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Crown Court Means Testing

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Crown Court Means Testing

- Welcome & background
- Overview of key processes
- Case Studies
- Q&A session
- Implementation
- Feedback and Action Learning Set
- Wrap up

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Content of Training

- Background
- Overview of scheme
- Crown Court trials
- Legal aid application process & form changes
- Evidential requirements, evidence provision fee (EPF) and sanctions
- Income contributions
- Hardship applications
- Capital contributions
- Assessing final case costs
- Judicial apportionment
- Practical examples
- Committals for Sentence
- Appeals to the Crown Court
- Collection & Enforcement
- Implementation of scheme

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Objectives

- To increase levels of confidence when operating all aspects of the scheme
- To understand how the forms and evidential requirements will work in practice
- To be clear about the practicalities when dealing with either way cases
- Inform delegates of the channels of communication to allow solicitors to raise queries and get advice on the new process

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Scope of Crown Court Means Testing

In scope

- Trials
- Committals for Sentences
- Appeals to the Crown Court
- VHCC cases

Out of scope

- Breaches & contempt
- High Court proceedings
- Court of Appeal proceedings
- Supreme Court proceedings

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Costs and Savings

- It is anticipated that approximately
 - 28% of defendants will be passported
 - 49% won't have to make a contribution
 - 23% will make a contribution to pay **some** or **all** of their costs. It is expected that only a small proportion will be able to pay all of their case costs
- It is estimated that this will deliver net savings of £50 million per year by 2013/14

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Introductory Overview

- One application process for both the magistrates' and the Crown Court
- Income eligibility is the same for magistrates' and Crown Court cases, but the means test is applied differently
- The magistrates' test is an in/out test and eligibility limits are
 - Disposable income less £3,398 or less = pass means test = get legal aid
 - Disposable income more than £3,398 = don't pass the means test = don't get legal aid
- For Crown Court trials the test assesses a defendant's ability to pay some or all of their case costs
- For Crown Court trials the test looks at a defendant's income and capital position when considering ability to pay
- The RDCO scheme will be replaced, so Form B will be withdrawn as CCMT rolled out

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Introductory Overview

- Magistrates' court staff will continue to process applications
- NCT will continue to process complex, high-risk and hardship applications
- No new forms introduced. CDS17 incorporated into CDS 15
- New evidential requirements for capital. Income requirements remain the same but NINO is mandatory if passported **and** for all applicants upon committal/sending or transfer
- Evidence Provision Fee introduced for Crown Court evidence
- The hardship route will be retained

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Introductory Overview

- Employed **and** self-employed defendants can self-certify if remanded into court custody for a magistrates' court case
- Following committal, transfer, sending or submission of application form, all non-passported defendants will be required to provide supporting evidence within 14 days
- Those in court custody will not be able to self-certify once it becomes a Crown Court matter

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Crown Court Trials

- Representation order will be issued if a completed application form(s) is submitted
- Definition of a completed application form is
 - All relevant questions answered
 - All forms signed & dated by applicant and partner
 - Solicitor signature on CDS14
 - Address shown in full
- Passported on IoJ but subject to existing means test with four possible outcomes
 - Entitled to free legal aid
 - Income contribution
 - Capital & Equity Contribution
 - Both
- Passported defendants will not make any contribution from income or capital
- Disposable income £3,398 or less = no income contribution
- Disposable income more than £3,398 = contribute towards defence costs from income
- If defendant gets a magistrates' court representation order, no income contributions will be required if in the Crown Court

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Crown Court Trials

- Non-passported defendants will have to provide additional information about income and capital; in some cases with additional evidence
- Rules introduced to reduce the likelihood of overpayment from income during proceedings
- Those acquitted will have contributions refunded at end of the case, with compound interest of 2%
- If the defendant is guilty, payments will be made from capital **if**
 - £30,000 or more of assets, e.g. savings, equity in property or shares, **and**
 - defence costs haven't already been covered from income payments

Legal Aid Application Forms

Changes to the CDS 14 Form

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Legal Aid Application Forms

Changes to the CDS 15 Form

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Evidential Requirements - Income

