



CRIMINAL BAR ASSOCIATION GUIDANCE NOTES

The Revised Advocates Graduated Fee Scheme 2007

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A. INTRODUCTION

The Criminal Defence Service (Funding) Order 2007, SI 2007 No 1174 comes into force on 30th April 2007 and applies to proceedings in the Crown Court or Court of Appeal where the Representation Order was granted on or after that date: Article 4(1). The new regulations significantly amend the legal aid regime for advocates in the Crown Court. The basic structure of the graduated fees scheme (GFS) for Crown Court advocacy was introduced in January 1997, applying initially to trials lasting between 1 and 10 days and to some guilty pleas. Over subsequent years, the scheme was extended to longer trials: initially up to 25 days and in 2005 up to 40 days. Those extensions were coupled with provisions to bring within graduated payments all guilty pleas, irrespective of size and complexity, trials which “cracked” following an initial plea of not guilty, and also re-trials of graduated fee cases. Graduated fees operate on a ‘swings and roundabouts’ basis, with fixed and equal payments made for cases of the same broad type, length and volume of prosecution evidence, and irrespective of the amount of preparation required from the advocate.

The 2007 Funding Order alters the gearing of, and in some cases removes, the proxies which have hitherto provided the graduation to fees within the scheme. The most dramatic change is the abolition of the length of trial uplift which was previously the key proxy for weight and complexity. Page count and witness proxies are increased in order to balance this alteration, the overall aim being to avoid any perverse incentive within the scheme to prolong trials. Secondly, the new calculations roll up within the fixed case fees certain “bolt on” payments previously available for individual items of work and pre-trial hearings. These include most conferences and views, the PCMH and up to four “standard appearances”. The compensation for the removal of such additional payments is an increase in trial Basic Fees, based on the average number of such payments across the whole scheme. The overall effect of this combination of changes in structure is considerably to flatten the payment scheme, and bring it much closer to a fixed fee mechanism, calculated primarily by reference to case type and the status of the advocate. Of some significance is the enhancement of fees payable for

Plea and Case Management Hearings, a strategy designed to encourage early preparation and the possibility of more early guilty pleas. Bringing cracked trials within the scheme in 2005 has created a number of anomalies in payment. These largely arise from using the fixing of the trial date as a “front anchor point” to calculate the division of the pre-trial stage into payment stages, rather than the date on which the case was transferred or sent for trial, or when the prosecution case was served. These are matters which will continue to be negotiated in the ongoing review of the operation of the scheme.

Parallel to extensions of the Graduated Fee Scheme prior to 2007 has been the development from 2004 of a contract based scheme for the remuneration of very high cost cases (VHCC), administered presently by the Complex Cases Unit of the Legal Services Commission. Initially, the scheme was designed to capture those cases which were anticipated would last longer than 25 days at trial. In 2005, the extension of the GFS to trials anticipated to last up to 40 days was matched by a revision of the VHCC scheme to focus on those complex cases falling outside the extended GFS. However, the ‘fit’ between the two schemes has never been a perfect one. Prior to 30th April 2007, application of the GFS scheme of payment excluded trials in excess of 40 days in length, unless a shorter trial estimate had been provided and accepted by the Court at the Plea and Directions Hearing: Paragraph 2(2) of Schedule 4 of the Criminal Defence Service (Funding) Order 2001. By way of contrast, the VHCC scheme depends upon a system of solicitor notification, and election to contract exercised by the Commission. Necessarily, some cases continued to fall between the two regimes and were taxed on an *ex post facto* basis. The effect of the 2007 Funding Order is to apply the revised GFS to all cases which are not made subject to a VHCC contract following notification and election: Article 5(1) and (8). Estimates of trial length are relevant to the decision whether a case should be notified to the Commission, and to the Commission’s decision whether to require a VHCC contract to be entered into. However, the Regulations makes clear at Article 2 that:

[A]“ “ Very High Cost Case” is a Crown Court case where if the case proceeds to trial, that trial would be likely to last for 41 days or longer, and any question as to whether the case fulfils this criterion must be determined by the Commission.”

The combined effect of these provisions is no doubt intended to provide the ‘fit’ which the Commission has long desired, but failed to achieve by means of previous amendments to the Regulations. However, the decision to contract will remain a matter of unfettered discretion. Where the Commission concludes that the case is a “Very High Cost Case”, because it accepts the time estimate provided, nevertheless it may not issue a contract. Unlike the replaced regulations, no time line is provided for the trial estimate and the accepted estimate may be a late or revised one. In these circumstances, it is intended that the only payment available will be the GFS fees applicable under Schedule 1.

Since their introduction in January 1997, the rates in 1-10 day GFS cases have remained static and their value over a decade has been considerably eroded by inflation, and by increased practice expenses. The effect of this failure to increase these fees over many years had a particular and serious impact on more junior members of the Bar. Negotiations between the Bar Council and the Department for Constitutional Affairs, during the evolution of the 2007 Regulations, addressed this

issue as a priority. The resulting rates payable in such cases from 30th April represent a return to the 1997 rates, upgraded to reflect inflation since that time. However, other rates within the scheme have not been improved or have, in some cases, been reduced to permit a top to bottom re-alignment of value within the same envelope of spending. That envelope has been calculated by reference to existing case levels and types and based upon their payment under the existing GFS scheme. The abolition of *ex post facto* taxation provides an additional saving, coupled with the likely savings which are to be maintained and extended from the operation of the VHCC regime.

B. MAIN CHANGES

The major changes introduced by the Funding Order include:

- (a) the abolition of *ex post facto* taxation for advocates in all Crown Court cases;
- (b) new Graduated Fees for trials, with length of trial removed as a proxy;
- (c) the rolling up within the graduated fee of “bolt on “ payments for the first three conferences and views, all tapes and video material, and up to four “standard appearances” by the advocate;
- (d) introduction of the concepts of “trial advocate” and “substitute advocate” to reflect “case ownership” principles proposed by Lord Carter’s Review;
- (e) new fees payable in respect of Plea and Case Management Hearings, but limited to one per case and included within the Basic Fee;
- (f) new fixed fees for appeals, committals for sentence and breach hearings (subject to ‘escape’ from the scheme in exercise of a discretion by the Commission); and
- (g) amendment to the categorisation of certain cases for the purposes of calculating the Graduated Fee payable- in particular the creation of two new Classes of Offence: J (serious sexual offences) and K (offences of dishonesty if the value exceeds £100,000).

C. APPLICATION

Cases in the Crown Court fall within the new scheme where:-

1	<p>The case is on indictment, or involves proceedings in the Crown Court for:</p> <ul style="list-style-type: none"> (a) an appeal against conviction or sentence; (b) a sentencing hearing following a committal for sentence; (c) an alleged breach of a Crown Court order 	Sch 1, para 2(1)
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2	The Representation Order was granted on or after 30 th April 2007	Article 4(1)
3	In trials in excess of 40 days, the case has not been contracted under the Very High Cost Case scheme	Article 7

D. RE-TRIALS AND DISMISSED AND DISCONTINUED CASES

Where a trial is followed by an order for a new trial, a graduated fee will be paid for both trial and re-trial, subject to a discount in the fee for the new trial where the same advocate appears. The level of discount depends upon the length of time which elapses between the two trials, and will now also apply if the second trial ends in a cracked trial or a guilty plea. The detailed provisions are contained in paragraph 2(3) of Schedule 1 as follows:

“(3) Sub-paragraph (4) applies where, following a trial, an order is made for a new trial and the same trial advocate appears at both trials where—

- (i) the defendant is an assisted person at both trials; or
- (ii) the defendant is an assisted person at the new trial only; or
- (iii) the new trial is a cracked trial or guilty plea.

(4) In respect of a new trial, or if he so elects, in respect of the first trial, the trial advocate will receive a graduated fee calculated in accordance with Part 2 or Part 3 of this Schedule, as appropriate, except that the fee will be reduced by—

- (a) 30 percent, where the new trial started within one month of the conclusion of the first trial;
- (b) 20 percent, where the new trial did not start within one month of the conclusion of the first trial;
- (c) 40 percent where the new trial becomes a cracked trial or guilty plea within one month of the conclusion of the first trial; or
- (d) 25 percent where the new trial becomes a cracked trial or guilty plea more than one month after the conclusion of the first trial.

(5) Where a different trial advocate appears for the assisted person at each trial then, in respect of each trial, the trial advocate will receive a graduated fee calculated in accordance with Part 2 or Part 3 of this Schedule, as appropriate.”

Paragraph 2 of Schedule 1 also addresses the issue of cases sent or transferred to the Crown Court which are later discontinued by notice or dismissed pursuant to the relevant provisions of the Criminal Justice Acts 1987 and 1991, or the Crime and Disorder Act 1998. In essence, these cases are brought within the AGFS by the application of the rates applicable in guilty pleas, but discounted by a fixed percentage

in accordance with paragraph 18, or by payment of fixed daily attendance rates. The complex provisions of paragraph 18 are set out in full below:

“(1) This paragraph applies to proceedings which are—

- (a) sent for trial to the Crown Court under section 51 of the Crime and Disorder Act 1998 (no committal proceedings for indictable-only offences); or
- (b) transferred to the Crown Court under—
 - (i) section 4 of the Criminal Justice Act 1987 (Transfer of serious fraud cases); or
 - (ii) section 53 of the Criminal Justice Act 1991 (Transfer of certain cases involving children).

(2) Where proceedings referred to in sub-paragraph (1) are discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985 at any time before the prosecution serves its evidence in accordance with the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005 the advocate must be paid 50 percent of the Basic fee (B) for a guilty plea, as specified in the Table following paragraph 7 as appropriate to the offence for which the assisted person is charged and the category of advocate.

(3) Where proceedings referred to in sub-paragraph (1) are discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985 at any time after the prosecution serves its evidence in accordance with the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005 the advocate must be paid a graduated fee calculated in accordance with paragraph 6, as appropriate for representing an assisted person in a guilty plea.

(4) Where, at the plea and case management hearing or any other hearing after the prosecution serves its evidence,—

- (a) the prosecution offers no evidence and the assisted person is discharged; or
- (b) the assisted person is charged on an indictment which includes no offence that is triable only on indictment and the case is remitted to the magistrates’ court in accordance with paragraph 10(3)(a) of Schedule 3 to the Crime and Disorder Act 1998,

the advocate instructed in the proceedings must be paid a graduated fee calculated in accordance with paragraph 6, as appropriate for representing an assisted person in a guilty plea.

(5) Where an application for dismissal is made under paragraph (2) of Schedule 3 to the Crime and Disorder Act 1998, section 6 of the Criminal Justice Act 1987 or paragraph 5 of Schedule 6 to the Criminal Justice Act 1991, the advocate must be remunerated for attendance at the hearing of the application for dismissal—

- (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 18 as appropriate to the category of advocate; or

(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 that Table as appropriate to the category of advocate,

provided that a fee is not payable elsewhere under this Schedule in respect of any day of the hearing.

(6) Where an application for dismissal is made under paragraph (2) of Schedule 3 to the Crime and Disorder Act 1998, section 6 of the Criminal Justice Act 1987 or paragraph 5 of Schedule 6 to the Criminal Justice Act 1991, and—

(a) the charge, or charges, are dismissed and the assisted person is discharged; or

(b) the charge, or charges, of an offence triable only on indictment are dismissed and the case is remitted to the magistrates' court in accordance with paragraph 10(3)(a) of Schedule 3 to the Crime and Disorder Act 1998,

in respect of the first day of the hearing of the application to dismiss, the advocate instructed in the proceedings must be paid a graduated fee calculated in accordance with paragraph 6, as appropriate for representing an assisted person in a guilty plea.

(7) Where an advocate represents more than one assisted person in proceedings referred to in sub-paragraph (1), the advocate must be paid a fixed fee of 20 percent of —

(a) the fee specified in sub-paragraph (2) where that sub-paragraph applies; or

(b) the Basic fee (B) specified in the Table following paragraph 7 where sub-paragraph (3), (4) or (5) applies, as appropriate for the circumstances set out in the relevant sub-paragraph,

in respect of each additional assisted person he represents.”

