



# **GRADUATED FEE PAYMENT PROTOCOL**

**The General Council of the Bar of England and Wales**  
April 2007

**GRADUATED FEE PAYMENT PROTOCOL**

**INTRODUCTION TO THE PROTOCOL**

**The need for a Fee Payment Protocol**

- 1 The Carter Review recommended a Revised Advocacy Graduated Fee Scheme (“RAGFS”) for the remuneration of advocates in the Crown Court: Chapter 4, paragraphs 56 & 57.
- 2 The Government has accepted the Carter Review’s proposals and the RAGFS is set out in *The Criminal Defence Service (Funding) Order 2007* SI No 1174 (“the Order”), which takes effect from 30<sup>th</sup> April 2007, in respect of representation orders granted on or after 30<sup>th</sup> April 2007.
- 3 The Fee Payment Protocol (“the Protocol”) has been the subject of consultation by the Bar Council, and adapted as a result. The Protocol will be reviewed by the Bar Council after the first 6 months of the effective operation of the RAGFS. Any amendments or additions to it will be circulated to the profession and published on the Bar Council website at [www.BarCouncil.org.uk](http://www.BarCouncil.org.uk)
- 4 The DCA and the Law Society support the Protocol which meets the requirements of the Order where necessary.

**The Instructed Advocate**

- 5 The Order defines the Instructed Advocate as follows (Article 2):  
“ ‘instructed advocate’ means

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- (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 a 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;”.

**Withdrawal as Instructed Advocate**

- 6 Although the Government and the Bar Council place great emphasis on continuity of representation, it has been accepted that there are some limited circumstances in which withdrawal as Instructed Advocate is inevitable. Those circumstances will be set out as follows in Schedule 1, paragraph 20(9) of the Order:

“(9) An instructed advocate must remain the 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; or
- (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.

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7 The replacement Instructed Advocate must then take over all the original Instructed Advocate's responsibilities (Schedule 1, paragraph 20(10)):

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

- (a) immediately inform 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.”

For the avoidance of doubt, Paragraph 19(10) does not impose an obligation on the incumbent Instructed Advocate to select a replacement Instructed Advocate, as such an obligation would be inconsistent with a client's freedom of choice. The obligation is one of notification and not selection.

**Continuity of representation and changes in listing practices**

8 Continuity of representation is a key objective of the Criminal Procedure Rules and Lord Carter's proposals strongly encourage this objective. He has acknowledged that existing listing practices will have to change, in order to achieve continuity:

*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 [Chapter 2, paragraph 170]*

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- 9 This change of approach, coupled with the Bar Council's radical proposals in respect of mentions, should reduce substantially any need for the Instructed Advocate to return parts of the case to another advocate. It is in the public interest and in the interest of the professions that the same advocate should undertake all necessary work on a case. The Bar is taking the lead in this initiative. It is in the interests of the Bar as whole, and the criminal justice system, that the advocate of choice should be able to undertake all aspects of the case for the client. The Bar Council, and Circuit Leaders will be prepared to raise with Resident judges, Presiding Judges and the Senior Presiding Judge listing practices which are brought to their attention which put efficient case management at risk.

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**Fees payable to the Instructed Advocate**

- 10 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. The Instructed Advocate will therefore be the person who contracts for advocacy services. Where it is necessary for a Substitute Advocate to undertake any advocacy services that will be as subcontractor. The relationship of contractor and sub-contractor does not affect any of the barrister's duties under the Code of Conduct.
- 11 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.

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- 12 The LSC will make a total payment to the Instructed Advocate, inclusive of VAT (if he is VAT registered).
- 13 13.1 The Instructed Advocate will be liable to account to HMRC for that VAT (ie on the value of the whole supply made) . The Substitute Advocate (if VAT registered) will be required to account for VAT on the value of the supplies made to the Instructed Advocate. The Instructed Advocate may, however, reclaim (on his VAT Return) VAT which charged to him by a Substitute Advocate, on these supplies as input tax, subject to normal VAT rules.
- 13.2 Appropriate records must be kept for VAT inspection, including copies of VAT invoices issued by the Instructed Advocate and VAT invoices issued to the Instructed Advocate by any Substitute Advocate. The Bar Council recommends that Chambers keep these records centrally. An extract of HMRC Guidance, and advice received by the Bar Council appears in Annex G. This advice is relevant to both barristers and any solicitor advocates who receive RAGFS fees.