- **Passporting benefit:** National Insurance number or letter from DWP confirming benefits
- **Other benefits:** Income details completed on CDS 15
- **No income, no benefits:** full explanation on CDS 15 of how client is supporting themselves and meeting daily living expenses
- **Employed:** latest pay slip
- **Cash in Hand:** letter from employer(s)/bank statements
- **Self-employed:** latest self-assessment tax return or latest set of accounts
- No additional evidential requirements to the magistrates' court scheme but the NINO is mandatory for all with the exception of youths
- Certified copies of all evidence will be accepted

Evidential Requirement - Capital

- **Bank & Building Society Accounts:** statement(s)
- **Cash ISAs:** statement(s)
- **Premium Bonds:** certificate(s)
- **National Savings Accounts/Certificates:** statement(s) or certificate(s)
- **Stocks & Shares:** certificate(s)
- **PEPs/Share ISAs/Unit Trusts/Investment Bonds:** statement(s)/certificate(s)
- **Trust Fund:** trust document
- **Equity in property:** information provided on CDS 15 (this will be checked with third parties)
- Certified copies of all evidence will be accepted



Legal Aid Application

- Application for legal aid to be submitted to the magistrates' court for processing. This also applies to late applications
- Certified copies of evidence sufficient for both magistrates' and Crown Court cases
- To identify the requirements for the application, key questions to consider are
 - Is my client going to the Crown Court?
 - Has my client been remanded into custody by the court?
 - What evidence does my client to provide?
 - When does that need to be submitted?
- NINOs are required for all Crown Court applications (excl youths)

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Evidence Provision Fee

- Additional fee introduced for solicitors to acknowledge assistance provided in submitting additional evidence for trial cases
- Can be claimed as a disbursement on the LGFS claim where any necessary additional evidential requirements have been complied with
- No benefit to delaying submission of evidence – fee claimable as long as the right evidence is submitted
- Two tier fee structure based on
 - £45 + VAT for standard applications (less than 5 pieces of evidence)
 - £90 + VAT complex applications (5 pieces of evidence or more)
- The upper tier can also be claimed for self-employed clients whose case has been committed, sent or transferred for trial to the Crown Court and the application has been referred to the NCT
- Additional costs to obtain evidence where defendant is in custody e.g. bank charges for statements can be claimed as a disbursement

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Evidence Provision Fee

- The EPF **cannot** be claimed for
 - Summary only proceedings
 - An either way offence that concludes in the magistrates' court
 - Applicants who are under 18 and/or in receipt of a passporting benefit
 - Applicants who do not have capital assets and there is no additional evidence to be provided
 - Equity evidence as this is not required
 - Hardship applications sent to NCT
 - Evidence provided post conviction
 - Applications where there is evidence required but this has not been provided in full. This includes cases referred to NCT
 - Appeals



Evidential Sanctions: Income

- Where evidence for CC cases has not been provided, the LSC can apply an income sanction
- The income sanction is a monthly contribution of £900 or 100% of disposable income, whichever is higher
- Once the defendant has submitted the evidence, the contribution level (if any) will be re-assessed
- If the defendant fails to pay the income sanction, enforcement action can be taken
- Where evidence is not submitted, or enforcement action is undertaken, the representation order will still remain in place



Evidential Sanctions: Capital

- Where evidence of capital has not been provided, the LSC can remove the £30,000 threshold
- The defendant may therefore be asked to pay their costs in full
- Where non-payment arises, enforcement action can be taken

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Crown Court Trials: Income Contributions

- Defendants only pay if they have an annual disposable household income in excess of £3,398 (more than £283 per month)
- Defendants will pay 90% of their total disposable income each month
- Minimum monthly contribution will be £254.85
- Maximum of six monthly payments
- If pay on time, only five monthly payments will be collected
- Option to make a lump sum payment covering the five monthly contributions on or before the first payment date

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Crown Court Trials: Income Contributions

- Following the application, if the defendant is financially liable, s/he will receive a representation order with a contribution order
- The contribution order will detail how much the defendant is required to pay each month
- First payment from income will be due within 28 days of the case being committed, sent or transferred for trial
- If the defendant is not liable to make any payments from income, s/he will receive a contribution notice confirming no income payments are to be made, but they may still be liable to make a contribution from capital