Some examples may be helpful as an aid to interpreting the effect of these regulations:

(1) A two-day dismissal application which succeeds will result in payment of a guilty plea graduated fee for the main hearing on the first day, plus an additional full or half day attendance fee for the second: paragraphs 6 and 18(5);

(2) A two-day dismissal application which is unsuccessful, and is followed by a Plea and Case Management Hearing (PCMH) on the second day at which the accused plead not guilty, will result in a full or half day appearance fee for each day, plus a PCMH fee for the second day: paragraphs 9 and 18(5);

(3) Where in the same case the defendant pleads guilty at the PCMH, the PCMH will be the “main hearing” and accordingly a guilty plea graduated fee will be payable for day two in addition to the appearance fee for day one: paragraphs 6 and 18(5);

(4) Where in the same case the PCMH is adjourned to a future date, a full or half day attendance rate will apply to both days, and the fee payable for the PCMH hearing will be added in the event of a later not guilty plea, or a guilty plea graduated fee will

be added in the event of a later guilty plea: paragraphs 6 and 18(5) or 9 and 18(5) respectively.

E. DEFINITIONS

It is important to note the use of new terminology, in particular, that distinguishing the advocate originally instructed from a replacement advocate, together with the re-definition of “appropriate officer” which has the effect of placing in the hands of the Legal Services Commission (LSC) important powers and discretions formerly exercised by the Courts Service staff.

“**Advocate**” means a barrister, a solicitor advocate or a solicitor who is exercising their automatic rights of audience in the Crown Court: Article 2

“**Appropriate Officer**” means

(a) in the case of proceedings in the civil division of the Court of Appeal, the head of the civil appeals office;

(b) in the case of proceedings in the criminal division of the Court of Appeal, the registrar;

(c) in the case of proceedings in the Crown Court, the Commission;

(d) in respect of advice and 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 where, on the advice of any representative instructed, notice of appeal is given, or application for leave to appeal made, whether or not such an appeal is later abandoned, the registrar;

(e) in respect of advice and assistance as to an appeal to the Courts-Martial Appeal Court, the registrar;

(f) in any other case, the Commission,

and, in any case, includes an officer designated by the appropriate officer to act on his behalf for the purposes of this Order.

“**Instructed Advocate**” means

(a) where a representation order provides for a single advocate the first barrister or solicitor advocate instructed in the case, who has primary responsibility for the case; or

(b) where a representation order provides for more than one advocate, each of -

- (i) the leading instructed advocate; and
- (ii) the led instructed advocate

“**Leading instructed advocate**” means the first leading barrister or solicitor advocate instructed in the case, who has primary responsibility for those aspects of the case undertaken by a leading advocate.

“**Led instructed advocate**” means the first led barrister or solicitor advocate instructed in the case, who has primary responsibility for those aspects of the case undertaken by a led advocate

“**Litigator**” means the person named on the representation order as representing an assisted person, being a solicitor, firm of solicitors or other appropriately qualified person.

“**Representative**” means a litigator or an advocate, including, where appropriate, an instructed advocate

“**Senior solicitor**” means a solicitor who, in the judgement of the appropriate officer, has the skill, knowledge and experience to deal with the most difficult and complex cases, including a substantial period of experience of a particular field which is relevant to a significant aspect of the case.

“**Solicitor advocate**” means a solicitor who has obtained a higher courts advocacy qualification in accordance with regulations and rules of conduct of the Law Society.

“**Solicitor, legal executive or fee earner of equivalent experience**” means a solicitor, Fellow of the Institute of Legal Executives or equivalent senior fee earner who, in the judgement of the appropriate officer, has good knowledge and experience of the conduct of criminal cases.

“**Trainee solicitor or fee earner of equivalent experience**” means a trainee solicitor or other fee earner who is not a Fellow of the Institute of Legal Executives, who, in the judgement of the appropriate officer, carries out the routine work on a case

“**Very High Cost Case**” is a Crown Court case where if the case proceeds to trial, that trial would be likely to last for 41 days or longer, and any question as to whether the case fulfils this criterion must be determined by the Commission.

Schedule 1 to the 2007 Funding Order which provides the detail of fees payable, contains further definitions of which many are familiar from the 2001 Funding Order (as amended). These include matters such as “cracked trial”, “guilty plea”, “main hearing” and “Newton hearing”. To be read alongside those familiar concepts are the following new definitions contained in paragraph 1 of Schedule 1:

“**Standard Appearance**” means an appearance by the trial advocate or substitute advocate in any of the following hearings which do not form part of the main hearing—

- (a) a plea and case management hearing, except the first plea and case management hearing;
- (b) a pre-trial review;
- (c) the hearing of a case listed for plea which is adjourned for trial;
- (d) any hearing (except a trial, a plea and case management hearing, a pre-trial review or a hearing referred to in paragraph (2)(1)(b)) 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;
- (e) custody time limit applications;
- (f) bail and other applications (except where any such applications take place in the course of a hearing referred to in paragraph (2)(1)(b)); or
- (g) the hearing of the case listed for mention only, including applications relating to the date of the trial (except where an application takes place in the course of a hearing referred to in paragraph (2)(1)(b)),

provided that a fee is not payable elsewhere under this Schedule in respect of the hearing;

“**Substitute advocate**” means an advocate who is not an instructed advocate or the trial advocate but who undertakes work on the case.

“**Trial advocate**” means an advocate instructed in accordance with a representation order to represent the assisted person at the main hearing in any case, including a Queen's Counsel or a leading junior advocate so instructed after the hearing at which pleas are taken.

“**The number of pages of prosecution evidence**” are defined as:

- (a) witness statements;
- (b) documentary and pictorial exhibits;
- (c) records of interview with the assisted person; and
- (d) records of interview with other defendants,

which form part of the committal or served prosecution documents or which are included in any notice of additional evidence, but does not include any document provided on CD-ROM or by other means of electronic communication. The latter are covered by Schedule 1, paragraph 14 (special preparation).

Note that, in the case of proceedings on indictment in the Crown Court initiated otherwise than by committal for trial, the appropriate officer must determine the

number of pages of prosecution evidence in accordance with sub-paragraph (2) or as nearly in accordance with sub-paragraph (2) as possible as the nature of the case permits.

F. THE INSTRUCTED ADVOCATE

A key concept in the new regulations is that of the “instructed advocate” who may be either a solicitor advocate or a barrister. This is an attempt to encourage “case ownership” in order to ensure early and effective preparation of cases, and to reduce the number of late returns. The mechanism to ensure that one advocate takes responsibility for preparation and progression, throughout the life of a case, is the payment to that advocate of the case fee. No separate claim for fees due to any substitute advocate can be entertained by the LSC under the new Funding Order. Acceptance of instructions as the “instructed advocate” carries the implication that the advocate will be available to conduct the eventual trial and will ensure, within reason, that s/he is available for the PCMH and any other interim appearances. The instructed advocate is responsible for notifying the court if s/he withdraws from the case and of the identity of his/her replacement as instructed advocate (Schedule 1, paragraph 20(10)). S/he is also responsible for the payment of fees to the trial or substitute advocate from the graduated fees received (paragraph 21). S/he must submit the fee note promptly and in any event within three months of the conclusion of the case if s/he is to be paid and is to comply with the duties set out in the Fee Protocol (see below). The detailed provisions of these two paragraphs are set out in full below:

Identity of instructed advocate

20.—(1) Where an instructed advocate is appointed before the plea and case management hearing, he must notify the Court in writing as soon as he is appointed and, where appropriate, he must confirm whether he is the leading instructed advocate or the led instructed advocate.

(2) Where the representation order provides for a single advocate and no instructed advocate has been notified to the Court in accordance with sub-paragraph (1)—

(a) the barrister or solicitor advocate who attends the plea and case management hearing will be deemed to be the instructed advocate; and

(b) the Court will make a written record of this fact, and will attach that record to the representation order.

(3) Where the representation order provides for a single advocate and no barrister or solicitor advocate attends the plea and case management hearing—

(a) the barrister or solicitor advocate who attends the next hearing in the case will be deemed to be the instructed advocate; and

(b) the Court will make a written record of this fact, and will attach that record to the representation order.

(4) Where the representation order provides for more than one advocate, and no leading instructed advocate has been notified to the Court in accordance with sub-paragraph (1), the leading advocate who attends—

- (a) the plea and case management hearing; or
- (b) where no leading advocate attends the plea and case management hearing, the next hearing in the case attended by a leading advocate

will be deemed to be the leading instructed advocate, and the Court will make a written record of this fact and will attach that record to the representation order.

(5) Where the representation order provides for more than one advocate, and no led instructed advocate has been notified to the Court in accordance with sub-paragraph (1), the led advocate who attends—

- (a) the plea and case management hearing; or
- (b) where no led advocate attends the plea and case management hearing, the next hearing in the case attended by a led advocate

will be deemed to be the led instructed advocate, the Court will make a written record of this fact and will attach that record to the representation order.

(6) Where a representation order is amended after the plea and case management hearing to provide for more than one advocate—

- (a) the additional instructed advocate must notify the Court in writing of his appointment within 7 days of the date on which the representation order is amended; and
- (b) each instructed advocate must notify the Court whether he is the leading instructed advocate or the led instructed advocate.

(7) Where no additional instructed advocate has been notified to the Court in accordance with sub-paragraph (6)(a), the advocate who attends the next hearing in the case will be deemed to be an instructed advocate and the Court will record in writing whether he is the leading instructed advocate or the led instructed advocate, as appropriate to the circumstances of the case.

(8) The Court will attach—

- (a) any notice received under sub-paragraph (1) or sub-paragraph (6);
- (b) any record made by it under sub-paragraphs (2), (3), (4), (5) or (7)

to the representation order.

(9) An instructed advocate must remain as instructed advocate at all times, except where—

- (a) a date for trial is fixed at or before the plea and case management hearing and the instructed advocate is unable to conduct the trial due to his other pre-existing commitments;
- (b) he is dismissed by the assisted person or the litigator; or
- (c) he is required to withdraw because of his professional code of conduct.

(10) Where, in accordance with sub-paragraph (9), an instructed advocate withdraws, he must—

- (a) immediately notify the court of his withdrawal—
 - (i) in writing; or

- (ii) where the withdrawal takes place at a plea and case management hearing, orally; and
 - (b), within 7 days of the date of his withdrawal, notify the court in writing of the identity of a replacement instructed advocate, who must fulfil all the functions of an instructed advocate in accordance with the terms of this Order.
- (11) This paragraph does not apply to a claim for fees under paragraph 26, 27 or 28.

Payment of fees to instructed advocate

21.—(1) In accordance with article 23 (payment of fees to advocates) the appropriate officer must notify each instructed advocate of the total fees payable to him and authorise payment to him accordingly.

(2) Payment of the fees in accordance with sub-paragraph (1) must be made to each instructed advocate.

(3) Where the representation order provides for a single advocate, the instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who has undertaken work on the case.

(4) Where there are two instructed advocates for an assisted person (where the representation order provides for more than one advocate), payment must be made to each instructed advocate individually, and—

(a) the leading instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who have undertaken work on the case of a type for which a leading advocate is responsible; and

(b) the led instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who have undertaken work on the case of a type for which a led advocate is responsible.

(5) This paragraph does not apply to a claim for fees under paragraph 26, 27 or 28.

Listing Issues

It will be apparent that the “case ownership” principles enshrined in this new system can only work if changes in the payment structure are matched by a step change in listing culture, and tolerance of some delay which may arise in proceedings in order to allow for the diary commitments of instructed advocates. Lord Carter’s proposals strongly encourage this objective. He has acknowledged that existing listing practices will have to change, in order to achieve continuity of representation:

When courts are listing, consideration should be given to the possibility of increased waiting time for all those involved in the justice system or to cases being presented with inadequate preparation [Review of Legal Aid Procurement. Chapter 2, paragraph 170]

The “stakeholders” in the Carter Review process included the Courts Service and the Judiciary. All parties expressed support for the “case ownership” mechanisms which have now been fixed in regulation. Intensive discussions have taken place between the

Bar Council and all other interested parties to ensure that payment mechanisms and listing processes are both facing in the same direction. Acknowledgement of the need for significant change is reflected in amendments to the Criminal Procedure Rules which now make clear the importance of the PCMH taking place when the instructed advocate is able to attend and so far as possible that the trial is listed when the advocate is available..

The Bar Council, Criminal Bar Association and the Senior Judiciary will continue to monitor the situation and address issues which arise nationally, or are reflected in poor practice in particular local court centres.