**Fees payable to a Substitute Advocate**

- 14 Schedule 1, paragraph 21(3) of the Order states that the Instructed Advocate is responsible for arranging payment of fees to any substitute advocate.
- 15 15.1 As stated in paragraph 10, the relationship between the Instructed Advocate and the Substitute Advocate is one of a contractor and sub-contractor. The fact that this is the relationship also simplifies the old fee collection system with the Court Service (HMCS): it is the Instructed Advocate as contractor who raises the invoice for the case fee for payment from HMCS, and any substitute advocate must invoice the Instructed Advocate. However, the obligation of each barrister under the Code of Conduct remains unaltered.

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- 15.2 The Instructed Advocate's position as contractor and the substitute advocate as sub-contractor will be evidenced by the Instructed Advocate and any Substitute Advocate agreeing to provide services in accordance with the letter at Annex D and on the terms of this Protocol, and will be reflected in the system of invoicing and fee notes established pursuant to the Funding Order, and this Protocol.
- 16 A Substitute Advocate will invoice the Instructed Advocate in respect of any Paid Returned Work done by him for the IA. This will include VAT where the Substitute Advocate is VAT registered.
- 17 The Instructed Advocate will be liable to pay this VAT to the SA, whether or not the Instructed Advocate is registered for VAT. If he is registered for VAT then he may deduct this VAT as input tax (subject to normal VAT rules). Therefore it is strongly advisable for the Instructed Advocate to be registered for VAT.
- 18 18.1 The Instructed Advocate will then pay the Substitute Advocate in accordance with this Protocol.
- 18.2 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**

- 19 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.

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**Professional obligation to pay a Substitute Advocate and Comply with the Funding Order**

- 20 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”.

Discrete payments made under the Order

- 21 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—

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- (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.”

22 22.1 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.”

22.2 Instructed Advocates are responsible for fee payment to other advocates. Instructed Advocates must therefore submit their claims for payment to HMCS promptly and in any event within 3 months of the conclusion of the case.

22.3 Instructed Advocates are responsible for making the fee claim to HMCS in the correct form, and in the correct amount, correctly categorising the case, and, subject to 22.4 below, undertaking appeals where any part of the fee claimed has been rejected, and the rejection is not acceptable to the Instructed Advocate or the Substitute Advocate.

22.4 Substitute Advocates must invoice the Instructed Advocate promptly, and in good time so as to enable the Instructed Advocate to submit a correct fee claim to HMCS within 3 months of the conclusion of the case.

Redetermination of fees

23 Article 29 of the Funding Order allows the Instructed Advocate to apply to the appropriate officer for a re-determination of his fees. Save in relation to special preparation and wasted preparation, only the Instructed Advocate may apply for a re-determination.

24 This means that where a Substitute Advocate is dissatisfied with the appropriate officer’s determination of a fee, the application for redetermination and any appeal must be brought by the Instructed Advocate.

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- 25 The Substitute Advocate will know the precise grounds of his dissatisfaction and therefore shall be responsible for preparing any written material required by Article 29 of the Funding Order in support of a re-determination.
- 26 The Instructed Advocate shall be responsible for ensuring that the application for a re-determination is made in accordance with Article 29 of the Funding Order.
- 27 Article 29 of the Funding Order allows a Substitute Advocate or a Trial Advocate to seek a re-determination of a decision by the appropriate officer not to allow such a fee, or with the decision as to the number of hours allowed in the calculation of such a fee.

Appeals to a Costs Judge

- 28 Article 30 of the Funding Order allows a representative who is dissatisfied with the decision of the appropriate officer to appeal to a Costs Judge.
- 29 Paragraphs 25-27 above apply to an appeal to a Costs Judge as they do to an application for a re-determination.

Paid Returned Work contained in the Basic Fee

- 30 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 are shown VAT exclusive) 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.

