

## For Defence Advocates: ensure your claim is processed promptly

*This document is current as of 16 December 2009*

### Why this document will benefit you

This document will help you get your Advocates' Graduated Fee Scheme (AGFS) claim and payment processed sooner. It gives key tips on checking that your claim has information the court needs so you can be paid without unnecessary delay.

It also highlights the importance of you using the new Pages of Prosecution Evidence (PPE) process. This will save you time working out PPE when you claim at the end of a case. See **Section 4** for the process.

Many claims that are submitted to the court are missing information or the information given does not match the court's record. If the record does not match the claim the court will spend time trying to resolve the mismatch, resulting in delays. You can use this document as an aid in getting your claim right first time, without unnecessary liaison with the court.

### Contents

|  |        |
|--|--------|
| 1. Overview of AGFS claiming                           | Page 1 |
| 2. A simple checklist to make your claim right         | Page 2 |
| 3. Telling the court who the Instructed Advocate is    | Page 4 |
| 4. How to use the new PPE Process                      | Page 5 |
| 5. How to claim the new fees for Confiscation Hearings | Page 7 |
| 6. Which form to use when claiming                     | Page 8 |
| Appendix 1: Quick reference for checking claims        | Page 9 |

### Section 1: Overview of AGFS Claiming

The Advocates' Graduated Fee Scheme (AGFS) is a fee structure that works on the basis that certain proxies are calculated together to total the final fee payable for an advocate's work in the Crown Court. The AGFS is made up of the Basic Fee and the following proxies determine the level of fee payable:

- class of offence
- type of case (for example, if there is a guilty plea or if the case goes to full trial)
- length of trial
- advocates' status. E.g. Leading Advocate
- pages of prosecution evidence
- number of prosecution witnesses.

Advocates can also claim fixed fees for ancillary hearings. These vary depending on the category of advocate. There are 21 hearing types, including Standard Appearance, Abuse of Process hearing, and Committal for Sentence.

When claiming at the end of a case, it is essential that the information entered onto the claim form is accurate and complete. Once received, the proxies claimed and the fixed fees for hearings, such as Committal for Sentence, are checked against the court record and the CDS (Funding) Order 2007. If the claim information matches the court record the advocate will be paid as claimed.

*You can find details on AGFS claiming in the CDS (Funding) Order 2007 – refer to Archbold 2009: Third Supplement to the 2009 Edition – from page 586, or [www.opsi.gov.uk/si/si2007/uksi\\_20071174\\_en\\_7](http://www.opsi.gov.uk/si/si2007/uksi_20071174_en_7).*

## **Section 2: Checklist for claiming**

Use the following Q & A to check your claim is complete.

### ***Are you claiming for a case with a representation order dated 30 April 2007 or later?***

If yes, then continue to review your claim against this checklist. If your case is older, then please read **Section 6** of this document.

### ***Did you inform the court of the identity of the Instructed Advocate?***

The court needs to know who the Instructed Advocate is from the beginning of the case (at the PCMH or before). Otherwise they will assume the person who attended the PCMH is the Instructed Advocate and will only accept a claim from that person at the end of the case.

Only the Instructed Advocate is allowed to make an AGFS claim for payment. The Instructed Advocate will then pay any Substitute or Trial Advocates for work they have done on the case.

See further guidance in **Section 3**.

### ***Have you added all hearings attended by the Substitute Advocate(s) to your claim?***

When you claim you should check with the Substitute Advocate(s) or Trial Advocate(s) the days they attended court. Then add these days to your AGFS claim.

This will ensure your Chambers or firm can save time by submitting a single claim that includes all relevant claim information.

### ***Have you claimed within three months of the case conclusion?***

The case must have concluded before you can submit your claim, otherwise it will be rejected by the court. It is also important that you claim within three months of the conclusion of the case. See *paragraph 5(3) of the CDS (Funding) Order 2007*. Go to [www.opsi.gov.uk](http://www.opsi.gov.uk).

### ***Have you used the correct offence group?***

To claim the correct level of fee, it is important to make sure you have stated the correct class of offence on your claim. Double-check the correct class in the offence table – go to *Part 6, Schedule 1 of the CDS (Funding) Order 2007*.