Issues relating to Payment

There are considerable practical challenges which arise from the payment of the total fee to the instructed advocate, and the need to make cross-payments to substitute advocates. The position is particularly acute where the instructed advocate and substitute advocates are from different chambers, or indeed firms of solicitors. The Funding Order itself reflects the need to apply standard payments to the work undertaken by substitute advocates, and identifies fees for items of work such as conferences, PCMHs and standard appearances, even though some or all of these are included within the Basic Fee payable to the instructed advocate. In addition, the Bar Council has developed a Fees Protocol which identifies the individual payment from the overall fee which must be paid by the instructed advocate to any substitute advocate who undertakes work on the case. The Protocol (see section 00 below) is being supported by the Law Society following continuing negotiations with the Bar Council. In any event a standard letter of acceptance of instructions has been prepared which will incorporate the Protocol into the standard terms for the acceptance of work by barristers in all criminal cases. Importantly, the Protocol addresses a vexed issue of how the Basic Fee is divisible between instructed and substitute advocates in cases where more than the average number of standard appearances or conferences have resulted in a devaluation of the trial or main hearing fee applicable. In these circumstances, the trial advocate is protected by a maximum reduction in the fee entitlement, and a consequent proportional reduction in the fees to which substitute advocates are entitled. It is absolutely essential (a) that any Substitute Advocate sends his/her fee note immediately on completion of the relevant piece of work to the Instructed Advocate (b) that the Instructed Advocate submits his/her fee note to the Court immediately the case is concluded and in any event within 3 months (otherwise no payment at all will be made) and (c) that the Instructed Advocate apply as appropriate for any re-assessment or appeals.

Reducing Unnecessary Standard Appearances

Since the new case fees include a notional number of standard appearances and items of preparation, reducing “mentions” to a minimum and streamlining the pre-trial process is of vital importance. This is an issue which the Bar Council has discussed in some detail with the Judiciary and with a positive response. Again, the initiative is likely to be reflected in revisions to the Criminal Procedure Rules and Practice Directions, some of which have now been made, to ensure that any temptation to list

cases “for a mention”, rather than to pursue effective and timely case preparation by other means, is strongly discouraged.

The Practice Direction section on PCMHs now reads:

“ Active case management at the PCMH is essential to reduce the number of ineffective and cracked trials and delays during the trial to resolve legal issues. The effectiveness of a PCMH hearing in a contested case depends in large measure upon preparation by all concerned and upon the presence of the trial advocate or an advocate who is able to make decisions and give the court the assistance which the trial advocate could be expected to give. Resident Judges in setting the listing policy should ensure that list officers fix cases as far as possible to enable to trial advocate to conduct the PCMH and the trial “

The section relating to mentions now reads:

“ Additional pre-trial hearings should be held only if needed for some compelling reason. Such hearings – often described informally as “mentions”- are expensive and should be actively discouraged. Where necessary, the power to give, vary or revoke a direction without a hearing should be used. Rule 3.9(3) of the Criminal Procedure Rules enables the Court to require the parties’ case progression officers to inform the Crown Court progression officer that the case is ready for trial, that it will proceed as a trial on the date fixed and will take no more or less time than previously ordered”.

All advocates, whether substitute or instructed, will suffer financial disincentives unless unnecessary hearings are kept to an absolute minimum. Steps are being taken to ensure that a record of prior conferences and appearances will travel with the case papers so that a replacement advocate will know, before accepting the brief, degree to which the case fees have been depleted by earlier hearings.

G. CALCULATION OF THE ADVOCATES GRADUATED FEE

TRIALS

Under Part 2 of Schedule 1, calculation of the Advocates Graduated Fee from 30th April 2007 will now involve the following formula in trials which last between 1-40 days:

$$G = B + (d \times D) + (e \times E) + (w \times W), \text{ where:}$$

G is the amount of the graduated fee;

B is the basic fee specified in paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate;

d is the number of days or parts of a day on which the advocate attends at court by which the trial exceeds 2 days but does not exceed 40 days;

D is the fee payable in respect of daily attendance at court for the number of days by which the trial exceeds two days but does not exceed 40 days, as appropriate to the offence for which the assisted person is tried and the category of trial advocate;

e is the number of pages of prosecution evidence excluding the first 50, up to a maximum of 10,000;

E is the evidence uplift specified in paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate;

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

W is the witness uplift specified in paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate.

For these purposes the basic fee (B), the daily attendance fee (D), the evidence uplift (E) and the witness uplift (W) appropriate to any offence will be those specified in the Table following this paragraph in accordance with the Class within which that offence falls.

Table of Fees and Uplifts

<i>Class of Offence</i>	<i>Basic Fee (B)</i>	<i>Daily attendance fee (D)</i>	<i>Evidence uplift (E)</i>	<i>Witness uplift (W)</i>
QC				
A	£4,434	£1,321	£1.89	£7.55
B	£2,924	£991	£1.89	£7.55
C	£2,275	£943	£1.89	£7.55
D	£2,641	£943	£1.89	£7.55
E	£1,750	£708	£1.89	£7.55
F	£1,750	£708	£1.89	£7.55
G	£2,200	£943	£1.89	£7.55
H	£2,200	£943	£1.89	£7.55
I	£2,453	£943	£1.89	£7.55
J	£3,302	£1,132	£1.89	£7.55
K	£3,302	£1,132	£1.89	£7.55
Leading Junior				
A	£3,325	£991	£1.42	£5.66
B	£2,193	£743	£1.42	£5.66
C	£1,706	£708	£1.42	£5.66
D	£1,981	£708	£1.42	£5.66
E	£1,313	£531	£1.42	£5.66
F	£1,313	£531	£1.42	£5.66
G	£1,650	£708	£1.42	£5.66
H	£1,650	£708	£1.42	£5.66
I	£1,840	£708	£1.42	£5.66
J	£2,476	£849	£1.42	£5.66
K	£2,476	£849	£1.42	£5.66

Led Junior

A	£2,217	£660	£0.94	£3.77
B	£1,462	£495	£0.94	£3.77
C	£1,038	£472	£0.94	£3.77
D	£1,300	£472	£0.94	£3.77
E	£802	£354	£0.94	£3.77
F	£802	£354	£0.94	£3.77
G	£1,100	£472	£0.94	£3.77
H	£943	£472	£0.94	£3.77
I	£1,132	£472	£0.94	£3.77
J	£1,887	£566	£0.94	£3.77
K	£1,651	£566	£0.94	£3.77

Junior alone

A	£2,547	£778	£1.13	£5.66
B	£1,509	£542	£1.13	£5.66
C	£1,038	£472	£1.13	£5.66
D	£1,300	£472	£1.13	£5.66
E	£755	£377	£1.13	£5.66
F	£802	£377	£1.13	£5.66
G	£1,415	£472	£1.13	£5.66
H	£943	£472	£1.13	£5.66
I	£1,132	£472	£1.13	£5.66
J	£1,887	£613	£1.13	£5.66
K	£1,887	£613	£1.13	£5.66

TRIALS LASTING IN EXCESS OF 40 DAYS

The presumption of the Funding Order is that trials which are estimated to last in excess of 40 days will be subject to the VHCC contracting provisions of Article 7 and Schedule 3. However, paragraph 24 of Schedule 1 makes provision for those trials which have last longer than their original estimate or have, for some other reason, not been made subject to a contract by the Commission. The applicable daily rates increase after 50 days but then represent a flat daily payment for the remainder of the trial.

Daily rates payable where a trial lasts over 40 days

<i>Class of Offence</i>	<i>Daily rate payable for days 41 to 50</i>	<i>Daily rate payable for days 51 and over</i>
QC		
A	£635	£680
B	£447	£479
C	£447	£479
D	£447	£479
E	£447	£479
F	£447	£479
G	£447	£479
H	£447	£479
I	£447	£479
J	£447	£479
K	£447	£479

Leading Junior

A	£544	£583
B	£383	£411
C	£383	£411
D	£383	£411
E	£383	£411
F	£383	£411
G	£383	£411
H	£383	£411
I	£383	£411
J	£383	£411
K	£383	£411

Led Junior

A	£363	£389
B	£256	£274
C	£256	£274
D	£256	£274
E	£256	£274
F	£256	£274
G	£256	£274
H	£256	£274
I	£256	£274
J	£256	£274
K	£256	£274

Junior acting alone

A	£435	£467
B	£286	£306
C	£286	£306
D	£307	£329
E	£260	£279
F	£260	£279
G	£307	£329
H	£286	£306
I	£286	£306
J	£307	£329
K	£307	£329

CRACKED TRIALS AND GUILTY PLEAS- SCHEDULE 1, PART 3

Under paragraph 6, the amount of the graduated fee for a single trial advocate representing one assisted person in a guilty plea or cracked trial is

(a) the basic fee specified in the table following paragraph 7 as appropriate to the offence with which the assisted person is charged, the category of trial advocate and whether the case is a guilty plea or a cracked trial; and

(b) the evidence uplift, as appropriate to the number of pages of prosecution evidence, calculated in accordance with the table following paragraph 7.

Tables of fees – paragraph 7

7.—(1) Subject to sub-paragraphs (2) and (3), for the purposes of paragraph 6 the basic fee and evidence uplift appropriate to any offence are specified in the Tables following this paragraph in accordance with the class within which that offence falls.

(2) Where—

- (a) the trial of a case does not commence on the date first fixed; or
- (b) the case is not taken and disposed of from the first warned list in which it is entered,

the basic fee and evidence uplift for the offence are specified for the last third in the Table referred to in sub-paragraph (1) above.

(3) In this paragraph, and in the Tables following this paragraph, references to the first, second and last third are references to the first, second and last third—

- (a) where a case is first listed for trial on a fixed date, of the period of time beginning after the date on which the case is so listed and ending before the date so fixed,
- (b) where the case is first placed in a warned list, of the period of time beginning after the date on which the case is so placed and ending before the date of the start of that warned list, and

where the number of days in this period of time cannot be divided by three equally, any days remaining after such division must be added to the last third.

(4) Where a graduated fee is calculated in accordance with this Part for the purposes of paragraph 2(4), the fee must be calculated as if the trial had cracked in the final third.

Table A -Fees and uplifts in guilty pleas and trials which crack in the first third

Class of Offence	Basic fee	Evidence uplift per page of prosecution evidence (pages 1 to 1,000)	Evidence uplift per page of prosecution evidence (1,001 to 10,000)
QC			
A	£2,358.00	£2.53	£1.17
B	£1,509.00	£2.08	£1.04
C	£1,415.00	£1.48	£0.74
D	£1,509.00	£3.30	£1.65
E	£1,250.00	£1.06	£0.53
F	£1,250.00	£1.39	£0.70
G	£1,415.00	£1.84	£0.92
H	£1,415.00	£1.91	£0.95
I	£1,415.00	£1.86	£0.92
J	£1,981.00	£3.30	£1.65
K	£1,981.00	£1.84	£0.92
Leading Junior			
A	£1,768.50	£1.90	£0.88
B	£1,131.75	£1.56	£0.78
C	£1,061.25	£1.11	£0.56
D	£1,131.75	£2.48	£1.24

E	£937.50	£0.80	£0.40
F	£937.50	£1.04	£0.53
G	£1,061.25	£1.38	£0.69
H	£1,061.25	£1.43	£0.71
I	£1,061.25	£1.40	£0.69
J	£1,485.75	£2.48	£1.24
K	£1,485.75	£1.38	£0.69
Led Junior			
A	£1,179.00	£1.27	£0.59
B	£754.50	£1.04	£0.52
C	£707.50	£0.74	£0.37
D	£754.50	£1.65	£0.83
E	£625.00	£0.53	£0.27
F	£625.00	£0.70	£0.35
G	£707.50	£0.92	£0.46
H	£707.50	£0.96	£0.48
I	£707.50	£0.93	£0.46
J	£990.50	£1.65	£0.83
K	£990.50	£0.92	£0.46
Junior alone			
A	£1,312.00	£1.08	£0.54
B	£802.00	£0.94	£0.47
C	£519.00	£0.69	£0.35
D	£802.00	£1.37	£0.68
E	£472.00	£0.41	£0.20
F	£472.00	£0.63	£0.31
G	£755.00	£1.18	£0.59
H	£566.00	£0.63	£0.32
I	£660.00	£0.49	£0.25
J	£1,132.00	£1.37	£0.68
K	£1,132.00	£1.18	£0.59