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31 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. VAT is due on the value of the whole supply by the Substitute Advocate to the Instructed Advocate, and this value should include any and all such expenses. Equally the IA must include such expenses in the total value for VAT and VAT should be charged when billing HMCS.

32 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.”

33 The Instructed Advocate will 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. Note that VAT must be accounted for in accordance with the advice given in paragraphs 10-18 and 31 above.

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- 34 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**

- 35 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. The purpose and intention of the letter at Annex D is to ensure that Instructed Advocates and Substitute Advocates, and their instructing solicitors comply with the terms of this Protocol.

**Depleted Basic Fee**

- 36 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.
- 37 Examples of how paragraph 36 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.

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### **Paid Returned Work where there are two Instructed Advocates**

- 38 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).
- 39 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.
- 40 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**

- 41 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”.*

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- 42 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.
- 43 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**

- 44 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 Solicitors Code Of Conduct when it comes into force in 2007.
- 45 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.

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**Dispute resolution**

- 46 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.
- 47 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.
- 48 If a dispute is not resolved under the procedure established under paragraph 40, 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.

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49 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**

50 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;"

51 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.

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

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**Income Tax and VAT implications**

- 53        Discussions have been taking place with HMRC in respect of VAT treatment and this Protocol should not present any particular VAT problems. The Bar Council has taken specialist income tax advice, and does not expect there to be any particular income tax problems. Chambers administration must, however, act promptly and efficiently. Appropriate records must be kept.

Income Tax

- 54        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, ie when the work is completed if over 7 years call, or when payment is made if under 7 years call (as at present). 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

- 55        As stated above, the relationship between the Instructed Advocate and the Substitute Advocate is one of a contractor and sub-contractor.
- 56        VAT should be accounted for in accordance with paragraphs 10-18 above.
- 57        57.1 A barrister whose taxable turnover (not including VAT) in the next year will be £150,000 or less, and whose total business income (including VAT) in the next year will be £187,500 or less may use the flat-rate scheme. A barrister on the

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scheme accounts for VAT at a flat rate of 13% but cannot claim back any input tax incurred. Any barrister who regularly acts as an instructed advocate receiving taxable supplies from VAT-registered Substitute Advocates may wish to consider the pros and cons of the scheme, since they will not be able to reclaim input tax on fees paid to Substitute Advocates.

57.2 Whilst the VAT treatment has been discussed with HMRC the views expressed in this document are based on the Bar Council's understanding of the law as at the date of publication of this Protocol, and neither the Bar Council nor HMRC can accept any liability for any reliance placed on this Protocol. Barristers, solicitors and their staff should check for changes in the law, and any court or tribunal decisions, and obtain updated official publications. Help can be obtained from HMRC's website at [www.hmrc.gsi.gov.uk](http://www.hmrc.gsi.gov.uk) or by telephoning HMRC National Audit Service on 0845 0109000

**Competition issues**

58       The Protocol does not cause any material competition law problems.

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**ANNEX A**

**TABLE A: PAID RETURNED AND PAID RETAINED WORK**

<b>Category</b>	<b>Comments</b>	<b>Junior</b>	<b>Leading Junior</b>	<b>QC</b>
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
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 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

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Conferences with clients and experts. Views. <i>Part Basic Fee, part fixed fee under the Order, depending upon the actual or estimated length of the case.</i>	The first three conferences are included in the Basic Fee. Separate payment is made for fourth and subsequent conferences only in cases lasting or estimated to last 21 days or more.	£45 per hour	£65 per hour	£85 per hour
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Fees for conferences are payable to a Substitute Advocate as Paid Returned Work and deductible by the Instructed Advocate as Retained Work at the rates shown in the columns above, but subject to the capping both as to number and length that applies under the current Graduated Fee Scheme.

