

Payment of Expert Witnesses Funding Guidance

Crime	Legal Services Commission (LSC) (Legal aid budget)	Central Funds (Fixed MoJ budget)
<p>Magistrates Court</p>	<p>1. Expert witness costs are claimed from the LSC via the lead solicitor (including preparation, conference attendance etc, but excluding court appearance).</p> <p>2. Payment on Account (POA) - Limited option for solicitor to claim a payment on account from LSC, only where the amount of a single disbursement is likely to exceed 50 % of the value of the solicitors Standard Monthly Payment (SMP) from the LSC. This is limited because SMP takes into account firm's annual disbursement expenditure.</p> <p>Contract Ref: <i>B2.2.13 Unified Contract crime specification.</i></p> <p>3. Prior authority - Solicitors also have the option of seeking prior authority on an expert witness fee if they deem it unusual in its nature or amount. This is utilised if the solicitor considers that the costs may not be allowed on final assessment.</p> <p>Contract Ref: <i>Section 5, Part D: narrative & guidance, Volume 1: Legal Services Commission manual.</i></p> <p>Timing: <i>Solicitors must submit their claim for payment to the relevant Regional Office within three months of the matter ending.</i></p> <p><i>LSC usually process POA's to a 5-day turnaround period.</i></p> <p>Contract Ref: <i>rule 1.3, Part C Assessment and Review Procedures, Unified Contract.</i></p>	<p>1. Expert witnesses court appearance are claimed directly by the expert from central funds via the courts.</p> <p>Contract Ref: <i>Section 4.7 of the Criminal Bills Assessment Manual, Unified Contract Specification A22.30 & Part V Costs In Criminal Cases (General) Regulations 1986. (Central funds).</i></p> <p>Timing: <i>Claims should be filed with the Court concerned within three months of the end of the proceedings.</i></p> <p>2. Experts instructed by the Courts are claimed directly by the expert from Central Funds via the courts.</p> <p>Timing: <i>Claims should be filed with the Court concerned within three months of the end of the proceedings.</i></p>
<p>Crown Court</p>	<p>1. Expert witness costs are claimed from the LSC via the lead solicitor (including report preparation, conference attendance etc, but excluding court appearance).</p> <p>The claim is prepared by the solicitor and submitted to the LSC under the Litigator Graduated Fee Scheme (LGFS).</p> <p>Timing: <i>In accordance with section 6 (3) of The Criminal Defence Service (Funding) Order 2007 the solicitor must submit all costs, including</i></p>	<p>1. Experts court appearance claimed from central funds via the courts unless the court directs otherwise.</p> <p>Contract Ref: <i>Section 4.7 of the Criminal Bills Assessment Manual, Unified Contract Specification A22.30 & Part V Costs In Criminal Cases (General) Regulations 1986. (Central funds).</i></p> <p><i>Costs In Criminal Cases (General) Regulations 1986 provide that the expenses properly incurred by a witness</i></p>

	<p>expert's disbursements within three months of the conclusion of the proceedings.</p> <p>2. Payments on Account (POA) can be sought for expert witness costs if it is £1000+. The expert can be paid via an Interim payment from the LSC to the solicitor.</p> <p>Contract Ref: section 14 of <i>The Criminal Defence Service (Funding) Order 2007</i>.</p> <p>Timing: LSC process POA's usually to a 5-day turnaround period.</p> <p>3. Prior Authority - Solicitors also have the option of seeking prior authority from LSC on an expert witness fee if they deem it unusual in its nature or amount. This can be done if they consider that the costs may not be allowed on final assessment.</p> <p>Contract Ref: Section 5, Part D: narrative & guidance, Volume 1: Legal Services Commission manual.</p> <p>4. Very High Cost Cases (VHCC's) (over 40 days planned at trial) - A contract is prepared by the solicitor with the LSC and work is planned including experts for a three-month period.</p> <p>Payment is made by the LSC at the end of each three-month period, as long as the work falls within the tasks and hours agreed in advance.</p> <p>Contract Ref: <i>Criminal Defence Service (VHCC) Regulations 2007</i>.</p>	<p>(Expert) or interpreter called on behalf of a defendant, a private prosecutor (NOT CPS) or *the court or a medical practitioner, shall be allowed out of central funds <u>unless the court directs that the expenses are not to be allowed out of central funds.</u></p> <p>Timing: Claims should be filed with the Court concerned within three months of the end of the proceedings.</p> <p>2. Experts Instructed by the Courts claimed from central funds via the courts unless the court directs otherwise.</p> <p>Timing: Claims should be filed with the Court concerned within three months of the end of the proceedings.</p>
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Invoices

Invoices are required for expert witness fees at the final bill stage when they exceed the following totals:

- Crime Lower (Magistrates Court) = £20.00
- Crime Higher (Crown Court) = £20.00
- Crime, Very High Cost Cases = £10.00

For POA's / interim claims the solicitor is required to provide an expert witness invoice if the fee is over £1000.00.