Table B -Fees and uplifts in trials which crack after the first third

				A case that crack s in the secon d third	A case that crack s in the final third
Class of Offen ce	Basic Fee	Evide nce uplift per page of prose cutio n evide nce (page s 1 to 250)	Evide nce uplift per page of prose cutio n evide nce (page s 251 to 1,000)	Evide nce uplift per page of prose cutio n evide nce (page s 1,001 to 10,00 0)	Evide nce uplift per page of prose cutio n evide nce (page s 1,001 to 10,00 0)
QC					
A	£3,585.00	£4.70	£1.17	£1.55	£4.70
B	£2,264.00	£4.16	£1.04	£1.38	£4.16
C	£1,975.00	£2.95	£0.74	£0.97	£2.95
D	£2,264.00	£6.59	£1.65	£2.18	£6.59
E	£1,600.00	£2.11	£0.53	£0.70	£2.11
F	£1,600.00	£2.77	£0.70	£0.92	£2.77
G	£2,000.00	£3.68	£0.92	£1.22	£3.68
H	£2,000.00	£3.80	£0.95	£1.25	£3.80
I	£2,075.00	£3.72	£0.92	£1.23	£3.72
J	£3,019.00	£6.59	£1.65	£2.18	£6.59
K	£3,019.00	£3.68	£0.92	£1.22	£3.68
Leading Junior					
A	£2,688.75	£3.53	£0.88	£1.16	£3.53
B	£1,698.00	£3.12	£0.78	£1.04	£3.12
C	£1,481.25	£2.21	£0.56	£0.73	£2.21
D	£1,698.00	£4.94	£1.24	£1.64	£4.94
E	£1,200.00	£1.58	£0.40	£0.53	£1.58
F	£1,200.00	£2.08	£0.53	£0.69	£2.08
G	£1,500.00	£2.76	£0.69	£0.92	£2.76
H	£1,500.00	£2.85	£0.71	£0.94	£2.85
I	£1,556.25	£2.79	£0.69	£0.92	£2.79

J	£2,264.25	£4.94	£1.24	£1.64	£4.94
K	£2,264.25	£2.76	£0.69	£0.92	£2.76
Led Junior					
A	£1,792.50	£2.35	£0.59	£0.78	£2.35
B	£1,132.00	£2.08	£0.52	£0.69	£2.08
C	£987.50	£1.48	£0.37	£0.49	£1.48
D	£1,132.00	£3.30	£0.83	£1.09	£3.30
E	£800.00	£1.06	£0.27	£0.35	£1.06
F	£800.00	£1.39	£0.35	£0.46	£1.39
G	£1,000.00	£1.84	£0.46	£0.61	£1.84
H	£1,000.00	£1.90	£0.48	£0.63	£1.90
I	£1,037.50	£1.86	£0.46	£0.62	£1.86
J	£1,509.50	£3.30	£0.83	£1.09	£3.30
K	£1,509.50	£1.84	£0.46	£0.61	£1.84
Junior alone					
A	£1,981.00	£4.63	£2.15	£0.71	£2.15
B	£1,179.00	£4.03	£1.88	£0.62	£1.88
C	£755.00	£2.99	£1.39	£0.46	£1.39
D	£1,050.00	£5.87	£2.73	£0.90	£2.73
E	£660.00	£1.75	£0.82	£0.27	£0.82
F	£660.00	£2.70	£1.25	£0.42	£1.25
G	£1,132.00	£5.08	£2.37	£0.78	£2.37
H	£802.00	£2.71	£1.26	£0.42	£1.26
I	£943.00	£2.11	£0.98	£0.32	£0.98
J	£1,698.00	£5.87	£2.73	£0.90	£2.73
K	£1,604.00	£5.08	£2.37	£0.78	£2.37

FIXED FEES

Part 4 of Schedule 1 deals with fixed fees, which are additional to the Basic Fee, in the following terms:

8. Except as provided under this Part, all work undertaken by an advocate is included within the basic fee (**B**) specified in paragraph 5 as appropriate to—

- (a) the offence for which the assisted person is tried;
- (b) the category of advocate; and
- (c) whether the case is a cracked trial, guilty plea or trial.

Fees for plea and case management hearings and standard appearances

9.—(1) The fee payable in respect of—

(a) an appearance by the trial advocate or substitute advocate at the first plea and case management hearing or pre-trial review; and

(b) up to four standard appearances by the trial advocate or substitute advocate is included within the basic fee (**B**) specified in paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate.

(2) The fee payable in respect of an appearance by the trial advocate or substitute advocate at a plea and case management hearing or standard appearance not included in sub-paragraph (1), is specified in the Table following paragraph 18 as appropriate to the category of trial advocate or substitute advocate.

(3) The fee payable for preparing and filing the plea and case management questionnaire where no oral hearing takes place is specified in the Table following paragraph 18 as appropriate to the category of trial advocate or substitute advocate.

(4) This paragraph does not apply to a standard appearance which is or forms part of the main hearing in a case or to a hearing for which a fee is payable elsewhere under this Schedule.

Fees for abuse of process, disclosure, admissibility, withdrawal of plea hearings

10.—(1) This paragraph applies to—

(a) the hearing of an application to stay the case on 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);

(c) the hearing of an application under section 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965⁽¹⁾ for disclosure of material held by third parties;

(d) any hearing relating to the question of the admissibility as evidence of any material; and

(e) the hearing of an application to withdraw a plea of guilty where the application is—

(i) made by an advocate other than the advocate who appeared at the hearing at which the plea of guilty was entered; and

(ii) unsuccessful

(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 is payable in respect of attendance at the hearing, but the hearing is included in the length of the main hearing for the purpose of calculating the fees payable.

(3) Where a hearing to which this paragraph applies is held prior to the first or only day of the main hearing, it is not included in the length of the main hearing for the purpose of calculating the fees payable and the trial advocate or substitute advocate must 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 18 as appropriate to the category of trial advocate or substitute advocate; or

(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 18 as appropriate to the category of trial advocate or substitute advocate.

(1) 1965 c.69

Fees for confiscation hearings

11.—(1) This paragraph applies to—

- (a) a hearing under Part 2 of the Proceeds of Crime Act 2002⁽²⁾;
- (b) a hearing under section 2 of the Drug Trafficking Act 1994;⁽³⁾ and
- (c) a hearing under section 71 of the Criminal Justice Act 1988⁽⁴⁾.

(2) A hearing to which this paragraph applies is not included in the length of the main hearing or of any sentencing hearing for the purpose of calculating the fees payable, and the trial advocate or substitute advocate must 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 18 as appropriate to the category of trial advocate or substitute 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 18 as appropriate to the category of trial advocate or substitute advocate.

Fees for sentencing hearings

12.—(1) This paragraph applies to—

- (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⁽⁵⁾; and
- (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.

(2) The fee payable to any person for appearing at a hearing to which this paragraph applies is that set out in the Table following paragraph 18 as appropriate to the category of trial or substitute advocate and the circumstances of the hearing.

Fees for ineffective trials

13. The fee set out in the Table following paragraph 18 as appropriate to the category of trial advocate will be payable in respect of each day on which the case was listed for trial but did not proceed on the day for which it was listed, for whatever reason.

Fees for special preparation

14.—(1) This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable under Part 2 or Part 3—

- (a) it has been necessary for an 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;

(2) 2002 c.29
(3) 1994 c.37
(4) 1988 c.33
(5) 2000 c.6

(b)the number of pages of prosecution evidence, as defined in paragraph 1(2), exceeds 10,000 and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule; or

(c) any or all of the prosecution evidence, as defined in paragraph 1(2), is served in electronic form only, and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule.

(2)Where this paragraph applies, a special preparation fee may be paid, in addition to the graduated fee payable under Part 2 or Part 3.

(3)The amount of the special preparation fee must be calculated—

(a)where sub-paragraph (1)(a) applies, from the number of hours preparation in excess of the amount the appropriate officer considers reasonable for cases of the same type;

(b)where sub-paragraph (1)(b) applies, from the number of hours which the appropriate officer considers reasonable to read the excess pages; and

(c)where sub-paragraph (1)(c) applies, from the number of hours which the appropriate officer considers reasonable to view the prosecution evidence,

and in each case using the rates of hourly fees set out in the table following paragraph 19 as appropriate to the category of trial advocate.

(4)Any claim for a special preparation fee under this paragraph must be made by an instructed advocate, whether or not he did the work claimed for.

(5) An instructed advocate claiming a special preparation fee must supply such information and documents as may be required by the appropriate officer in support of the claim.

(6) In determining a claim under this paragraph, the appropriate officer must take into account all the relevant circumstances of the case, including, where special preparation work has been undertaken by more than one advocate, the benefit of such work to the trial advocate.

Fees for wasted preparation

15—(1) A wasted preparation fee may be claimed where a trial advocate 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 the assisted person or the litigator; or

(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 must 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 18 as appropriate to the category of trial advocate, but no such fee is payable unless the number of hours of preparation is eight or more.

(4) Any claim for a wasted preparation fee under this paragraph must be made by an instructed advocate, whether or not he did the work claimed for,

(5) An instructed trial advocate claiming a wasted preparation fee must 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.

Fees for conferences and views

16—(1) This paragraph applies to the following types of work—

(a) attendance by the trial advocate at pre-trial conferences with prospective or actual expert witnesses not held at court;

(b) attendance by the trial advocate at views at the scene of the alleged offence;

(c) attendance by the trial advocate at pre-trial conferences with the assisted person not held at court;

(d) reasonable travelling time by the trial advocate for the purpose of attending a view at the scene of the alleged offence; or

(e) reasonable travelling time by the trial advocate for the purpose of attending a pre-trial conference with the assisted person or prospective or actual expert witness, where the appropriate officer is satisfied that the assisted person or prospective or actual expert witness was unable or could not reasonably have been expected to attend a conference at the trial advocate's chambers or office.

(2) The fees payable in respect of attendance at the first three pre-trial conferences or views, as set out in sub-paragraph (1)(a) to (c), are included in the basic fee (B) specified in paragraph 5 or paragraph 7, as appropriate to the offence for which the assisted person is tried, the category of trial advocate and whether the case is a guilty plea, cracked trial or trial, provided that the trial advocate satisfies the appropriate officer that the work was reasonably necessary.

(3) The fee specified in the Table following paragraph 18 as appropriate to the category of trial advocate will be payable in the following circumstances, provided that the trial advocate satisfies the appropriate officer that the work was reasonably necessary—

(a) for trials lasting not less than 21 and not more than 25 days, and cracked trials where it was accepted by the court at the plea and case management hearing that the trial would last not less than 21 days and not more than 25 days, one further pre-trial conference or view not exceeding two hours;

(b) for trials lasting not less than 26 and not more than 35 days, and cracked trials where it was accepted by the court at the plea and case management hearing that the trial would last not less than 26 days and not more than 35 days, two further pre-trial conferences or views each not exceeding two hours; and

(c) for trials lasting not less than 36 days, and cracked trials where it was accepted by the court at the plea and case management hearing that the trial would last not less than 36 days and not more than 40 days, three further pre-trial conferences or views each not exceeding two hours.

(4) Travel expenses must be paid for all conferences and views set out in sub-paragraph (1)(a) to (c), provided that the trial advocate satisfies the appropriate officer that they were reasonably incurred.

(5) Travelling time must be paid for all conferences and views set out in sub-paragraph (1)(a) to (c), provided that the trial advocate satisfies the appropriate officer that it was reasonably incurred.

Fees for appeals, committals for sentence and breach hearings

17.—(1) Subject to sub-paragraphs (4) and (5) and paragraph 21 (additional charges and cases) the fee payable to a trial advocate in any of the hearings referred to in paragraph 2(1)(b) is the fixed fee specified in the Table following paragraph 18.

(2) Where a hearing referred to in paragraph 2(1)(b) is listed but cannot proceed because of the failure of the assisted person or witness to attend, the unavailability of a pre-sentence report, or other good reason, the fee payable to the advocate is the fixed fee specified in the Table following paragraph 18.

(3) Where—

- (a) a bail application;
- (b) a mention hearing; or
- (c) any other application

takes place in the course of a hearing referred to in paragraph 2(1)(b) the fee payable to the advocate is the fixed fee specified in the Table following paragraph 18.

(4) Where it appears to the appropriate officer that the fixed fee allowed under sub-paragraph (1) would be inappropriate taking into account all of the relevant circumstances of the case he may instead allow fees in such amounts as appear to him to be reasonable remuneration for the relevant work in accordance with sub-paragraph (4).

(5) The appropriate officer may allow any of the following classes of fees to an advocate in respect of work allowed by him under this paragraph—

(a) a fee for preparation including, where appropriate, the first day of the hearing including, where they took place on that day—

- (i) short conferences;
- (ii) consultations;
- (iii) applications and appearances (including bail applications);
- (iv) views at the scene of the alleged offence; and
- (v) any other preparation;

(b) a refresher fee for any day or part of a day for which a hearing continued, including, where they took place on that day—

- (i) short conferences;
- (ii) consultations;
- (iii) applications and appearances (including bail applications);
- (iv) views at the scene of the alleged offence; and
- (v) any other preparation; and

(c) subsidiary fees for—

(i)attendance at conferences, consultations and views at the scene of the alleged offence not covered by paragraph (a) or (b);

(ii)written advice on evidence, plea, appeal, case stated or other written work; and

(iii)attendance at applications and appearances (including bail applications and adjournments for sentence) not covered by paragraph (a) or (b).