### ***Have you claimed for the correct hearings?***

Incorrect hearing types can often cause delays to claims e.g. a Committal for Sentence is claimed when the actual hearing that took place was a Committal for Breach. So it is important to check the schedule of hearing types as you claim. *A table of hearing types are listed in Part 4, Schedule 1 of the CDS Funding Order 2007*.

Where you need to claim under a new offence that is not specifically listed in the CDS Funding Order 2007 you should use Offence Class H. This rule applies even where you have spotted that a new offence has more or less replaced an old one.

This is because the court's IT needs to be updated with the new offences too. So if you claim for new offences under Class H, your claim will match the court's IT and will be accepted by the court.

### ***Have you checked the number of days spent at court?***

If you (and any Substitute Advocate) have not signed in each day at court, the actual number of days you claim for may be different from the court's record. This will result in a mismatch between the court record and your claim. To avoid this happening each advocate must sign in every day they attend court.

### ***Has the correct advocate category been claimed?***

Sometimes claims contain the right hearing type but for the wrong advocate category. E.g. claiming for a Standard Appearance as a Leading Advocate instead of a Junior Alone. Make sure you have claimed under the correct category. See *Schedule 1 of the CDS (Funding) Order 2007 to check the advocate category within the fee table*.

### ***Have you claimed the right amount for travel?***

You can only claim travel costs if you meet paragraph 24, Schedule 1 of the CDS (Funding) Order 2007 or if your court has a local travel arrangement unique to your area.

You may only claim for travel where the advocate is instructed to appear at a court further than 40km away from his/her office or chambers. This amount cannot be greater than the amount normally payable to a local advocate. Though the court can grant prior approval if appropriate. In some areas there is not a local Bar and so the court will have in place a Local Travel Arrangement which enables advocates to claim for travel.

So advocates must meet the criteria specified in Schedule 1, or follow the rules for claiming under their court's Local Travel Arrangements.

### ***Did you submit to the court the PPE confirmation form at the end of the case?***

On 1 May 2009, a PPE Stakeholder Group (consisting of LSC, HMCS, CPS, MoJ and Representative Bodies) implemented a new process to ensure that PPE is recorded accurately on the court's CREST system.

It is important you count PPE as it is defined:

*PPE includes all witness statements, documentary and pictorial exhibits, records of interviews with the assisted person, and records of interviews with other defendants, which form part of the committal or served prosecution documents (prosecution bundle for cases that are sent or transferred) or which are included in any Notice of Additional Evidence (NAE) and are served in paper format on the court.*

*PPE does not include any document provided by means of electronic communication, 'unused' material or material generated by the defence in their preparation of the case.*

You can download the PPE form at:

[http://www.legalservices.gov.uk/criminal/crown\\_court.asp](http://www.legalservices.gov.uk/criminal/crown_court.asp).

The PPE process is outlined in **Section 4** of this document.

Further PPE Guidance can be found at [http://www.legalservices.gov.uk/criminal/crown\\_court.asp](http://www.legalservices.gov.uk/criminal/crown_court.asp).