Calculating The Income Contribution

- Calculate gross household income (clients annual income + partners annual income)
- Calculate the weighting
 - For a single adult 1.00+weighting for children
 - For a couple 1.64+ weighting for children
 - For each child based on age at next birthday
 - 0-1 year 0.15
 - 2-4 years 0.30
 - 5-7 years 0.34
 - 8-10 years 0.38
 - 11-12 years 0.41
 - 13-15 years 0.44
 - 16-18 years 0.59

Initial Means Test

- Gross Household Income ÷ weighting = adjusted income

Annual adjusted income	Result	Magistrates Court	Committal for sentence	Appeal to Crown Court	Crown Court Trial
Under £12,475	Pass	Funded	Funded	Funded	No income contribution
Between £12,475 and £22,325	Go to full means test	Depends on outcome of full means test		Possible fee depending on outcome of appeal	Possible income contribution, depending on outcome of full means test
Above £22,325	Fail	Not funded	Not funded		Income contribution

Full Means Test

- Annual living allowance X weighting = weighted living allowance
- Gross household income – weighted living allowance – allowable outgoings = annual disposable income
- Allowable outgoings:
 - Tax and national insurance
 - Annual housing costs*
 - Annual child care costs*
 - Annual maintenance to former partners and any children*
- * - Where the outgoing is more than £500 per month supporting evidence is required.

Means Test Results

Annual disposable income	Result	Magistrates Court	Committal for sentence	Crown Court Trial
£3,398 and under	Pass	Funded	Funded	No income contribution
More than £3,398	Fail	Not funded	Not funded	Income contribution

Calculating Income Contribution

- Annual disposable income
- X 90%
- ÷ 12
- = Monthly contribution

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Income Contribution Review

The contribution level can be reviewed in the following circumstances

- If the defendant believes the data inputted for the income calculation is **wrong**
 - Ask the magistrates' court where they made the application to look at it again – the court will notify the client of the outcome
- If the defendant believes they would suffer financial hardship or have higher than usual outgoings, they can submit a hardship application
 - The NCT at the LSC carries out the review
- If the hardship application is successful, the revised contribution order will take effect from the date the hardship application was submitted

Hardship Applications

- An applicant may submit a hardship review at any point up to the conclusion of proceedings
- Some examples of expenditure that may be considered for hardship are

Unsecured Loan	Fines
Secured loan	Rent arrears
Car loan	Student loan
Credit/store card payment	Mortgage on 2 nd property
Debts	Monthly prescription charges
University housing costs	Medical costs

- For personal debt, the hardship review will take the minimum level of payment into account. Voluntary overpayments will not be counted
- Private education, private tuition and private medical costs are not allowable expenditure

Crown Court Capital Contributions

- Capital payments will be required only if
 - found **guilty**
 - income payments made (if required) have **not covered** total defence **costs**
 - have **£30,000** or more of assets, eg savings, premium bonds, equity in property or shares
- Capital contributions will only be required at the end of the case. If the above applies, the defendant will be contacted by the Collection and Enforcement Agency

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Assessing Final Case Costs

- Actual case costs are the total of litigator and advocate fees (including payments to expert witnesses) at the end of the case
- These costs will be used to decide the defendant's position at the end of the case
- The defendant could
 - be refunded if they have paid too much; or
 - pay more if they are found guilty and have assets (including equity) of £30,000 or more and there is a balance of costs to pay
- The defendant will be issued with a final contribution order if there are additional costs to pay

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Judicial Apportionment

- May apply where there are multiple offences on one LGFS bill
- Allows the solicitor to make an application to the Trial Judge for an apportionment of costs to be made, where to pay all of the costs would be manifestly unfair
- Starting point will be equal split of costs across the charges:
 - D may have been convicted on two of seven counts on an indictment following a trial. The total LGFS bill is not representative of the defendant's liability
- Solicitor can make a written request to the Trial Judge to make a ruling on costs i.e. D liable for 29% of total costs
- The form required to make the application is included in the consolidated guidance and available on the LSC website
- The Judicial apportionment of costs will then be considered as part of the final case cost assessment

Refreshment Break then Questions and Answers

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Case Study 1



- Co-defendants charged with rape
- Mr Harley lives in council accommodation
- Mr Grimes lives with his parents
- Proof of income:
 - Mr Harley: NINO,
 - Mr Grimes: No mandatory requirement
- Capital test will not apply
- Evidence provision fee not applicable

Case Study 2



- Mr Jones charged with burglary and lives at home. He has no children
- He is a casual worker and earns £10,000
- He has no capital assets
- Evidential requirements – only for income, which is same as the magistrates'
- Additional info required: NINO
- Evidence provision fee not payable

What makes EW Cases Different?