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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 <sup>th</sup> 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

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Sentencing. <i>Fixed fee under the Order if effective. Non-effective hearing counts as a standard appearance. Same as for sentence hearing.</i>	Sentence Hearings			
	Effective	£125	£200	£300
	Non-effective	£100	£150	£200
	Deferred Sentence			
	Effective	£200	£275	£375
	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	£125	£175	£250
	Non-effective	£100	£150	£200
	Against Conviction			
	Effective	£150	£225	£300
	Non-effective	£100	£150	£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	-	-

**UPLIFTS FOR ADDITIONAL CASES**

Any uplifts payable under Schedule 1, paragraph 22 of the Order are payable to a Substitute Advocate in respect of Paid Returned Work and are deductible by the Instructed Advocate for Retained Work.

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**ANNEX B**

**Table B: PCMH FEES in £**

<b>Class of offence</b>	<b>QC</b>	<b>Leading Junior</b>	<b>Led Junior</b>	<b>Junior alone</b>
A	665.10	498.75	332.55	382.05
B	438.60	328.95	219.30	226.35
C	341.25	255.90	155.70	155.70
D	396.15	297.15	195.00	195.00
E	262.50	196.95	120.30	113.25
F	262.50	196.95	120.30	120.30
G	330.00	247.50	165.00	212.25
H	330.00	247.50	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	247.65	283.05

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**ANNEX C**

**Table C: RAGFS CATEGORIES**

The offences are divided into the following classes:

Class A

Homicide and related grave offences

Class B

Offences involving serious damage and serious drug offences

Class C

Lesser offences involving violence or damage, and less serious drug offences

Class D

Sexual offences and offences against children

Class E

Burglary and going equipped

Class F

Other offences of dishonesty including those where the value does not exceed £30,000

Class G

Other more serious offences of dishonesty including those where the value exceeds £30,000

Class H

Miscellaneous lesser offences

Class I

Offences against public justice and similar offences.

Class J

More serious sexual offences

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Class K  
Theft, deception etc. where the value exceeds £100,000

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**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 Protocol<sup>1</sup>. 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"

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<sup>1</sup> 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.

**GRADUATED FEE PAYMENT 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.

**GRADUATED FEE PAYMENT PROTOCOL**

- 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.
12. Reference should be made to the VAT advice contained in Annex G. In short the tax point arises on receipt of money into the Chambers Fee Account and not on payment out to the barrister concerned.

**GRADUATED FEE PAYMENT PROTOCOL**

**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.

<b>Advocate</b>	<b>Hearing</b>	<b>Cost</b>
	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
<b>Instructed Advocate</b>	<b>Trial</b>	<b>£541.75</b>

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

<b>Advocate</b>	<b>Hearing</b>	<b>Cost</b>
	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>	<b>-£86.75</b>

*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>	<b>£86.75</b>

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	<b>£89.69</b>
Substitute Advocate	SAF	£100.00	<b>£89.69</b>
Instructed Advocate	Trial (@ 70%)	£528.50	<b>£474.03</b>
Instructed Advocate	PCMH	£113.25	<b>£101.58</b>
	Total	£841.75	<b>£755.00</b>

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**GRADUATED FEE PAYMENT PROTOCOL**

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

<b>Advocate</b>	<b>Hearing</b>	<b>Cost</b>
	30% of BF	£226.50 minus
Substitute 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.*

**Fees' Breakdown**

Instructed Advocate	BF	£755.00 minus
Substitute Advocate	PCMH	£113.25 minus
Substitute Advocate	SAF	£100.00
<b>Instructed Advocate</b>	<b>Trial</b>	<b>£541.75</b>

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**GRADUATED FEE PAYMENT PROTOCOL**

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

<b>Advocate</b>	<b>Hearing</b>	<b>Cost</b>
	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>	<b>-£186.75</b>

*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
	BF	£755.00
	<i>Excess</i>	<b>£186.75</b>

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	<b>£80.17</b>
Substitute Advocate	SAF	£100.00	<b>£80.17</b>
Substitute Advocate	SAF	£100.00	<b>£80.17</b>
Instructed Advocate	Trial (@ 70%)	£528.50	<b>£423.70</b>
Instructed Advocate	PCMH	£113.25	<b>£90.79</b>
	Total	£941.75	<b>£755.00</b>

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**GRADUATED FEE PAYMENT PROTOCOL**