Noting brief fees

19. The fee payable to an advocate retained solely for the purpose of making a note of any hearing must be the daily fee set out in the table following this paragraph.

TABLE OF FIXED FEES

<i>Category of work</i>	<i>Paragraph providing for fee</i>	<i>Fee for QC</i>	<i>Fee for leading junior</i>	<i>Fee for led junior or junior alone</i>
Standard appearance	9(2)	£200 per day	£150 per day	£100 per day
Paper plea and case management hearing	9(3)	£30 per case	£30 per case	£30 per case
Abuse of process hearing	10(1)(a)	Half day £300 Full day £575	Half day £225 Full day £400	Half day £150 Full day £275
Hearings relating to disclosure	10(1)(b) and (c)	Half day £300 Full day £575	Half day £225 Full day £400	Half day £150 Full day £275
Hearings relating to the admissibility of evidence	10(1)(d)	Half day £300 Full day £575	Half day £225 Full day £400	Half day £150 Full day £275
Hearings on withdrawal of a plea of guilty	10(1)(e)	Half day £300 Full day £575	Half day £225 Full day £400	Half day £150 Full day £275
Confiscation hearings	11	Half day £300 Full day £575	Half day £225 Full day £400	Half day £150 Full day £275
Deferred sentencing hearing	12(1)(a)	£375 per day	£275 per day	£200 per day
Sentencing hearing	12(1)(b)	£300 per day	£200 per day	£125 per day
Ineffective trial payment	13	£325 per day	£225 per day	£150 per day
Special preparation	14	£85 per hour	£65 per hour	£45 per hour

Wasted preparation	15	£85 per hour	£65 per hour	£45 per hour
Conferences and views	16	£85 per hour	£65 per hour	£45 per hour
Appeals to the Crown Court against conviction	17(1)	£300 per day	£225 per day	£150 per day
Appeals to the Crown Court against sentence	17(1)	£250 per day	£175 per day	£125 per day
Proceedings relating to breach of an order of the Crown Court	17(1)	£250 per day	£175 per day	£125 per day
Committal for sentence	17(1)	£300 per day	£225 per day	£150 per day
Adjourned appeals, committals for sentence and breach hearings	17(2)	£200 per day	£150 per day	£100 per day
Bail applications, mentions and other applications in appeals, committals for sentence and breach hearings	17(3)	£200 per day	£150 per day	£100 per day
Noting brief	19	-	-	£125 per day
Second and subsequent days of an application to dismiss	18(6)	Half day £300 Full day £575	Half day £225 Full day £400	Half day £150 Full day £275

H. CLASSIFICATION OF OFFENCES

Part 6 of Schedule 1 provides a re-classification of offences applicable to the new scheme as follows:

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
Class A: Homicide and related grave offences		
Murder	Common law	
Manslaughter	Common law	
Soliciting to commit 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
Class B: Offences involving serious violence or damage, and serious drugs offences		
Endangering the safety of an aircraft	Aviation Security Act 1982 s. 2(1)(b)	1982 c. 36
Racially-aggravated arson (not endangering life)	Crime and Disorder Act 1998 s. 30(1)	1998 c. 37
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	as above
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
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
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
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 s.170(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
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 proscribed organisations	Terrorism Act 2000 s.11	2000 c. 11
Support or meeting of proscribed organisations	Terrorism Act 2000 s.12	as above
Uniform of proscribed 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

Concealing criminal property	Proceeds of Crime Act 2002 s.327	2002 c.29
Involvement in arrangements facilitating the acquisition, retention, use or control of criminal property	Proceeds of Crime Act 2002 s.328	As above
Acquisition, use or possession of criminal property	Proceeds of Crime Act 2002 s.329	As above
Failure to disclose knowledge or suspicion of money laundering: regulated sector	Proceeds of Crime Act 2002 s.330	As above
Failure to disclose knowledge or suspicion of money laundering: nominated officers in the regulated sector	Proceeds of Crime Act 2002 s.331	As above
Failure to disclose knowledge or suspicion of money laundering: other nominated officers	Proceeds of Crime Act 2002 s.332	As above
Tipping off	Proceeds of Crime Act 2002 s.333	As above
Disclosure under sections 330, 331, 332 or 333 of the Proceeds of Crime Act 2002 otherwise than in the form and manner prescribed	Proceeds of Crime Act 2002 s.339(1A)	As above
Causing or allowing the death of a child	Domestic Violence, Crime and Victims Act 2004 s.5	2004 c.28
Class C: Lesser offences involving violence or damage, and less serious drugs offences		
Racially-aggravated assault	Crime and Disorder Act 1998 s. 29(1)	1998 c.37
Racially-aggravated criminal damage	Crime and Disorder Act 1998 s. 30(1)	1998 c.37
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	Firearms Act 1968 s.42	as above

when transferring firearm		
Permitting an escape	Common law	
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
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
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
Class D: Sexual offences and offences against children		
Administering drugs to obtain intercourse	Sexual Offences Act 1956 s.4	1956 c.69
Procurement of a defective	Sexual Offences Act 1956 s.9	as above
Incest other than by man with a girl under 13	Sexual Offences Act 1956 ss.10 and 11	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
Man living on earnings of prostitution	Sexual Offences Act 1956 s.30	1956 c.69
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
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 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 defective to use premises for intercourse	Sexual Offences Act 1956 s.27	as above
Causing or encouraging prostitution of defective	Sexual Offences Act 1956 s.29	as above
Sexual assault	Sexual Offences Act 2003 s.3	2003 c. 42
Causing sexual activity without penetration	Sexual Offences Act 2003 s. 4	As above
Engaging in sexual activity in the presence of a child	Sexual Offences Act 2003 s. 11	As above
Causing a child to watch a sexual act	Sexual Offences Act 2003 s. 12	As above
Child sex offence committed by person under 18	Sexual Offences Act 2003 s. 13	As above
Meeting child following sexual grooming	Sexual Offences Act 2003 s. 15	As above
Abuse of trust: sexual activity with a child	Sexual Offences Act 2003 s. 16	As above
Abuse of position of trust: causing a child to engage in sexual activity	Sexual Offences Act 2003 s. 17	As above
Abuse of trust: sexual activity in the presence of a child	Sexual Offences Act 2003 s. 18	As above
Abuse of position of trust: causing a child to watch sexual activity	Sexual Offences Act 2003 s. 19	As above
Engaging in sexual activity in the presence of a person with a mental disorder	Sexual Offences Act 2003 s. 32	As above
Causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003 s. 33	As above
Engaging in sexual activity in the presence of a person with a mental disorder	Sexual Offences Act 2003 s. 36	As above

Causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003 s. 37	As above
Care workers: sexual activity in presence of a person with a mental disorder	Sexual Offences Act 2003 s. 40	As above
Care workers: causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003 s. 41	As above
Causing or inciting prostitution for gain	Sexual Offences Act 2003 s. 52	As above
Controlling prostitution for gain	Sexual Offences Act 2003 s. 53	As above
Administering a substance with intent	Sexual Offences Act 2003 s. 61	As above
Committing offence with intent to commit sexual offence	Sexual Offences Act 2003 s. 62	As above
Trespass with intent to commit sexual offence	Sexual Offences Act 2003 s. 63	As above
Sex with adult relative	Sexual Offences Act 2003 s. 64, 65	As above
Exposure	Sexual Offences Act 2003 s. 66	As above
Voyeurism	Sexual Offences Act 2003 s. 67	As above
Intercourse with an animal	Sexual Offences Act 2003 s. 69	As above
Sexual penetration of a corpse	Sexual Offences Act 2003 s. 70	As above
Class E: Burglary etc		
Burglary (domestic)	Theft Act 1968 s.9(3)(a)	1968 c. 60
Going equipped to steal	Theft Act 1968 s.25	as above
Burglary (non-domestic)	Theft Act 1968 s.9(3)(b)	as above
Classes F, G and K: Other offences of dishonesty		
<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
Possession (with intention) of false identity documents	Identity Cards Act 2006 s.25(1)	2006 c.15
Possession (with intention) of apparatus or material for making false identity documents	Identity Cards Act 2006 s.25(3)	As above
Possession (without reasonable excuse) of false identity documents or apparatus or material for making false identity documents	Identity Cards Act 2006 s.25(5)	As above
<i>The following offences are always in class G</i>		
Undischarged bankrupt being concerned in a company	Insolvency Act 1986 s. 360	1986 c.45
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	Customs and Excise Management Act	as above

or coins	1979 s.170(2)(b), (c)	
<i>The following offences are in class G if the value involved exceeds £30,000, class K if the value exceeds £100,000 and in class F otherwise</i>		
VAT offences	Value Added Tax Act 1994 s. 72(1-8)	1994 c.23
Fraudulent evasion of duty	Customs and Excise Management Act 1979 s. 170(1)(b)	1979 c. 2
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
Fraud by false representation	Fraud Act 2006 s.2	2006 c.35
Fraud by failing to disclose information	Fraud Act 2006 s.3	As above
Fraud by abuse of position	Fraud Act 2006 s.4	As above
Possession etc of articles for use in frauds	Fraud Act 2006 s.6	As above
Making or supplying articles for use in frauds	Fraud Act 2006 s.7	As above
Participating in fraudulent business carried on by sole trader etc.	Fraud Act 2006 s.9	As above
Obtaining services dishonestly	Fraud Act 2006 s.11	As above
Class H: miscellaneous other offences		
Breach of anti-social behaviour order	Crime and Disorder Act 1998 s. 1(10)	1998 c. 37
Breach of sex offender order	Crime and Disorder Act 1998 s. 2(8)	As above
Racially-aggravated public order offence	Crime and Disorder Act 1998 s. 31(1)	As above

Racially aggravated harassment/putting another in fear of violence	Crime and Disorder Act 1998 s. 32(1)	As above
Having an article with a blade or point in a public place	Criminal Justice Act 1988 s. 139	1988 c. 33
Breach of harassment injunction	Protection from Harassment Act 1997 s. 3(6)	1997 c. 40
Putting people in fear of violence	Protection from Harassment Act 1997 s. 4(1)	As above
Breach of restraining order	Protection from Harassment Act 1997 s. 5(5)	As above
Being drunk on an aircraft	Air Navigation Order 2005, article 75	S.I. 2005/1970
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
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	1751 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	1968 c. 29
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. 16
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 and Registration Act 1994 s.44	1994 c.22
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.13	1979 c. 2
Obstructing Customs officer	Customs and Excise Management Act 1979 s.16	as above
Class I: Offences against public justice and similar offences		
Conspiring to commit offences outside the United Kingdom	Criminal Justice (Terrorism and Conspiracy) Act 1998 s. 5	1998 c.40
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
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. 58
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. 98
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 5B 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

Class J: Serious Sexual Offences

Rape	Sexual Offences Act 1956 s.1(1)	1956 c. 69
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
Incest by man with a girl under 13	Sexual Offences Act 1956 s. 10	as above
Buggery of person under 16	Sexual Offences Act 1956 s.12	as above
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
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
Abduction of unmarried girl under 16 from parent	Sexual Offences Act 1956 s.20	1956 c.69
Permitting girl under 16 to use premises for intercourse	Sexual Offences Act 1956 s.26	as above
Causing or encouraging prostitution of girl under 16	Sexual Offences Act 1956 s.28	as above
Rape	Sexual Offences Act 2003 s. 1	2003 c. 42
Assault by penetration	Sexual Offences Act 2003 s. 2	As above
Causing sexual activity with penetration	Sexual Offences Act 2003 s. 4	As above
Rape of child under 13	Sexual Offences Act 2003 s. 5	As above
Assault of child under 13 by penetration	Sexual Offences Act 2003 s. 6	As above
Sexual assault of child under 13	Sexual Offences Act 2003 s. 7	As above
Causing a child under 13 to engage in sexual activity	Sexual Offences Act 2003 s. 8	As above
Sexual activity with a child	Sexual Offences Act 2003 s. 9	As above
Causing a child to engage in sexual activity	Sexual Offences Act 2003 s. 10	As above
Arranging child sex offence	Sexual Offences Act 2003 s. 14	As above
Sexual activity with a child family member, with penetration	Sexual Offences Act 2003 s. 25	As above
Inciting a child family member to engage in sexual activity	Sexual Offences Act 2003 s. 26	As above
Sexual activity with a person with a mental disorder	Sexual Offences Act 2003 s. 30	As above
Causing or inciting a person with a mental disorder to engage in sexual activity	Sexual Offences Act 2003 s. 31	As above
Offering inducement to procure sexual activity with a person with a mental disorder	Sexual Offences Act 2003 s. 34	As above
Inducing person with mental disorder to engage in sexual activity	Sexual Offences Act 2003 s. 35	As above
Care workers: sexual activity with a	Sexual Offences Act 2003 s. 38	As above

person with a mental disorder		
Care workers: inciting person with mental disorder to engage in sexual act	Sexual Offences Act 2003 s. 39	As above
Paying for sexual services of a child	Sexual Offences Act 2003 s. 47	As above
Causing or inciting child prostitution or pornography	Sexual Offences Act 2003 s. 48	As above
Controlling a child prostitute	Sexual Offences Act 2003 s. 49	As above
Facilitating child prostitution	Sexual Offences Act 2003 s. 50	As above
Trafficking into UK for sexual exploitation	Sexual Offences Act 2003 s. 57	As above
Trafficking within UK for sexual exploitation	Sexual Offences Act 2003 s. 58	As above
Trafficking out of UK for sexual exploitation	Sexual Offences Act 2003 s. 59	As above

Class K: Other offences of dishonesty (high value)

Class K offences are listed under Class F and G.

