

**THE SCOTTISH LEGAL AID BOARD**

**CRIMINAL LEGAL AID FEES  
AND  
TAXATION GUIDELINES**

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# **CRIMINAL LEGAL AID**

Payment will be assessed in accordance with the Criminal Legal Aid (Scotland) (Fees) Regulations 1989, as amended, the fees appropriate to the whole proceedings being the fees in force when the proceedings were concluded (the only exception being copy charges which came into force on 1 April 1997 at the rate of 8p per copy which rate applies when the work was undertaken). The time and line detailed fees laid out in schedule 1 to the regulations apply to all criminal cases except where a fixed fee is specifically provided by the fees regulations e.g. identification parades, judicial examination and the initial appearance of the duty solicitor in custody cases. These fees also apply to cases where payment is made under the Secretary of State's determination following a successful appeal where legal aid was not made available.

## **STANDARD OF TAXATION**

A solicitor acting in proceedings in which his client was granted criminal legal aid shall be paid for work actually and reasonably done, outlays and travel and waiting time actually and reasonably undertaken or incurred, due regard being had to economy. The Board will objectively assess whether work carried out by the solicitor was necessary to further the defence and, if so, was carried out in the most efficient and cost effective manner consistent with the proper conduct of the case. The words "due regard being had to economy" are a clear injunction to the solicitor to actively address the question of cost at every stage of the proceedings and where incurring outlays to obtain competitive estimates as appropriate. The standard is equivalent to the civil standard of "agent and client, third party paying" the third party in legal aid cases being the Legal Aid Fund. On this basis, the Board will only allow such expenses as "a prudent man of business, without special instructions from his client, would incur in the knowledge that his account would be taxed"<sup>1</sup>. This is a higher standard of taxation than between agent and client. The most significant consequence, for practical purposes, is that it is not enough that a solicitor carries out an item of work, even with the specific instructions of his client. Work must be necessary to advance the case. The onus is always on the solicitor to establish that work is actually and reasonably done and to this end the solicitor should be in a position to support all entries with file notes, vouch all expenditure and be in a position to justify all costs when submitting an account to the Board.

The Board is mindful that it is exercising its powers on receipt of the account by which time, of course, the expenditure will have been incurred. It is for this reason that these guidelines have been prepared and published for the assistance of the profession. The detailed guidelines contained in these pages reflect the Board's experience and practice in taxing criminal accounts. The advice contained in these guidelines may, at times, appear somewhat peremptory. It is considered preferable

to clearly state the Board's requirements especially where information is required to accompany an account to avoid unnecessary continuations or abatements. The solicitor may well decide in the particular circumstances of the case to adopt a course of action which conflicts with this advice. That is entirely a matter for the solicitor. However, in these circumstances, the solicitor should address the issues of cost and be in a position to support and justify any increased expenditure incurred. In the event of a question or dispute between the Board and the solicitor the matter will, of course, be referred to the Auditor in terms of regulation 11 of the Criminal Fees Regulations.

Authorities which may be of assistance to solicitors are:-

<sup>1</sup> Hood -v- Gordon (1896)23R.675 per Lord McLaren at P.676

Park -v- Colvilles Limited (1960) S.C.143 per Lord Patrick at P.153 also 1960 S.L.T. 200

H.M.A. -v- Daniel Gray S.C.C.R. 1992. 883

### **EFFECTIVE DATE OF LEGAL AID**

The Board will disallow all work prior to the date of grant of criminal legal aid unless covered by the automatic legal aid provisions of the Legal Aid (Scotland) Act 1986, section 22, section 24(6) or the special urgency provisions of regulation 15 of the Criminal Legal Aid (Scotland) Regulations 1987.

Where a case has been prosecuted under solemn procedure, the panel has automatic cover from the first appearance at court unless the charge on petition is murder, attempted murder, or culpable homicide where cover is automatic from the date of arrest. Automatic legal aid continues until an application under section 23(1)(a) has been determined. Automatic legal aid in summary proceedings granted under section 22(1)(d) to clients in custody who have tendered a plea of not guilty lasts only until an application for legal aid made contemporaneously has been determined by the Board. Automatic legal aid comes into force after a trial has been adjourned in terms of section 24(6) and an application has been made to the Board but only in circumstances where the accused was not represented by a solicitor or counsel and the trial has been adjourned for the purpose of an application being made to the Board. An accused is 'represented' if a solicitor appears for him at any stage of the hearing leading to adjournment, whether or not the solicitor appearing for or assisting the accused is entitled to remuneration for the appearance.