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

<b>Advocate</b>	<b>Hearing</b>	<b>Cost</b>
	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>		<b>-£186.75</b>

*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
BF		£755.00
<i>Excess</i>		<b>£186.75</b>

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	<b>£90.79</b>
Substitute Advocate	SAF	£100.00	<b>£80.17</b>
Substitute Advocate	SAF	£100.00	<b>£80.17</b>
Substitute Advocate	SAF	£100.00	<b>£80.17</b>
Instructed Advocate	Trial (@ 70%)	£528.50	<b>£423.70</b>
Total		£941.75	<b>£755.00</b>

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**GRADUATED FEE PAYMENT PROTOCOL**

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

<b>Advocate</b>	<b>Hearing</b>	<b>Cost</b>
	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>	<b>-£286.75</b>

*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>	<b>£286.75</b>

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	<b>£82.08</b>
Substitute Advocate	SAF	£100.00	<b>£72.47</b>
Substitute Advocate	SAF	£100.00	<b>£72.47</b>
Substitute Advocate	SAF	£100.00	<b>£72.47</b>
Substitute Advocate	SAF	£100.00	<b>£72.47</b>
Instructed Advocate	Trial (@ 70%)	£528.50	<b>£383.03</b>
	Total	£1,041.75	<b>£755.00</b>

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

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<b>Advocate</b>	<b>Hearing</b>	<b>Cost</b>
	30% of BF	£226.50 plus
	SAF 5	£100.00
	<b>Total</b>	<b>£326.50</b> 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>	<i><b>-£286.75</b></i>

*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
	<b>Total</b>	<b>£855.00</b>
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>	<i>£286.75</i>

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	<b>£84.81</b>
Substitute Advocate	SAF 1	£100.00	<b>£74.89</b>
Substitute Advocate	SAF 2	£100.00	<b>£74.89</b>
Substitute Advocate	SAF 3	£100.00	<b>£74.89</b>
Substitute Advocate	SAF 4	£100.00	<b>£74.89</b>
Substitute Advocate	SAF 5	£100.00	<b>£74.89</b>
Instructed Advocate	Trial (@ 70%)	£528.50	<b>£395.77</b>
	Total	£1,141.75	<b>£855.00</b>

## GRADUATED FEE PAYMENT PROTOCOL

### 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.**

#### ADVICE RECEIVED ON VAT TREATMENT

Annex E of the Protocol deals with the Chambers Fee Account (FA) into which all fees are paid and distributed by the chambers administrator twice monthly. VAT Regulations 1995 Statutory Instrument 1995/2518 Regulation 92 governs the time of supply for supplies of services by barristers and advocates. This regulation does not relate to any other business activity (to which the normal tax point rules apply as per Notice 700 The VAT Guide) apart from advocacy. This reads as follows:

"Services supplied by a barrister, or in Scotland by an advocate, acting in that capacity, shall be treated as taking place at whichever is the earliest of the following times:

- \* When the fee in respect of those services is received by the barrister or advocate;

**GRADUATED FEE PAYMENT PROTOCOL**

- \* When the barrister or advocate issues a tax invoice in respect of them; or
- \* the day when the barrister or advocate ceases to practice as such."

The expectation therefore is that for the IA who issues a "request for payment fee note" to the LSC (rather than a tax invoice), the tax point will, as now, continue to be triggered by receipt of the LSC payment. It is important to note that for chambers operating a FA, "received" for the purposes of regulation 92 will be the time the payment is received into the FA, as opposed to the time of the bi-monthly payment to individual barristers described under step 6 of Annex E.

For the SA, who issues an invoice to the IA, the time of the SA's supply to the IA will be the earlier of receipt of payment or issue of a VAT invoice.

Note that Reg 92 only extends to barristers. Solicitors are therefore subject to normal tax point rules.

Under para 18.2 of the Protocol, solicitor IAs must treat the SA element of any LSC payments as "client monies and account for them as such". However, the tax point for VAT purposes will be created by the receipt of that payment in the normal way. In other words, the normal practice of disregarding payments into client's accounts will not be appropriate in these circumstances.