I. MISCELLANEOUS CASES AND PAYMENTS

PROCEEDINGS FOR CONTEMPT

Paragraph 13 of Schedule 1 provides daily attendance rates in respect for such cases as follows:

<i>Category of advocate</i>	<i>Payment rates (£ per day)</i>
QC	300
Leading junior	225
Led junior or Junior acting alone	150

UNFITNESS TO PLEAD

Paragraph 26 of Schedule 1 provides a graduated fee mechanism for payment of hearings held to determine whether the assisted person is fit to plead or to stand trial, or where a trial takes place following an earlier hearing to determine fitness.

- (f) if a trial on indictment is held or continues at any time thereafter, the length of the fitness hearing is included in determining the length of the trial for the calculation of the graduated fee
- (g) if a trial on indictment is not held, or does not continue, thereafter by reason of the assisted person being found unfit to plead or to stand trial, the trial advocate must be paid—

- (i) a graduated fee calculated in accordance with paragraph 4 as appropriate to the combined length of—
 - (aa) the fitness hearing; and
 - (bb) any hearing under section 4A of the Criminal Procedure (Insanity) Act 1964⁽⁶⁾ (Finding that the accused did the act or made the omission charged against him); or
 - (ii) a graduated fee calculated in accordance with paragraph 6 as appropriate for representing an assisted person in a cracked trial, whichever the trial advocate elects; and
- (h) if at any time the assisted person pleads guilty to the indictable offence, the trial advocate must be paid either—
- (i) a graduated fee calculated in accordance with paragraph 4 as appropriate to the length of the fitness hearing; or
 - (ii) a graduated fee calculated in accordance with paragraph 6 as appropriate for representing an assisted person in a guilty plea, whichever the trial advocate elects.

VULNERABLE WITNESSES

Paragraph 26 of Schedule 1 provides that where an advocate is instructed on a case on indictment solely for the purpose of cross-examining a vulnerable witness under section 38 of the Youth Justice and Criminal Evidence Act 1999, he must be paid a graduated fee calculated in accordance with paragraph 4 (the general provisions). The daily attendance fee D within the calculation will be taken to be the number of days for which the advocate was required to attend the trial.

ADVICE ONLY CASES

Where on any case on indictment the advocate is instructed solely for the purpose of providing written or oral advice to as assisted person, s/he will be paid an hourly rate for special preparation for time reasonably and demonstrably spent in that task (paragraph 27 of Schedule 1). Paragraph 28 applies an identical provision to an advocate instructed in such a case solely for the purposes of mitigating sentence.

TIMING OF CLAIMS AND APPEAL MECHANISMS

Claims for fees by each instructed advocate must be made to the appropriate officer in the required form within 3 months of the conclusion of the proceedings to which it relates, and claims made outside of the stipulated period will not be considered (paragraph 5). A discretion exists in the appropriate officer to extend this time limit for good reason (paragraph 32). In the absence of good cause, a refusal is likely although, in exceptional circumstances, leave may be given but the fees allowable reduced (paragraph 32). In these circumstances, the applicant must be given an

⁽⁶⁾ 1964 c.84, as amended by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c.25) and the Domestic Violence, Crime and Victims Act 2004 (c.28).

opportunity to make representations. Where payment is delayed beyond 3 months from the date of receipt of that claim, or the last related claim, or from the conclusion of the last proceedings to which it relates, an application may be made by the instructed advocate for an interim payment. The claim must comply with a minimum threshold of £4000, exclusive of VAT (paragraph 17). If successful, 40% of the claim awaiting determination will be paid. Staged payments in long Crown Court cases, and interim payments in respect of attendance at trial, are preserved by paragraphs 19 and 20. Paragraph 21 permits an application to be made for a hardship payment where the remuneration due, or the amount required to mitigate the hardship, is in excess of £5000 excluding VAT. The applicant must have been instructed in the relevant proceedings for at least 6 months and be unlikely to receive payment within 3 months of the application for a hardship payment.

Advocates, instructed or substitute, are entitled to apply for re-determination of fees by the appropriate officer in respect of the fee payable for their work, or in relation to any claim for special or wasted preparation, the hourly fee payable for conferences and views or the re-classification of any offence not falling within Class H (paragraph 29). Thereafter, as before, an appeal lies in the first instance under Regulation 30 to a Costs Judge, and subsequently on a point of general importance to the High Court (paragraph 31).

K. THE PROTOCOL FOR THE PAYMENT OF GRADUATED FEES

As of 14th April 2007, the final version of the Protocol is yet to be agreed. When finalised, the document will be posted on the CBA website at www.criminalbar.co.uk. What follows by way of summary is unlikely to be the subject of significant alteration.

The key provisions of the Protocol are as follows:

“Fees payable to the Instructed Advocate

- 1 Under the terms of the Order, the total fee for the case will be paid to the Instructed Advocate. This will include any discrete payments allowed for under the Order.
- 2 At the end of the case, the Instructed Advocate will prepare a claim form (in an agreed format) and will submit it promptly to the LSC for payment. This claim form will itemise the appropriate fee for the case and any items of work which attract discrete payments under the Funding Order.

- 3 The LSC will make a total payment to the Instructed Advocate, inclusive of VAT (assuming he is VAT registered).
- 4 The Instructed Advocate will be liable to account to HMRC for that VAT, subject to deducting any VAT which is paid by him to a Substitute Advocate. Appropriate records must be kept for VAT inspection, including copies of VAT invoices issued by the Instructed Advocate, and issued to the Instructed Advocate by any Substitute Advocate. The Bar Council recommends that Chambers keep these records centrally. An extract of HMRC Guidance appears in Annex G of the Protocol.

Fees payable to a Substitute Advocate

- 5 The Instructed Advocate is responsible for arranging payment of fees to any substitute advocate.
- 6 The relationship between the Instructed Advocate and the Substitute Advocate is regarded by HMRC, the DCA and the LSC as one of a contractor and sub-contractor. The Bar Council has accepted this approach, as it will ultimately simplify the fee collection system. However, the obligation of each barrister under the Code of Conduct remains unaltered.
- 7 A Substitute Advocate will invoice the Instructed Advocate in respect of any Paid Returned Work done by him. This will include a claim for VAT where the Substitute Advocate is VAT registered.
- 8 The Instructed Advocate will be liable to pay this VAT, whether or not he is registered for VAT. If he is registered for VAT then he may deduct this VAT as input tax. Therefore it is strongly advisable for the Instructed Advocate to be registered for VAT.
- 9 The Instructed Advocate will then pay the Substitute Advocate in accordance with this Protocol. Further, and for the avoidance of doubt, where the Instructed Advocate is a solicitor (“the solicitor”), and where

work has been undertaken by other advocates on the case (whether barristers or Higher Court Advocates) the solicitor will treat the amounts due to such other advocates from the fee or fees paid by the LSC as client monies and account for them as such.

Professional obligations to professional and lay client

- 10 The relationship of contractor and sub-contractor does not alter any of the Instructed or Substitute Advocate's professional obligations to his professional or lay client or to the court.

Professional obligation to pay a Substitute Advocate

- 11 The person receiving the fee is referred to in this Protocol as the "Instructed Advocate". Any other advocate who carries out paid returned work (as defined below) in relation to the case is referred to in this Protocol as the "Substitute Advocate". The total fee for the Case paid by the LSC or other agency is referred to in the Protocol as the "Total Fee".
- 12 Where work is done by a Substitute Advocate which attracts a discrete fee under the Order, then Schedule 1, paragraph 21 of the Order requires the Instructed Advocate to make arrangements for that fee to be paid to the Substitute Advocate:

"Payment of fees to instructed advocate

21. (1) In accordance with article 23 (payment of fees to advocates) the appropriate officer must notify each instructed advocate of the fees payable to him and authorise payment accordingly.

(2) Payment of the fees in accordance with sub-paragraph (1) must be made to each instructed advocate.

(3) Where the representation order provides for a single advocate, the instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who has undertaken work on the case.

(4) Where there are two instructed advocates for an assisted person (where the representation order provides for more than one advocate), payment must be made to each instructed advocate individually, and—

(a) the leading instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who have undertaken work on the case of a type for which a leading advocate is responsible; and

(b) the led instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who have undertaken work on the case of a type for which a led advocate is responsible.”

13 Paragraph 406.1 of the Code of Conduct states:

“**406.1** A self-employed barrister who receives fees in respect of work done by another barrister must himself and without delegating the responsibility to anyone else pay forthwith the whole of the fee in respect of that work to that other barrister.”

Paid Returned Work contained in the Basic Fee

14 During the Carter Review, the Bar Council provided the Carter Review Team with a full breakdown of the appropriate fees for the constituent parts of the case (with the exception of the PCMH fee). The Carter Review Team agreed that these are the appropriate fees, even though many of them have been put into the Basic Fee rather than being discrete payments as before. These fees (which do not include VAT) are included in the Table, at Annex A (“Table A”) below. These are the fees which should be paid by the Instructed Advocate to any substitute advocate.

15 The Instructed Advocate is obliged to pay any Substitute Advocate who undertakes any of the work on the case specified in Table A below (“Paid Returned Work”). Paid Returned Work is to be paid at the rates shown in Table A below (“Paid Returned Fee Rates”), together with any hotel or travel expenses paid by the LSC or other agency in respect of expenses incurred by the Substitute Advocate.

16 Paragraph 406.2 of the Code of Conduct states:

“406.2 Subject to paragraph 805 a self-employed barrister who arranges for another barrister to undertake work for him (other than a pupil or a person who has asked to do the work in order to increase his own skill or experience) must himself and without delegating the responsibility to anyone else:

(a) pay proper financial remuneration for the work done;

(b) make payment within a reasonable time and in any event within three months after the work has been done unless otherwise agreed in advance with the other barrister.”

17 The Instructed Advocate is entitled to retain from the Total Fee paid to him/her for the case the appropriate sums for any work on the case done by him/her which is specified in Table A below (“Retained Work”) at the rates shown there, together with any hotel or travel expenses incurred by him/ her as above.

18 Paid Returned Work covers only the items specified in Table A below. In particular, there is no separate payment for tape listening, video watching and/or reading unused material. The same applies to Retained Work.

Incorporation of the Fee Payment Protocol into Standard Terms of Business with Solicitors

19 In order to ensure that solicitors and barristers comply with the Fee Payment Protocol (“the Protocol”), the Bar Council has drafted a standard

letter to instructing solicitors, setting out terms of work in defence criminal legal aid cases. A copy of the letter is at Annex D below.

Depleted Basic Fee

- 20 If the proportion of the Basic Fee remaining for the trial, re-trial, cracked trial or guilty plea (as the case may be) under the provisions of Table A is less than 70% of the Basic Fee, then the Instructed Advocate shall reduce the sums payable for all paid returned work and paid retained work (including the trial, included in the starting calculation at 70% of the Basic Fee) by such equal percentage as will reduce the total to the amount of the Basic Fee.
- 21 Examples of how this works in practice are set out in Annex F below. The underlying principle is that in determining whether the fees are subject to reduction, both paid returned work and paid retained work must be deducted from the Basic Fee, otherwise the Instructed Advocate may be penalised for attending hearings other than the main hearing.

Paid Returned Work where there are two Instructed Advocates

- 22 In a case where there are two Instructed Advocates and a Substitute Advocate appearing alone undertakes any Paid Returned Work in place of the led junior, the obligation to pay the Substitute Advocate shall be shared between the Instructed Advocates in the ratio of two-thirds (leading advocate) to one-third (led advocate).
- 23 Where a leading advocate (QC or leading junior) is instructed as a trial advocate after the date of instruction of the junior advocate, the leading advocate shall be liable for two-thirds of all of the Paid Returned Work

fees, including work undertaken by a Substitute Advocate appearing alone prior to the date of instruction of the leading advocate.