Instruction and payment of Expert witnesses

Solicitors must pay expert witnesses whom they instruct in connection with contract work in accordance with the terms of your agreement with them.

In the absence of any term in the agreement with the solicitor as to the timing of payment, the solicitor must pay the expert witness within 28 days of receipt the invoice or fee note.

Delayed payment by the solicitor can occur if the expert witness breaches any term (express or implied) of the agreement with them.

Contract Ref: Section 19, *Instruction and payment of third parties, Unified Contract Standard terms 2007*

Civil	Legal Services Commission LSC (Legal aid budget)
<p>Controlled Work</p> <p>- All Legal Help (initial advice and assistance)</p> <p>- Controlled Legal Representation (Legal representation before mental health and Immigration tribunal, applications under section 103A of the Nationality, Immigration and Asylum Act 2002; and CLA work)</p>	<p>1. Expert witness costs are claimed from the LSC via the lead solicitor. It is claimable from the legal aid budget where it is in the best interests of the client and the amount is reasonable.</p> <p><u>Contract Ref:</u> 5.23 <i>Unified Contract, Civil Specification</i></p> <p><u>Timing</u></p> <p><i>The time of claiming for Controlled Work Matters is stated to 3 months from the conclusion of the case. However this is to be extended to 6 months in the 2010 Standard Civil Contract.</i></p>
<p>Licensed Work</p>	<p>1. Expert witness costs are claimed from the LSC via the lead solicitor. It is claimable from the legal aid budget where it is in the best interests of the client and the amount is reasonable.</p> <p><u>Contract Ref:</u> <i>Section 2.5 of the Funding Code Decision Making Guidance</i></p> <p>2. Prior authority - Solicitor can seek prior authority if they propose to incur costs, which are either unusual or large in costs. To do so expert's witnesses must supply appropriate estimates showing a breakdown of the work, relevant area of expertise/qualification and rates applied.</p> <p><u>Contract ref:</u> <i>Rule 6.14, Carrying out Licensed work, Unified Contract</i></p> <p>3. Payments on Account (POAs) – Solicitors have the option of applying for a POA for expert witness fees that have been incurred or are about to be incurred.</p> <p>Solicitors can claim for a disbursement payment on account for expert's fees at any time during the lifetime of the case up until the submission of a final claim for costs. (Solicitor's profit costs can only be claimed 2 every 12 month period but experts fees would be a disbursement and as such claimed as and when incurred)</p> <p><u>Contract ref:</u> <i>Section 17, clauses 5-15 of the Unified Contract, Standard Terms</i></p>
<p>Apportionment of Costs</p>	<p>Disbursements should be appropriately apportioned between parties (whether publicly funded or not) where that is reasonable.</p> <p>It is inappropriate and unreasonable to transfer the responsibility for expenditure to a publicly funded party having regard to their publicly funded status. Solicitors should not agree liability or apportionments that place or transfer financial liability on the legal aid funded client.</p> <p>Suppliers must take care not to accept that funded clients will, through their certificates, bear costs and expenses unless this would be appropriate in the case of a private paying client.</p> <p><u>Contract Ref:</u> <i>Legal Services Commission manual, Vol1, Part D: Narrative and Guidance, 5. 6</i></p>

Instruction and payment of expert witnesses

Solicitors must pay expert witnesses whom they instruct in connection with Contract Work in accordance with the terms of your agreement with them.

In the absence of any term in the agreement with the solicitor as to the timing of payment, the solicitor must pay the expert witness within 28 days of receipt of the invoice or fee note.

Delayed payment by the solicitor can occur if the expert witness breaches any term (express or implied) of the agreement with them.

Contract Ref: Section 19, *Instruction and payment of third parties, Unified Contract Standard terms 2007*

Invoices

Invoices are required for expert witness fees at the final bill stage when they exceed £50.00:

For POA's / interim claims the solicitor is required to provide an expert witness invoice if the fee is over £1000.00.

Expert Witness Flow Chart – Payment by the LSC (Civil + Crime)