Where automatic cover is available, it should only be used for carrying out urgent work. A solicitor should not be writing to witnesses and obtaining statements until the legal aid application has been determined unless the trial diet is imminent. Such work - increasingly from the date of submission of the application - is carried out at the solicitor's risk as there can be no continuing legal aid cover and,

therefore, no basis for remuneration from the moment an application is refused, notwithstanding that the solicitor has not yet received intimation of such refusal.

When legal aid is made available under the special urgency provisions of regulation 15 the Board may specify that it is available only for such limited purposes as it thinks appropriate in the circumstances.

## **USE OF LOCAL SOLICITOR**

### Regulation 7(2)

The regulations provide that when work has to be done in a town where the solicitor does not have a place of business, he should instruct a local solicitor for the conduct or preparation of the case if it be more economical to do so, unless it is reasonable in the interests of the client that the nominated solicitor attends personally.

In the event of a solicitor seeking payment for personally conducting such work, the solicitor must address the question of comparative costs to establish that his attendance was more or equally economical, failing which the solicitor must fully address why it was “in the interests of the client” that the nominated solicitor or solicitor assisting the nominated solicitor required to attend personally. Such explanation should deal with the specifics of the circumstances of the particular case rather than a broad declaration of principle. The Board is of the view that a competent, experienced local solicitor in possession of the appropriate information can invariably properly represent and look after the interests of the client.

When it is not considered necessary for the nominated solicitor to undertake the work, the fees of the local solicitor should be charged at legal aid rates and included in the account of the nominated solicitor, settlement of this being a matter between the nominated solicitor and the local agent (regulation 4(3)). This regulation simply deals with the alternative use of a local solicitor and does not preclude the use of an unqualified person or precognition agent being used where appropriate. Indeed, the Board considers that the standard of taxation, to which reference has already been made, requires that precognitions be taken by unqualified persons wherever possible and that the expenditure of qualified time on this exercise requires to be justified.

## **ACCOUNT - PROPER FORM**

All accounts should be lodged on a detailed time and line basis indicating work carried out in chronological order. Each entry should be dated, accompanied by appropriate narrative and with the fee to be charged for each item of work inserted. The name and status (qualified or unqualified) of the person carrying out the work should be stated. The account should be in the form recommended by the Board

from time to time. All entries contained in accounts shall be supported by entries on the file or by appropriate vouchers.

### **POSTS AND INCIDENTS**

Regulation 8(1)(c) provides that "... there shall not be allowed to a solicitor outlays representing posts and incidents." Such costs are directly related to work incurred for the particular client and include postage stamps and DX costs; telephone accounts; stationery, files etc. used on client's business; travelling expenses to court where not chargeable; drawing cheques and banking procedures etc.

# DUTY SOLICITORS' FEES AND SOLICITORS' FEES FOR IDENTIFICATION PARADES AND JUDICIAL EXAMINATIONS

## *THE CRIMINAL LEGAL AID (SCOTLAND) (FEES) REGULATIONS 1989 REGULATIONS 5 AND 6*

	<b>Fees with effect from:</b>	
	<b>1.4.92</b>	<b>1.4.91</b>
<b>DUTY SOLICITOR</b>		
<b>IDENTIFICATION PARADE</b>		
<i>First hour of attendance at identification parade</i>	<b>83.75</b>	<b>79.75</b>
<i>Each subsequent quarter hour of attendance</i>	<b>10.55</b>	<b>10.05</b>
<b>JUDICIAL EXAMINATION</b>		
<i>Sessional fee covering all interviews with accused and others and appearance in court</i>		
<i>fee for first case in court session</i>	<b>44.40</b>	<b>42.30</b>
<i>fee for each additional case in same session</i>	<b>6.00</b>	<b>5.70</b>
<u><i>subject to</i></u>		
<i>maximum fee for first session of day</i>	<b>96.25</b>	<b>91.65</b>
<i>maximum fee for any further session</i>	<b>64.55</b>	<b>61.50</b>

Note: In addition detailed fees for waiting time and other necessary work are chargeable in accordance with the criminal table of fees (see page 15).