### ***Have you enclosed the original Representation Order?***

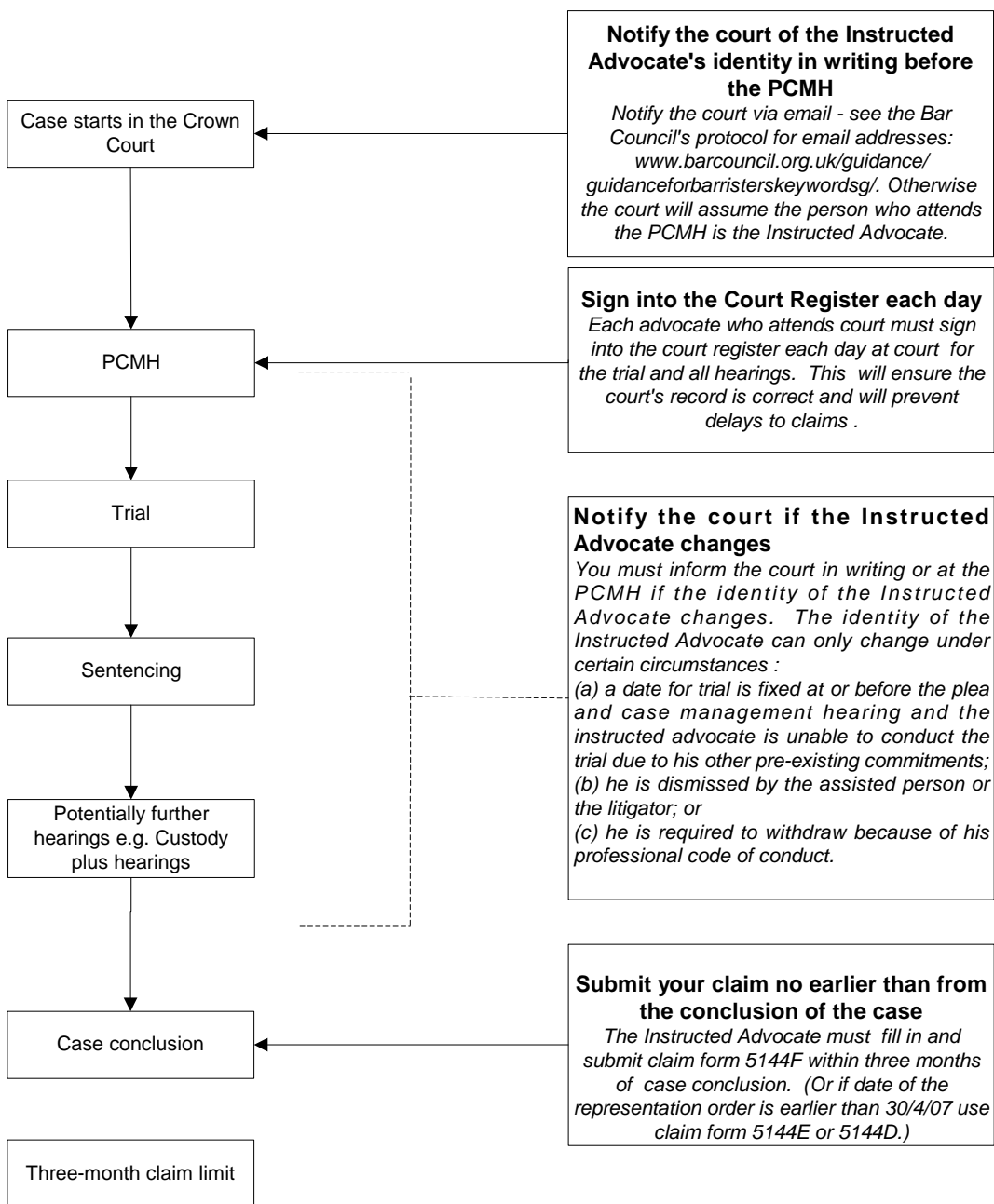
A copy of the Representation Order is needed to confirm case details. Delays can occur if the court does not have this information. Enclose a copy of the original representation order with your claim to allow the claim to be processed as quickly as possible following submission.

### Section 3: Instructed Advocate: recording attendance at court

The Instructed Advocate is the only person who can make a claim for payment under the AGFS (under the current scheme which is Scheme 4). This is stated in paragraph 5 of the CDS Funding Order 2007. So it is important the Instructed Advocate is identified as such at or before the PCMH. The court can then record this and can expect a claim from this person at the end of the case. The Instructed Advocate must also make sure that s/he keeps a record of the days at court attended by any Substitute or Trial Advocate and include their days at court in the claim for payment.

Note that in the best interests of the defendant and of case continuity, it is preferable that the advocate who attends the PCMH is the same advocate who leads the trial. If the Instructed Advocate leads the case during both the PCMH and trial the case is likely to proceed effectively. This is because the advocate has prepared for the trial and can make effective decisions relating to the trial at the PCMH.

The figure below outlines how to ensure the court has an accurate record of your attendance at court during the course of your case. This will enable the court to verify your claim for payment.