- Is it going to be a Crown Court trial?
- Will the magistrates' court scheme apply?
- Is the process different if the applicant appears from custody?
- Is the applicant employed or self-employed?
- Completed application v completed application form: what's the difference?
- What about eligibility – what happens if the applicant fails the magistrates' means test?



Case Study 3



- Mr Hawkins is a self-employed roofer who is separated with 3 children
- Charged with s.18 GBH
- Gross income of £42,000
- Equity and savings £27,600
- Income evidence – same as the magistrates' court scheme
- Capital – savings statement
- Evidence provision fee payable at the higher tier

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Case Study 4



- Mr Lawrence is a civil servant and lives with his partner
- Charged with causing death by dangerous driving
- Household gross annual income £85,000
- Capital assets £32,000
- Income evidence – same as the magistrates' court
- Capital evidence – savings statement
- Evidence provision fee payable at lower tier

Case Study 5



- Mr Thorpe is married with 3 children
- Electrician by trade, made redundant
- He is charged with murder
- Gross household income £19,500
- No compensation from redundancy
- Capital assets £85,000
- Income evidence – same as magistrates' court scheme
- Capital evidence – as only capital is equity in the property, no additional requirements
- Evidence provision fee may be payable

Coming Up....

- Committals for Sentence
- Appeals
- Collection & Enforcement
- Implementation Plan
- National Roll Out
- Implementation of CDS forms
- Communication

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Committals for Sentence

- Magistrates' court scheme extended to include committals for sentence hearings
- Existing means test applies but passported on the loJ test
- No income or capital contributions
- Hardship route available
- If no application made pre committal for sentence, means test will still apply

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Committals for Sentence in Practice

- Defendant is:
 - Eligible in the magistrates' court, the legal aid order will be extended to the Crown Court for the sentence hearing
 - Ineligible in the magistrates' court, they will be ineligible in the Crown Court for the sentence hearing
- Defendant may re-apply for legal aid if there has been a change of circumstances or if they wish to submit a hardship application
 - Paid solicitor privately for defence costs in the magistrates' court therefore unable to afford cost of sentence hearing in the Crown Court



Appeals to Crown Court

- Fresh funding needs to be applied for
- IoJ Test still applies
- Income only test. No capital requirements
- The means test incorporates additional £500 allowance
- Those who pass the means test will not have to pay
- Costs if unsuccessful:
 - £500 - appeal against conviction is dismissed (in full)
 - £250 - appeal against conviction is dismissed but sentence is reduced
 - £250 - appeal against sentence/order is dismissed
- Appellants will still be liable for costs if the appeal is abandoned
- Costs recovered at the end of the case

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Collection and Enforcement - Background

- Objective of the procurement exercise was to put in place a suitable value for money collection and enforcement service to support Crown Court Mean Testing
- Collection and Enforcement service will be provided as a combined service by an external Contractor
- The requirement covers all activities from creation of defendant account to recovery using enforcement sanctions
- The external contractor is Rossendales

Collection and Enforcement - scope

Pre-conviction

- Creation of a Defendant Account
- Collection of contributions from income
- Introduction letter sent Defendants Required to make contributions
- Chase/remind Defendants where payment not received
- Recovery and allocation of outstanding debts
- Tracing debtors and investigating means where appropriate
- Recover outstanding payments from income using enforcement sanctions
- Issue notification when all contributions made
- Deal with Defendant queries