**Fees with effect from:  
1.4.92      1.4.91**

**ORDINARY CUSTODY CASES**

**First appearance**

*Sessional fee covering all interviews with accused and others and appearance in court*

<i>fee for first case in court session</i>	<b>44.40</b>	<b>42.30</b>
<i>fee for each additional case in same session</i>	<b>6.00</b>	<b>5.70</b>
<i><u>subject to</u></i>		
<i>maximum fee for first session of day</i>	<b>96.25</b>	<b>91.65</b>
<i>maximum fee for any further session</i>	<b>64.55</b>	<b>61.50</b>

**Preliminary pleas (sheriff and district court)**

Detailed fees for making preliminary pleas to competency or relevancy or conducting pleas in bar of trial or mental health proof (see criminal table of fees - pages 8 and 15)

*subject to*

<i>maximum fee for first session of day</i>	<b>108.85</b>	<b>103.65</b>
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**Follow-up duties after guilty pleas**

Detailed fees for attendance at court outwith period of duty and for additional interviews with accused and others (see criminal table of fees - pages 8 and 15)

*subject to*

<i>maximum fee of</i>	<b>108.85</b>	<b>103.65</b>
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Note: Any appearance in court during a period of duty must be charged by way of sessional fee.

**Fees with effect from:**  
**1.4.92      1.4.91**

**NOMINATED SOLICITOR**

**GENERAL RULE**

Detailed fees are chargeable - (see criminal table of fees - pages 8 and 15), subject to the following special provisions or restrictions.

**IDENTIFICATION PARADE**

<i>First hour of attendance at identification parade</i>	<b>83.75</b>	<b>79.75</b>
<i>Each subsequent quarter hour of attendance</i>	<b>10.55</b>	<b>10.05</b>

**JUDICIAL EXAMINATION**

*Sessional fee covering all interviews with accused and others and appearances in court.*

<i>fee for first case in court session</i>	<b>44.40</b>	<b>42.30</b>
<i>fee for each additional case in same session</i>	<b>6.00</b>	<b>5.70</b>
<u><i>subject to</i></u>		
<i>maximum fee for first session of day</i>	<b>96.25</b>	<b>91.65</b>
<i>maximum fee for any further session</i>	<b>64.55</b>	<b>61.50</b>

Note: In addition detailed fees for waiting time and other necessary work are chargeable in accordance with the criminal table of fees (see page 15).

# DESCRIPTION OF WORK AND FEES FOR CALCULATING REMUNERATION OF SOLICITORS IN THE HIGH, SHERIFF AND DISTRICT COURTS

## THE CRIMINAL LEGAL AID (SCOTLAND) (FEES) REGULATIONS 1989 SCHEDULE 1

	Fees with effect from:	
	1.4.92	1.4.91
<b>1. ATTENDANCES CONDUCTING TRIAL OR HEARING (ADVOCACY RATES)</b>		
<i>(a) Any time up to the first half hour spent by a solicitor conducting a trial in court or conducting another hearing</i>	<b>27.40</b>	<b>26.10</b>
<i>(b) Each quarter hour (or part thereof) subsequent to the first half hour spent in so conducting a trial or other hearing</i>	<b>13.70</b>	<b>13.05</b>
<b>1.1 COURT ATTENDANCES CONDUCTING TRIAL OR OTHER HEARING</b>		

**Note: For legal aid purposes a ‘Hearing’ may be taken to mean any contested attendance other than a trial, requiring substantial argument before the court.**

### 1.1.1 HIGH COURT

When the trial is in the High Court counsel will be employed and the solicitor will be paid at non-advocacy rates.