## Section 4: The PPE Process

A PPE Stakeholder group was set up in November 2008 and consisted of representatives from:

- Her Majesty's Court Service
- Legal Services Commission
- Crown Prosecution Service
- Ministry of Justice
- the Legal Aid Practitioners Group.

The group consulted with the Bar Council on their proposals. Representatives from the Bar Council now sit on various other groups that discuss PPE related issues.

The group examined best practice across the country and recommended the following process be implemented.

### The New PPE Process:

- The CPS print running totals of PPE on the front sheet of all new bundles and NAEs. There will be a running total of the PPE for all additional notices.
- At the end of a case, the defence advocate, on behalf of the defence team, submits a PPE form along with evidence of the CPS PPE figure, to the court clerk. The advocate either confirms agreement with the CPS PPE count, or proposes a revised PPE count with details of the statements/exhibits relevant to the proposed new figure. If a form is not submitted at that time, the court will assume that the defence team agrees with the CPS PPE count.
- Where the defence team agrees with the final CPS PPE figure, the advocate completes and submits the PPE form, along with evidence of the final CPS PPE figure, to the court officer for entry onto the court's CREST system.
- Where the defence team disputes the PPE figure, the advocate completes and submits the PPE form, along with evidence of the final CPS PPE figure, to the court officer who then reviews it. Please note that alternative PPE figures must still meet the regulatory definition of PPE.
- If the court officer agrees with the revised figure, they will enter that figure onto the CREST system. If not, they will enter the original CPS figure or they may partially agree with the defence figure and amend the PPE count accordingly.
- The figure entered onto the CREST system will be used to validate claims for payment.
- If the advocate still disagrees, re-determination can be sought after a determining officer has calculated the graduated fee.

The PPE process is shown in Figure 1 on page 6 of this document.

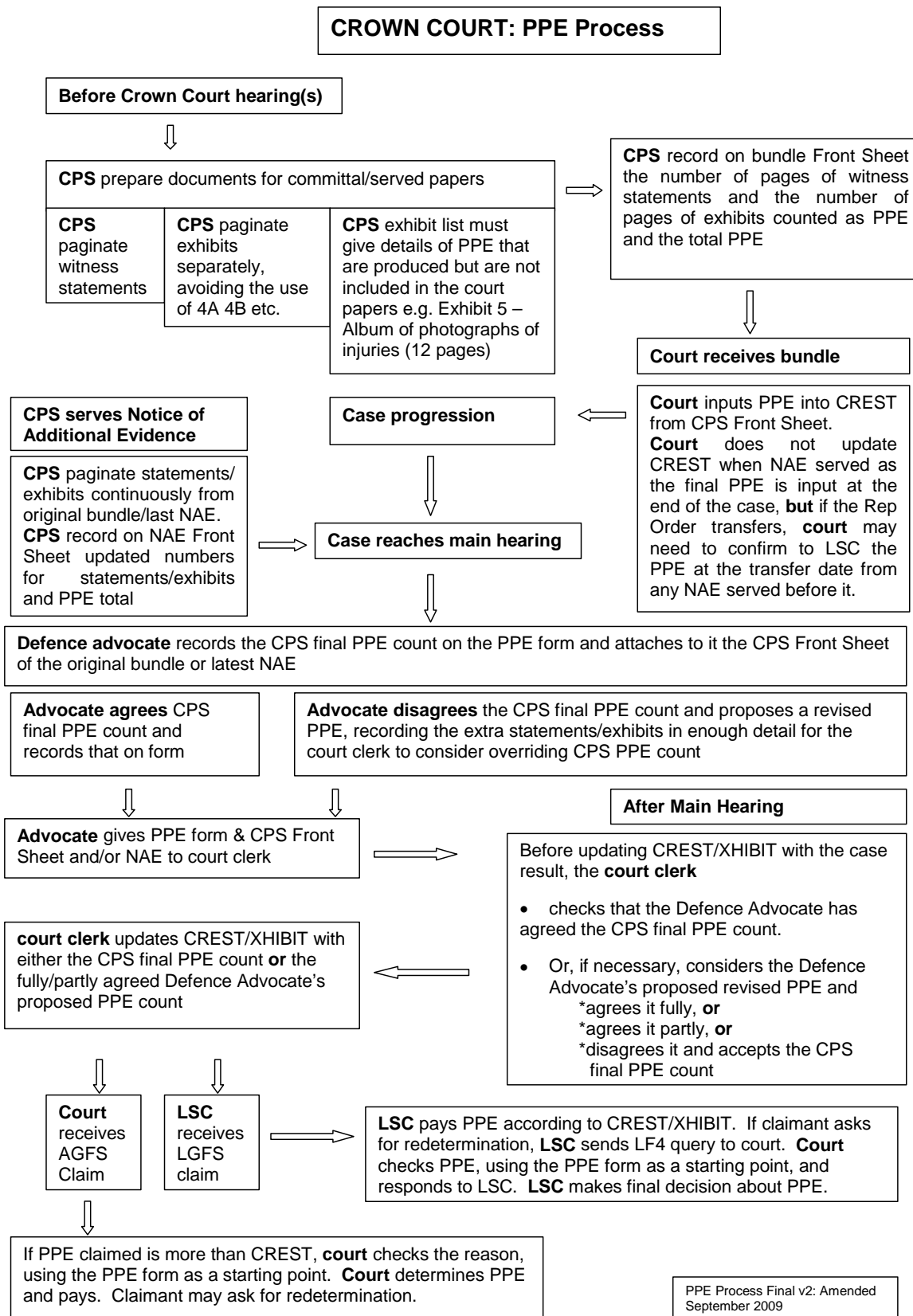
You can download the PPE form at:

[http://www.legalservices.gov.uk/docs/cds\\_main/PPEForm\\_Sept\\_09.pdf](http://www.legalservices.gov.uk/docs/cds_main/PPEForm_Sept_09.pdf)

As stakeholders adjust to this process, it is hoped many of the difficulties in validating PPE will be resolved. At the moment this process only applies to CPS prosecutions. However, the LSC and HMCS are exploring the possibility of rolling out this process with all prosecuting authorities.

Further PPE Guidance can be found at [http://www.legalservices.gov.uk/criminal/crown\\_court.asp](http://www.legalservices.gov.uk/criminal/crown_court.asp).

**Figure 1: The PPE Process Flowchart**



## **Section 5: Confiscation Hearings from 21 August 2009**

This section gives a summary of new fees for claiming a Confiscation Hearing. *For full guidance and the new claim form, go to [www.hmcourts-service.gov.uk/cms/767.htm](http://www.hmcourts-service.gov.uk/cms/767.htm).*

The Criminal Defence Service (Funding) (Amendment No. 2) Order 2009 introduced new fees for advocacy in Confiscation Hearings, concluded on or after 21 August 2009, where there are more than 50 pages of evidence.

You can claim for the new fees for Confiscation Hearings by sending the claim form to the National Taxing Team. Use the full guidance, located on the HMCS website, to help you make your claim.

Confiscation Hearing claims where there are fewer than 50 pages of evidence should be included in the main graduated fee claim.

The main graduated fee should be claimed in the usual way and sent to the appropriate Crown Court.

## Section 6: Which form to use when claiming

This section tells you which form to use and which fee scheme applies to your case.

The current scheme used for all new cases is AGFS Scheme 4. The correct claim form to use for Scheme 4 is Form 5144F or your bill which contains the same claim information. If the representation order for your case is dated earlier than 30 April 2007 then you must claim under an earlier scheme.