- 24 Where a junior advocate (i.e. led either by a QC or a leading junior) is instructed after the leading advocate, the junior advocate shall not be liable in respect of any Paid Returned Work undertaken prior to the date of his or her instruction.

PCMH Fee

- 25 Lord Woolf LCJ's 22nd March 2005 Amendment No 11 to the Consolidated Criminal Practice Direction provides as follows:

“Plea and case management hearing

IV 41.8 Active case management at the PCMH should reduce the number of ineffective and cracked trials and delays during the trials to resolve legal issues. The effectiveness of a PCMH hearing in a contested case depends in large measure upon preparation by all concerned and upon the presence of the trial advocate or an advocate who is able to make decisions and give the court the assistance which the trial advocate could be expected to give. Resident Judges in setting the listing policy should ensure that list officers fix cases as far as possible to enable the trial advocate to conduct the PCMH and the trial”.

- 26 Where the PCMH is conducted by an advocate other than the Instructed Advocate, the PCMH fee will be 15% of the appropriate trial Basic Fee as shown in Table in Annex B below (“Table B”), whether the case ultimately fights or cracks. If the case is disposed of as a guilty plea at the PCMH then the advocate conducting the hearing will receive the appropriate guilty plea fee. This will ensure that the advocate who conducts the PCMH is properly remunerated for the necessary preparation and attendance at court.
- 27 As stated above, listing practices are expected gradually to improve so as to allow the Instructed Advocate to conduct the PCMH in the majority of his/her cases.

REGULATION & DISPUTE RESOLUTION

Compliance with Codes of Conduct

28 It is the duty of all advocates at all times to act in the best interest of their clients, in accordance with the Bar Council's Code of Conduct, the Solicitors Practice Rules, the Solicitors' Advocacy Code and the Code Of Practice when it comes into force in 2007.

29 In particular, the best interests of the client include:

- (a) having the appropriate level of representation; and
- (b) not changing the advocate without proper justification, and the informed consent of the client.

Dispute resolution

30 Chambers must have in place their own dispute resolution process in relation to the division of RAGFS fees. However, disputes should be rare in properly run Chambers and amongst conscientious practitioners. It is expected that the Bar Standards Board will take a serious view of any failure by one member of the Bar to honour his obligations to another, and barristers must comply at all times with Paragraph 406 of the Code of Conduct.

31 In the first instance any dispute between barristers should be resolved by the Head of Chambers or Heads of Chambers (where barristers are in different chambers) with the barristers concerned. The Head of Chambers will, with the senior clerk, ensure that a procedure is in place which resolves any dispute quickly and fairly. Where the dispute involves a barrister or barristers under 5 years call the Head of Chambers will arrange for suitable

assistance to be available to such barrister/s through the Head of the Chambers Pupillage Committee. Where the dispute involves a barrister and solicitor advocate the Head of Chambers and the Senior Partner of the firm in question will seek to resolve the dispute quickly and fairly. A written record of the dispute and its resolution should be kept. Where the dispute involves a sole practitioner the parties concerned will seek to resolve the dispute in writing.

- 32 If a dispute is not resolved under the procedure established under these procedures, the Bar Council will upon written notification to it, refer the matter to the Dispute Resolution Panel which will offer expeditious advice, and will resolve disputes between barristers, whether in sole practice or in the same or different chambers.
- 33 A dispute between a barrister and a solicitor which cannot be resolved informally will be resolved in accordance with the Joint Tribunal Standing Orders for Fee Disputes with Solicitors.

Accounting system

- 34 Paragraphs 404.1 and 404.2 of the Code of Conduct state as follows:

"Heads of chambers

404.1 The obligations in this paragraph apply to the following members of chambers:

- (a)** any barrister who is head of chambers;
- (b)** any barrister who is responsible in whole or in part for the administration of chambers;
- (c)** if there is no one within (a) and (b) above, all the members of the chambers.

404.2 Any person referred to in paragraph 404.1 must take all reasonable steps to ensure that:

(a) his chambers are administered competently and efficiently and are properly staffed;

(b) the affairs of his chambers are conducted in a manner which is fair and equitable for all barristers and pupils;”

35 The Bar Council considers it essential for chambers to have in place a communal fee accounting system to enable fees for Paid Returned Work to be paid to other advocates.

36 The outline of a model accounting system is set out in Annex E below.

Income Tax and VAT implications

37 Discussions have been taking place with HMRC and this Protocol should not present any particular income tax and VAT problems. Chambers administration must, however, act promptly and efficiently. Appropriate records must be kept.

Income Tax

38 In relation to Income Tax, when the Instructed Advocate receives the Total Fee he/ she is only liable to tax on payment for the work he/ she has actually undertaken. The Substitute Advocate will be liable to tax for his/ her share of the fees at the point when those fees are earned (as at present). This is likely to be judged as being the point at which the Instructed Advocate receives payment. Provided that there is no delay in payment by the Instructed Advocate to the Substitute Advocate, the Substitute Advocate should not be liable to tax on fees earned but not received.

VAT

39 As stated above, the relationship between the Instructed Advocate and the Substitute Advocate is regarded by HMRC as one of a contractor and sub-contractor.

40 VAT should be accounted for in accordance with paragraphs 10-18 above.

41 Any barrister on the flat-rate scheme for small businesses (available to those with turnover not exceeding £225,000 a year) who regularly acts as an instructed advocate receiving taxable supplies from VAT-registered Substitute Advocates, may wish to consider the pros and cons of remaining on the flat-rate scheme.

A barrister on the flat-rate scheme simply accounts for VAT at 13% of his gross turnover, *without* deducting input tax (eg VAT on fees paid to substitute advocates); if not on the flat-rate scheme, the barrister would of course account for all the VAT he charges (normally at 17.5%) LESS the input tax on supplies he receives.

Competition issues

42 The Protocol does not cause any material competition law problems.”

ANNEX A

TABLE A: PAID RETURNED AND PAID RETAINED WORK

Category	Comments	Junior	Leading Junior	QC
The trial	The amount paid to the advocate undertaking the trial will be the Total Fee less (a) any sums payable to other advocates for Paid Returned Work apart from the trial, and (b) any sums which the Instructed Advocate is entitled to deduct for Retained Work.	See adjoining comments column	See adjoining comments column	See adjoining comments column

Category	Comments	Junior	Leading Junior	QC
PCMH <i>Part of Basic Fee</i>	The amount paid to the advocate undertaking the PCMH will be the amount shown as 15% of the Basic Basic Fee in table B below, or the guilty plea fee less any sums which the Instructed Advocate is entitled to deduct for Retained Work if the case pleads at the PCMH	See adjoining comments column	See adjoining comments column	See adjoining comments column

Category	Comments	Junior	Leading Junior	QC
Conferences with clients and experts. Views. <i>Part Basic Fee, part fixed fee under the Order.</i>	The caps on the number of conferences which apply currently will remain. 7 Where 3 or more conferences are allowed for under the Order, the first 3 conferences are included in the Basic Fee. Separate payment is made for 4 th and subsequent conferences. All conferences which qualify for payment are paid as Paid Returned Work at the rates shown in the adjoining columns. The same rules apply to views.	£45 per hour	£65 per hour	£85 per hour

7 Schedule 1, paragraph 16 of the Order. Conferences are paid for exclusive of travel time, capped at 2 hours per conference.

Category	Comments	Junior	Leading Junior	QC
Standard appearances. <i>Standard appearances 1-4 part of Basic Fee, 5+ fixed fee under the Order.</i>	The first 4 standard appearances are included in the Basic Fee. Separate payment is made for 5 th and subsequent standard appearance. They are paid as Paid Returned Work at the rates shown in the adjoining columns	100	150	200
Full and Half Day Hearings for PII hearings, bad character hearings, confiscation hearings, abuse of process, and disclosure hearings. <i>Fixed fee under the Order.</i>		Half Day £150 Full Day £275	Half Day £225 Full Day £400	Half Day £300 Full Day £575
Special and Wasted Preparation. <i>Fixed fee under the Order.</i>	Wasted preparation to apply only as defined in the Order. This includes research on novel facts.	£45	£65	£85
Ineffective Trial Payment. <i>Fixed fee under the Order.</i>	A listed trial that does not proceed for any reason.	£150	£225	£325

Category	Comments	Junior	Leading Junior	QC
Sentencing. <i>Fixed fee under the Order if effective.</i> <i>Non-effective hearing counts as a standard appearance.</i> <i>Same as for sentence hearing.</i>	Sentence Hearings	£125	£200	£300
	Effective Non-effective	£100	£150	£200
	Deferred Sentence	£200	£275	£375
	Effective Non-effective	£100	£150	£200
Appeals to the Crown Court <i>Fixed fee under the Order.</i> <i>Fixed fee under the Order.</i>	Against Sentence			
	Effective Non-effective	£125 £100	£175 £150	£250 £200
	Against Conviction			
	Effective Non-effective	£150 £100	£225 £150	£300 £200
Proceedings for breach of a Crown Court order <i>Fixed fee under the Order.</i>	Effective	£125	£175	£250
	Non-effective	£100	£150	£200
Committal for sentence <i>Fixed fee under the Order</i>	Effective	£150	£225	£300
	Non-effective	£100	£150	£200
Noting Brief. <i>Fixed fee under the Order.</i>		£125	-	-

ANNEX B

Table B: PCMH FEES in £

Class of offence	QC	Leading Junior	Led Junior	Junior alone
A	665.10	498.75	322.55	382.05
B	438.60	328.95	219.30	226.35
C	311.25	233.55	155.70	155.70
D	396.15	297.15	169.80	169.80
E	212.25	159.15	106.20	113.25
F	212.25	159.15	106.20	120.30
G	311.25	233.55	212.25	212.25
H	311.25	233.55	141.45	141.45
I	367.95	276.00	169.80	169.80
J	495.30	371.40	283.05	283.05
K	495.30	371.40	283.05	283.05

ANNEX D

TERMS OF WORK IN DEFENCE CRIMINAL LEGAL AID CASES

Dear [Sir],

Thank you for sending me instructions in the case of [], which I note is or is likely to be the subject of a Criminal Legal Aid Funding Order (The Funding Order). It is a term of my acceptance of these instructions that applications for payment under the Funding Order will be made promptly and in accordance with its terms, and no later than 3 months after the conclusion of the case.

I also accept instructions in this case on the basis that the terms and provisions of the Bar Council's Fee Payment Protocol apply. I or {Mr/Ms X of [x] chambers,} will be the Instructed Advocate. The Protocol provides, amongst other things, that in the event that I am required, subject to my professional client's consent, to subcontract any of the advocacy work involved in the case to a substitute advocate(s), the fee or fees for work undertaken by any subcontracted advocate(s) will be in the amounts contained in, and will be accounted for and distributed in accordance with the Protocol⁸. A copy of the Protocol ***is attached**, or ***has been provided to you by my clerk**, or ***is available on my Chambers/Bar Council website**.

As I am sure you will be aware the Protocol has been prepared by the Bar Council and has been supported by the Department of Constitutional Affairs during consultation leading to the Funding Order 2007. Its purpose is to ensure that payment and distribution of legal aid fees occurs in a fair and disciplined way.

Yours sincerely,

Barrister A"

⁸ If a solicitor Higher Court Advocate is the Instructed Advocate your attention is drawn to the accounting obligation under paragraph 18.2 of the Protocol.

ANNEX E: CHAMBERS FEE ACCOUNT

THE SCHEME

The scheme involves creating a chambers fee account. All fees are paid in to the account, rather than to an individual barrister. The chambers administrator(s) reconcile the fees received with the work done and make payments (twice monthly) to each barrister. The scheme allows for detailed record keeping and cross-payments to other chambers.

STEPS

- 1 The chambers' constitution needs to have an enabling provision to cover the scheme and each member should sign to show assent. A suitably worded part of the Constitution (or side document) will cover pupils' fees. The Constitution needs to ensure that cheques made out to members under the RAGFS scheme can be paid into the Chambers Fee Account and distributed in accordance with the terms of the Protocol. Arrangements need to be made for pupil's fees to be paid and dealt with under the Protocol and distributed through the Chambers fee Account. One form of amendment to a fairly standard chambers constitution is as follows:
 - a. Chambers may operate such fees accounts and systems as are reasonable or efficient for the business – and may require Members remuneration to be paid into fees accounts and hold such monies for dispersal to Members, or other advocates, including pupils.
 - b. Chambers may deduct from any funds received to Chambers any monies outstanding to Chambers (including expenses, surcharges and contingency funds and any debts that Chambers may have incurred for on or behalf of Members, or other advocates for whom the fees are held) before release of any net proceeds to Members
 - c. Chambers may hold the property of any Members or any interest in Chambers property, until any sums due and owing to Chambers are discharged. Any disputes as to sums owed shall be dealt with by the grievance procedure.
- 2 Chambers must notify all paymasters (HMPMG, CPS, LSC, HMCS etc.) of its intention to create a dedicated fees account ("the Fees Account") and supply them with the account details.
- 3 Each member of chambers must supply his/ her bank account details to the chambers administrator.
- 4 At the outset, the bank is likely to require one copy of the chambers' constitution which contains details of the fees accounting system. It ought not to require any additional mandate thereafter. The account is both for payments in and out.

