6(7)(g)(iv)** (with reg. 2(2)) (as amended by S.I. 2015/2049, **reg. 2**)
- F6** Words in Sch. 2 para. 13(7)(c) omitted (1.4.2016) by virtue of The Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015 (S.I. 2015/1369), regs. 1(2)(b), **6(7)(n)(ii)** (with reg. 2(2)) (as amended by S.I. 2015/2049, **reg. 2**)
- F7** Words in Sch. 2 para. 13(7)(d) inserted (1.4.2016) by The Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015 (S.I. 2015/1369), regs. 1(2)(b), **6(7)(n)(iii)** (with reg. 2(2)) (as amended by S.I. 2015/2049, **reg. 2**)
- F8** Sch. 2 para. 13(7)(e) omitted (30.9.2022) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (S.I. 2022/848), reg. 1(1), **Sch. 2 para. 10** (with reg. 3) (as amended (31.10.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1035), regs. 1(1), **2(1)**) (which affecting provision is amended so that the increases to certain fees apply to a wider range of cases (23.12.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1267), regs. 1(1), 3, **Sch.**)
- F9** Sch. 2 para. 13(10) omitted (30.9.2022) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (S.I. 2022/848), reg. 1(1), **Sch. 2 para. 11** (with reg. 3) (as amended (31.10.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1035), regs. 1(1), **2(1)**) (which affecting provision is amended so that the increases to certain fees apply to a wider range of cases (23.12.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1267), regs. 1(1), 3, **Sch.**)
- F10** Sch. 2 para. 13(11) omitted (30.9.2022) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (S.I. 2022/848), reg. 1(1), **Sch. 2 para. 12** (with reg. 3) (as amended (31.10.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1035), regs. 1(1), **2(1)**) (which affecting provision is amended so that the increases to certain fees apply to a wider range of cases (23.12.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1267), regs. 1(1), 3, **Sch.**)
- F11** Words in Sch. 2 para. 13(12) inserted (1.4.2016) by The Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015 (S.I. 2015/1369), regs. 1(2)(b), **6(7)(n)(iv)** (with reg. 2(2)) (as amended by S.I. 2015/2049, **reg. 2**)
- F12** Words in Sch. 2 para. 13 substituted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), **5(12)(b)**

Changes to legislation:

There are currently no known outstanding effects for the The Criminal Legal Aid (Remuneration) Regulations 2013, PART 4.