The following table provides information on each historic scheme. It tells you which form to use and which statute to follow. *These forms are available to download at <http://www.hmcourts-service.gov.uk> or you can submit your own version of the bill made available by your IT software provider.*

| Scheme No                        | Summary of scheme  | Date of Representation Order | Form to use                  |
|----------------------------------|--|------------------------------|------------------------------|
| <b>Initial Scheme (Scheme 0)</b> | <p><b>Governed by The Legal Aid in Criminal and Care Proceedings (Costs)(Amendment)(No.2) Regulations 1996 - 1996 No.2655</b></p> <ul style="list-style-type: none"> <li>▪ Captured 1-10 day trials</li> <li>▪ Captured a limited number of Cracked trials and Guilty pleas (limited by numbers of witnesses and pages of prosecution evidence.)</li> </ul>  | Prior to 29/10/01            | Submit your bill into court. |
| <b>Scheme 1</b>                  | <p><b>Governed by the Criminal Defence Service (Funding) (Amendment No.3) Order 2001- 2001 No.3341</b></p> <ul style="list-style-type: none"> <li>▪ Expanded scope of trials to include 11-25 day trials.</li> </ul>   | 29/10/01 to 1/8/04           | Form 5144D                   |
| <b>Scheme 2</b>                  | <p><b>Governed by the Criminal Defence Service (Funding)(Amendment) Order 2004 -2004 No.2045</b></p> <ul style="list-style-type: none"> <li>▪ Introduced revised rates for 11-25 day trials</li> <li>▪ Increased scope of scheme to include 26-40 day trials (and trials over 40 days which were estimated to be 40 days and under and were not picked up by the LSC's Very High Cost Cases Unit / Complex Crime Unit.)</li> </ul> | 2/8/04 to 2/10/05            | Form 5144D                   |
| <b>Scheme 3</b>                  | <p><b>Governed by the Criminal Defence Service (Funding)(Amendment) Order 2005 - 2005 No.2621</b></p> <ul style="list-style-type: none"> <li>▪ Revised trial fees</li> <li>▪ Further extended scope of the graduated fee scheme to include all guilty pleas and all cracked trials except those that 'crack' prior to the PCMH.</li> </ul>   | 3/10/05 to 29/04/07          | Form 5144E                   |
| <b>Scheme 4</b>                  | <p><b>Governed by the Criminal Defence Service (Funding) Order 2007. No. 1174</b></p> <p>Scheme 4 is the current scheme.</p> <ul style="list-style-type: none"> <li>▪ Introduced the idea of the Instructed Advocate. The Instructed Advocate claims for the whole case and pays substitutes.</li> </ul>   | 30/04/07 to date.            | Form 5144F                   |

Appendix 1

**SAMPLE CLAIM FORM** (PRODUCED BY THE BAR'S IT PROVIDERS)

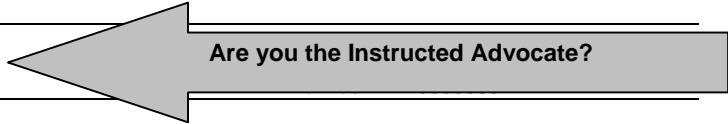
Scheme 4

**GRADUATED FEE CLAIM**

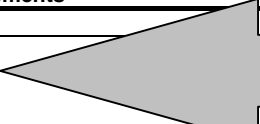
Draft Copy

| Bill-to Address  | Chambers Address   |
|--|--|
| DX: 6716 MANCHESTER<br>Manchester Crown Court<br>Combined Court Center<br>Crown Square<br>Manchester<br>M3 1MM | DX: 12345 LAW TOWN<br>Chambers of Arnold Atherton Q.C.<br>Meridian Law Chambers<br>101 Lawtown Grove<br>Lawtown<br>Lawshire<br>B4 R5                       |
| <b>Instructed by:</b> Helen Frew & Co Solicitors<br><b>Instructed Ref:</b> HF/AT-302-11                        | <b>Chambers Telephone Number:</b> 01973 553 442<br><b>Chambers Fax Number:</b> 01973 334 446<br><b>Chambers Email Address:</b> clerks@lawtown-chambers.com |