Collection and Enforcement - scope

Post-conviction

- Balance final case costs against monies collected - determine final liability
- Refund Defendants - acquitted or overpaid through income contributions
- Request and chase capital evidence
- Carry out capital / equity checks to determine ability to pay final balance
- Collection of final balance, including notification of final balance
- Remind/chase Defendant where final balance not received
- Recovery of final balance using enforcement sanctions
- Issue notification when costs repaid
- Land Charges / charging - Manage the ongoing liability once secured
- Assessment in respect of the LSC write off policy
- Deal with Defendant queries

Stage of Compliance: Voluntary

- Collections will make the initial contact with the Defendant advising payments due, payment date, payment methods, details on hardship, contact details
- Make further contact with the defendant 5 days prior to payment due date
- Will make contact via; letter, email, SMS, telephone, voice to text
- Payment can be made via Direct debit, Standing order, Debit / Credit Cards, Cheque, Giro, Paypoint

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Stage of Compliance: Supported

- 5 days after a failed payment, Collections will issue a reminder letter to the Defendant
- Will make further contact via; letter, email, SMS, telephone, voice to text
- Provide advice on hardship / appeal route / payment options
- Collections will refer cases to Enforcement where the Defendant has missed two consecutive payments

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Stage of Compliance: Enforcement

- Enforcement will pursue the debt in-line with an LSC Code of Conduct
- Will charge interest on the debt
- Will add the cost of enforcement to the Defendants monies due
- Will use appropriate enforcement sanction at the most appropriate time as appropriate to the Defendants circumstance
- Attachment of Earnings order
- Distress warrant
- Motor vehicle clamping order
- Third party debt order
- Charging order



Support for Solicitors

- Material has been produced for solicitors and clients to assist when applying
- Feedback from Engage Events has been incorporated into the documents that have been provided
- This includes the following:
 - Suggested wording for a paragraph to be included with **client care letters**
 - **Pocket Book**: provides a step by step guide to means testing in the criminal courts
 - **Solicitor Guidance**: provides a condensed guide of the requirements of the scheme, including average case costs
 - **Consolidated Guidance**: revised guidance that is produced for court staff and will be available on the LSC website
 - **Interactive PDF**: provides an interactive version of the Solicitor Guidance on the LSC website
 - **Q&A Doc**: provides answers to questions raised at the Engage Events
- Additional copies of training materials available on request

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Implementation Plan

- Phased approach to roll out of CCMT
- First phase: Early Adopters consisting of five Crown Courts and their committing magistrates' courts went live on Monday **11th January 2010**
- Second phase: National roll out with implementation by region

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Implementation of CDS Forms

11 January 2010:

- Early adopter areas will work with version 6(EA) of the CDS forms
- Non early adopter areas will continue to work with version 5 forms

National Roll Out:

- When national roll out commences in April 2010, version 6 of the CDS forms will become mandatory as Crown Court means testing is implemented
- Version 5 stock levels will be run down with non-CCMT areas
- Non Crown Court means testing areas will work from version 6. These areas will not need to include information required by CCMT

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National Roll Out

- National roll out will take place between April – June 2010
- Will be undertaken in a phased approach:

Region	Go Live	Region	Go Live
South West	12 April 10	Midlands	26 April 10
North West	10 May 10	North East	17 May 10
Wales	24 May 10	South East	14 June 10
London	28 June 10		

- Training in these regions will also be undertaken in a phased approach, as CCMT is rolled out



Communication

- General progress and updates will continue to be included in LSC Update (fortnightly)
- You can email your queries to ccmt@legalservices.gov.uk
- Three solicitor focus groups have been held in London, Manchester and Swansea to review the scheme in the first few weeks and feed into the evaluation of the early adopter phase
- General feedback has been:
 - Supporting guidance documents have been useful – suggestions made to improve for national roll out
 - Training events were extremely useful
- Experiences of the scheme to date:
 - Clients complying with evidential requirements
 - Digesting all the information on the scheme whilst doing the ‘day job’

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Action Learning Set

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Question 1

- **Which of the following statements is true (choose all that apply):**
 - a. A defendant will never be subject to both an income contribution and capital contribution
 - b. A defendant will be expected to pay contributions from their income until their defence case costs have been met
 - c. A defendant will only ever pay a maximum of six contributions from their income, which may be reduced to five if paid upfront or on time
 - d. A defendant's case costs may be met from capital at the end of the case if there are outstanding costs and the defendant has been convicted