- 5 All payments into the Fees Account should be by BACS, so far as possible. This saves a considerable amount of money (BACS transfers work out at £5 for twenty transactions: the same number of cheque transactions would cost £12). However, HMCS have yet to move to use of BACS and say that they will pay RAGFS fees by cheque in the name of the Instructed Advocate concerned. Hence the need for constitutional arrangements to be made as in paragraph 1 so as to ensure a fair and efficient system operates which is fair to all members of chambers, and particularly the young.
- 6 Payments are made from the Fees Account to individual barristers twice monthly. These payments are net of payments due to other barristers, chambers contributions and incidentals. On request, the VAT can be held back so that it remains available to be paid at the end of the quarter.
- 7 The date of cross-payments will appear as the remittance date.
- 8 There is a spreadsheet facility available called Bar Stat, which will show details of cross-payments. This system can lift data from Meridian and is also compatible with SAGE accounting systems. This system is felt to be good value.
- 9 Payments to and from other chambers and HCA's should be made by direct transfer from one Fee Account to the other Fee Account. In order to achieve this, each Chambers should open a Fee Account as described in this document. Details would have to be exchanged with other chambers/HCA's, thereby allowing payments to be made and received between chambers. There are many benefits to this scheme such as avoiding missing cheques and cancellation fees. BACS payments are cleared within 3 days whereas in comparison a cheque normally takes 5 working days.
- 10 Fees Accounts should not become overdrawn. Payments out should only be made from cleared funds.
- 11 If under Chambers Constitutional arrangements (as in the example given) Chambers charges or expenses are to be deducted from funds in the Fees Account deductions should only be made in respect of the correct amount due from sums held to the credit of individual Members of Chambers or other advocates.

ANNEX F: EXAMPLES OF DEPLETED BASIC FEES

The examples below are of a two-day Class E trial conducted by a sole junior. The Basic Fee includes: the PCMH, all conferences and views; and up to four standard appearances (SAF) as defined in Schedule 1, paragraph 1 of the Order.

The Basic Fee (BF) for the trial is £755

70 per cent of the Basic Fee (BF) is £528.50

30 per cent of the BF is £226.50

15 per cent of the BF (the PCMH fee or value) is £113.25

Example 1: A Substitute Advocate (SA) conducts one SAF; the Instructed Advocate (IA) conducts the PCMH and trial.

Advocate	Hearing	Cost
	30% of BF	£226.50 minus
Instructed Advocate	PCMH	£113.25 minus
Substitute Advocate	SAF	£100.00
	<i>Balance</i>	<i>£13.25</i>

*Due to the balance being **greater** than £0.00 the SA's fee is paid out of the Instructed Advocate's BF.*

Basic Fee Cost Breakdown

Instructed Advocate	BF	£755.00 minus
Instructed Advocate	PCMH	£113.25 minus
Substitute Advocate	SAF	£100.00
Instructed Advocate	Trial	£541.75

Example 2: SA conducts two SAFs; the IA conducts the PCMH and trial.

Advocate	Hearing	Cost
	30% of BF	£226.50 minus
Instructed Advocate	PCMH	£113.25 minus
Substitute Advocate	SAF	£100.00 minus
Substitute Advocate	SAF	£100.00
	<i>Balance</i>	-£86.75

Due to the balance being **less** than £0.00 the fees are reduced using the "Depleted Basic Fee" rule

Depleted Basic Fee Rule

Substitute Advocate	SAF	£100.00
Substitute Advocate	SAF	£100.00
	Substitute Total	£200.00
Instructed Advocate	Trial (@ 70%)	£528.50
Instructed Advocate	PCMH	£113.25
	Total	£841.75 minus
	BF	£755.00
	<i>Excess</i>	£86.75

Excess as a proportion of Total	10.31%
Percentage rate payable of each fee	89.69%

Allocation of Amounts

		Fee	Paid
Substitute Advocate	SAF	£100.00	£89.69
Substitute Advocate	SAF	£100.00	£89.69
Instructed Advocate	Trial (@ 70%)	£528.50	£474.03
Instructed Advocate	PCMH	£113.25	£101.58
	Total	£841.75	£755.00

Example 3: SA conducts the PCMH and a SAF; the IA conducts the trial.

Advocate	Hearing	Cost
	30% of BF	£226.50 minus
Substitute Advocate	PCMH	£113.25 minus
Substitute Advocate	SAF	£100.00
	<i>Balance</i>	£13.25

*Due to the balance being **greater** than £0.00 the SA's fee is paid out of the Instructed Advocate's BF.*

Fees' Breakdown

Instructed Advocate	BF	£755.00 minus
Substitute Advocate	PCMH	£113.25 minus
Substitute Advocate	SAF	£100.00
Instructed Advocate	Trial	£541.75

Example 4: SA conducts three SAFs; the IA conducts the PCMH and trial.

Advocate	Hearing	Cost
	30% of BF	£226.50 minus
Instructed Advocate	PCMH	£113.25 minus
Substitute Advocate	SAF	£100.00 minus
Substitute Advocate	SAF	£100.00 minus
Substitute Advocate	SAF	£100.00
	<i>Balance</i>	-£186.75

Due to the balance being **less** than £0.00 the fees are reduced using the "Depleted Basic Fee" rule

Depleted Basic Fee Rule

Substitute Advocate	SAF	£100.00
Substitute Advocate	SAF	£100.00
Substitute Advocate	SAF	£100.00
	Substitute Total	£300.00
Instructed Advocate	Trial (@ 70%)	£528.50
Instructed Advocate	PCMH	£113.25
	Total	£941.75 minus
	<u>BF</u>	<u>£755.00</u>
	<i>Excess</i>	£186.75

Excess as a proportion of Total	19.83%
Percentage rate payable of each fee	80.17%

Allocation of Amounts

		Fee	Paid
Substitute Advocate	SAF	£100.00	£80.17
Substitute Advocate	SAF	£100.00	£80.17
Substitute Advocate	SAF	£100.00	£80.17
Instructed Advocate	Trial (@ 70%)	£528.50	£423.70
Instructed Advocate	PCMH	£113.25	£90.79
	Total	£941.75	£755.00

Example 5: SA conducts PCMH and three SAFs; IA conducts the trial.

Advocate	Hearing	Cost
	30% of BF	£226.50 minus
Substitute Advocate	PCMH	£113.25 minus
Substitute Advocate	SAF	£100.00 minus
Substitute Advocate	SAF	£100.00 minus
Substitute Advocate	SAF	£100.00
	<i>Balance</i>	-£186.75

Due to the balance being **less** than £0.00 the fees are reduced using the "Depleted Basic Fee" rule

Depleted Basic Fee Rule

Substitute Advocate	PCMH	£113.25
Substitute Advocate	SAF	£100.00
Substitute Advocate	SAF	£100.00
Substitute Advocate	SAF	£100.00
	Substitute Total	£413.25
Instructed Advocate	Trial (@ 70%)	£528.50
	Total	£941.75 minus
	<u>BF</u>	<u>£755.00</u>
	<i>Excess</i>	£186.75

Excess as a proportion of Total	19.83%
Percentage rate payable of each fee	80.17%

Allocation of Amounts

		Fee	Paid
Substitute Advocate	PCMH	£113.25	£90.79
Substitute Advocate	SAF	£100.00	£80.17
Substitute Advocate	SAF	£100.00	£80.17
Substitute Advocate	SAF	£100.00	£80.17
Instructed Advocate	Trial (@ 70%)	£528.50	£423.70
	Total	£941.75	£755.00

Example 6: SA conducts the PCMH and four SAFs; IA conducts trial.

Advocate	Hearing	Cost
	30% of BF	£226.50 minus
Substitute Advocate	PCMH	£113.25 minus
Substitute Advocate	SAF	£100.00 minus
Substitute Advocate	SAF	£100.00 minus
Substitute Advocate	SAF	£100.00 minus
Substitute Advocate	SAF	£100.00
	<i>Balance</i>	-£286.75

Due to the balance being **less** than £0.00 the fees are reduced using the "Depleted Basic Fee" rule

Depleted Basic Fee Rule

Substitute Advocate	PCMH	£113.25
Substitute Advocate	SAF	£100.00
Substitute Advocate	SAF	£100.00
Substitute Advocate	SAF	£100.00
Substitute Advocate	SAF	£100.00
	Substitute Total	£513.25
Instructed Advocate	Trial (@ 70%)	£528.50
	Total	£1,041.75 minus
	BF	£755.00
	<i>Excess</i>	£286.75

Excess as a proportion of Total	27.53%
Percentage rate payable of each fee	72.47%

Allocation of Amounts		Fee	Paid
Substitute Advocate	PCMH	£113.25	£82.08
Substitute Advocate	SAF	£100.00	£72.47
Substitute Advocate	SAF	£100.00	£72.47
Substitute Advocate	SAF	£100.00	£72.47
Substitute Advocate	SAF	£100.00	£72.47
Instructed Advocate	Trial (@ 70%)	£528.50	£383.03
	Total	£1,041.75	£755.00

Example 7: SA conducts the PCMH and five SAFs; IA conducts the trial

Advocate	Hearing	Cost
	30% of BF	£226.50 plus
	SAF 5	£100.00
	Total	£326.50 minus
Substitute Advocate	PCMH	£113.25 minus
Substitute Advocate	SAF 1	£100.00 minus
Substitute Advocate	SAF 2	£100.00 minus
Substitute Advocate	SAF 3	£100.00 minus
Substitute Advocate	SAF 4	£100.00 minus
Substitute Advocate	SAF 5	£100.00
	<i>Balance</i>	-£286.75

Due to the balance being **less** than £0.00 the fees are reduced using the "Depleted Basic Fee" rule

Depleted Basic Fee Rule

	BF	£755.00
	SAF 5	£100.00
	Total	£855.00
Substitute Advocate	PCMH	£113.25
Substitute Advocate	SAF 1	£100.00
Substitute Advocate	SAF 2	£100.00
Substitute Advocate	SAF 3	£100.00
Substitute Advocate	SAF 4	£100.00
Substitute Advocate	SAF 5	£100.00
	Substitute Total	£613.25
Instructed Advocate	Trial (@ 70%)	£528.50
	Total	£1,141.75 minus
	Total Fee	£855.00
	<i>Excess</i>	£286.75

Excess as a proportion of Total 25.11%
 Percentage rate payable of each fee 74.89%

Allocation of Amounts

		Value	Paid
Substitute Advocate	PCMH	£113.25	£84.81
Substitute Advocate	SAF 1	£100.00	£74.89
Substitute Advocate	SAF 2	£100.00	£74.89
Substitute Advocate	SAF 3	£100.00	£74.89
Substitute Advocate	SAF 4	£100.00	£74.89
Substitute Advocate	SAF 5	£100.00	£74.89
Instructed Advocate	Trial (@ 70%)	£528.50	£395.77
	Total	£1,141.75	£855.00

ANNEX G

EXTRACT FROM HMRC GUIDANCE ON VAT RECORDS

HMRC have issued guidance on VAT, Notice 700. The following extract is taken from para 19.2 of the guide:

You must keep records and accounts of all taxable goods and services which you receive or supply in the course of your business.

This includes:

- * standard-rated;
- * reduced-rated; and
- * zero-rated supplies.

You must also keep records of any exempt supplies that you make.

In addition, you must keep a summary of the totals of your input tax and

output tax for each tax period. This is called a VAT account (see paragraph 19.12).

All these records must be kept up to date and must be in sufficient detail to allow you to calculate correctly the amount of VAT that you have to pay to, or can claim from, Customs and Excise.

You do not have to keep these records in any set way. But they must be kept in a way which will enable our officers to check easily the figures that you have used to fill in your VAT return. If your records do not satisfy the requirements set out in this notice, we have the power to direct you to make the necessary changes.

However you decide to keep your records, you must be able to make them

readily available to our officers when they ask to see them.