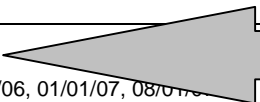
| Section 1: Case, Advocates & Offence           |                          | FOR COURT USE                       |
|--|--------------------------|-------------------------------------|
|  |                          | Date received & Serial No.          |
| <b>Tax Point Date:</b>                         |                          |                                     |
| <b>Court Name:</b>                             | Manchester Crown Court   |                                     |
| <b>Principal Case Number:</b>                  | T2007/2019               |                                     |
| <b>Unique Reference Number:</b>                | URN:07/M/00293           |                                     |
| <b>Case Title:</b>                             | Regina -v- Andrew Hewitt |                                     |
| <b>Principal Defendant:</b>                    | Andrew James Hewitt      |                                     |
| <b>Date of Representation Order</b>            | 02/01/2007               |                                     |
| <b>Advocate's Identifier:</b>                  | 1-823                    |                                     |
| <b>Advocate's Full Name:</b>                   | Mr Arnold Atherton Q.C.  |                                     |
| <b>Advocate's Claim Reference:</b>             | 000309-1/AA              |                                     |
| <b>Advocate Category:</b>                      | 0 - Queens Counsel       |                                     |
| <b>Type of Case:</b>                           | T - Jury Trial           |                                     |
| <b>Date notice of 1st Fixed/Warned issued:</b> |                          | <b>1st Fixed/Warned Trial Date:</b> |
| <b>Offence Group:</b>                          | H                        | <b>Offence Value:</b> 15000.00      |
| <b>Offence Description:</b>                    | Affray                   |                                     |
| <b>Estimated Length of Trial (Days):</b>       | 39                       | <b>Actual Length (Days)</b> 60      |



| Section 2: Basic Fee & Enhancements   |      |     |          |                 |          |
|---|------|-----|----------|-----------------|----------|
| Description   | Code | Qty | Rate     | Amount          |          |
| Basic Fee<br>02/10/06   |      |     |          | 2200.00         |          |
| Number of Defendants uplift   |      |     |          | 440.00          |          |
| Number of Cases   | NOC  | 2   | 440.0000 | 880.00          |          |
| Number of Prosecution Witnesses   | NPW  | 100 | 7.5500   | 679.50          |          |
| Pages of Prosecution Evidence   |      |     |          | 1795.50         |          |
| Daily Attendance Fee<br>04-06/10/06, 09-13/10/06, 16-20/10/06, 23-27/10/06, 30-31/10/06, 01-03/11/06, 06-10/11/06, 13-17/11/06, 20-24/11/06 | DAF  | 38  | 943.0000 | 35834.00        |          |
| Daily Attendance Fee (41 to 50)<br>27-30/11/06, 01/12/06, 04-08/12/06   | DAH  | 10  | 447.0000 | 4470.00         |          |
| Daily Attendance Fee (51+)<br>11-15/12/06, 18-22/12/06  | DAJ  | 10  | 479.0000 | 4790.00         |          |
| Plea and Case Management Hearing<br>01/09/06  | PCM  | 0   | 330.0000 | 0.00            |          |
| <b>Section 2 Total Carried Forward</b>  |      |     |          | <b>51089.00</b> | <b>0</b> |



| Section 3: Miscellaneous Fees   |      |     |         |               |  |
|---|------|-----|---------|---------------|--|
| Description   | Code | Qty | Rate    | Amount        |  |
| Standard Appearance Fee<br>08/08/06, 14/08/06, 19/08/06, 15/09/06, 01/01/07, 08/01/07 |      |     |         | 400.00        |  |
| Standard Appearance Fee uplift<br>08/01/07  | SAU  | 2   | 40.0000 | 80.00         |  |
| Conferences and Views<br>07/08/06, 18/08/06, 31/08/06, 05/01/07, 12/01/07             | CAV  | 4   | 85.0000 | 340.00        |  |
| <b>Section 3 Total Carried Forward</b>  |      |     |         | <b>820.00</b> |  |



| Section 4: Travel & Hotel Expenses    |  |  |  |                 |          |
|---------------------------------------|--|--|--|-----------------|----------|
| Description                           |  |  |  | Amount          |          |
| Travel & Hotel Expenses               |  |  |  | 977.00          |          |
| Travel Costs                          |  |  |  | 2337.50         |          |
| <b>Section 4 Total (Total Travel)</b> |  |  |  | <b>3314.50</b>  |          |
| <b>Section 2 Total B/F</b>            |  |  |  | <b>51089.00</b> | <b>0</b> |