Question 2

- **Which of the following statements is false (choose all that apply):**
 - a. The hardship route will be retained for CCMT, which includes trials, committals for sentences and appeals
 - b. The interest of justice test will not apply to all cases that are heard in the Crown Court
 - c. The income sanction will be considered on a case by case basis and will be intelligently applied
 - d. The evidence provision fee is paid as a disbursement at a two-tier level: £45 and £90 plus VAT

Question 3

- **Which of the following statements is true (choose all that apply):**
 - a. Means testing applies to Crown Court trials, committal for sentences and appeals
 - b. Means testing applies to cases heard in the Court of Appeal
 - c. RDCO's will be phased out completely as CCMT is introduced by region
 - d. The Representation Order will be withdrawn if the defendant fails to comply with the terms of the contribution order

Question 4

- **The definition of a completed application form is:**
 - a. Relevant sections of the form completed and signed with necessary supporting evidential requirements for income
 - b. Relevant sections of the form completed and signed with necessary supporting evidential requirements for capital
 - c. Relevant sections of the form completed and all evidential requirements satisfied
 - d. Relevant sections of the form completed and signed with supporting evidence being submitted within 14 days from submission of form or committal/sending hearing

Question 5a

- **Defendant A is 19 and charged with aggravated burglary. He lives at home with his parents. He completes the CDS 14&15 confirming that he is in part-time employment and has no savings or other capital assets. What evidence do you need to provide?**
 - a. Nothing – because he is going to be tried in the Crown Court
 - b. Confirmation from his employer that he is a part-time employee
 - c. Most recent wage slip – exactly the same as the magistrates' court scheme
 - d. Most recent wage slip, evidence of outgoings and his parent's mortgage statement

Question 5b

- **When should defendant A submit his application and evidence for legal aid?**
 - a. Only following the first hearing in the Crown Court and the evidence must be submitted at the same time
 - b. A fully completed application form must be submitted before the sending hearing in the magistrates' court and the evidence must follow within 7 days
 - c. As soon as the application form is fully completed, with any required evidence submitted within 14 days
 - d. As soon as the application form is fully completed and all the necessary supporting evidence is available

Question 6

- **Defendant B has been charged with possession of a bladed article in a public place. He has been remanded into custody by the court due to previous convictions of a similar nature. He is going to elect Crown Court trial. He is a self-employed plumber who runs the business with his two business partners. They employ eight plumbers including two apprentices. Which process is applicable?**
 - a. Defendant B completes the form, receives legal aid decision and submits it to the court and sends in the evidence piece by piece as it becomes available
 - b. Defendant B receives decision on legal aid only when he submits fully completed application form with evidence once it has all been made available. The solicitor claims the higher EPF
 - c. Defendant B self-certifies his financial position, submits his forms without any further evidence
 - d. Defendant B self-certifies his financial position up until the point that he is committed to the Crown Court, then submits required evidence within 14 days of committal or submission of form, whichever is first. The solicitor claims the higher EPF

Question 7

- **The evidence provision fee can be claimed in the following circumstances (choose all that apply):**
 - a. Any necessary additional evidence that has been provided, which is above the magistrates' court scheme
 - b. Applicants that submit a hardship application
 - c. Applicants who are self employed and provide evidence required for legal aid application
 - d. Applicants that do not have any capital assets to declare

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Question 8

- **When submitting a hardship application , the following expenditure may be considered (choose all that apply):**
 - a. Sky television and mobile phone costs
 - b. Monthly prescription and medical costs
 - c. Student loans and personal debt
 - d. Vet bills and associated costs with having a pet

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Question 9

- **You want to make an application for judicial apportionment. In which scenario are you able to do that:**
 - a. Your client faced several charges on one indictment of which they were convicted of some and acquitted of others
 - b. You represented three of your clients on one indictment upon which one was acquitted and two were convicted
 - c. You represented one defendant on one charge upon which he was convicted
 - d. You represented one defendant on one charge upon which he was acquitted

Thank you

For any questions or training material requests:

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