### 1.1.2 SHERIFF & DISTRICT COURT

The criminal regulations draw a distinction between advocacy rates and non-advocacy rates. Where counsel has been instructed, the solicitor will be paid at non-advocacy rates. Solicitors should always give serious consideration to the need for counsel to attend any particular diet or hearing. For example, there may be no contentious issues requiring the attendance of counsel at the first diet. Equally, where a plea of guilty is tendered or pronounced and sentence deferred for whatever reason, e.g. continued for reports, there may well be no need for counsel to attend the continued diet to address the court in mitigation.

In the usual situation in these courts, where counsel has not been instructed, the solicitor will be paid at advocacy rates for conducting the trial or other hearing. Accordingly, court attendances should be calculated from the time the court sits until the time the court rises. If the hearing is adjourned for luncheon, both the rising time for this purpose and the time at which the court reconvenes must be clearly recorded in the account. A charge cannot be made at advocacy rates for luncheon or any other adjournment when, clearly, a solicitor is not “conducting a trial ... or other hearing”.

If a trial or other hearing resumes after an adjournment or other gap in the proceedings, the further time spent in conducting the hearing must be charged by the quarter hour. The case does not revert to an initial half hour charge.

### 1.1.3 INTERMEDIATE DIETS AND FIRST DIETS

#### *Intermediate diets*

Solicitors should seek to ensure that all intermediate diets in their local court are conducted by one solicitor from the firm. Where a diet is held in a town or place in which the solicitor does not have a place of business, a local solicitor shall be instructed wherever possible. The local solicitor conducting the diet should be provided with a full, concise narrative of the current state of preparation of the case, including any evidence agreed with the fiscal and the reason why it is proceeding to trial. Local agents will no doubt be versed in the particular requirements of individual sheriffs.

There may be a reason for the nominated solicitor to attend personally. For example, there may have been discussions with the procurator fiscal raising the possibility, given the attendance of the nominated solicitor at court, that negotiations might be concluded and a plea made disposing of the matter without the need to proceed to trial. The Board would prefer, of course, that such negotiations take place by letter or telephone prior to the intermediate diets in these and similar circumstances, allowing a local agent to make a formal appearance. The nominated solicitor may wish to draw the prosecutor's attention to a factual or legal gap in the case allowing the case to be dismissed or a plea of not guilty to be accepted at the intermediate diet. Alternatively, the nominated solicitor may wish to address the court personally on seeking an adjournment due to lack of preparation due to no fault on the part of the defence.

Whatever the reason for personal attendance, such reason should be made clear in the narrative supporting the entry in the account. Where the case is not proceeding to trial, solicitors should also address why personal attendance was required for a plea of guilty tendered at an intermediate diet where there was no particular complexity.

Solicitors should not claim preparation fees for attendance at an intermediate diet. Where a guilty plea is tendered and the case disposed of at the intermediate diet, the case itself may attract a preparation fee according to circumstances. (See paragraph 2.5.)

*Intermediate diets in 'distant jurisdictions'*

Where the intermediate diet is held in a distant jurisdiction (see paragraph 2.3.2) the solicitor should give particularly careful consideration to the instruction of a local agent to attend and be in a position to support a decision to attend an intermediate diet in person or by another solicitor from his office or locality and the potentially substantial increased costs incurred.

*Adjourned or continued intermediate diets*

If a solicitor is claiming for attendance at more than one diet or a diet is adjourned or continued, a full narrative as to why this has taken place must accompany the account. The onus is firmly on the solicitor to show good reason why the Board should pay for more than one attendance. There may, of course, be an obvious reason but the solicitor requires to draw this to the attention of the Board.

*First diets*

Where the diet takes place in a town or place in which the solicitor does not have a place of business, a local solicitor should be instructed. Where counsel has been instructed and there are no contentious procedural issues justifying the attendance of counsel at the diet, the nominated solicitor or local solicitor should attend. The same considerations apply, where appropriate, to first diets as to intermediate diets (above).

**Note: Attendance at an intermediate diet should be charged at advocacy or non-advocacy rates according to the nature of the work. Where the work involves a substantive motion or a significant level of enquiry by the court as to the state of preparedness, etc. the solicitor should charge at advocacy rates. On the other hand, where the nature of the diet is, in effect, a call-over the solicitor should claim payment at non-advocacy rates. The solicitor should clearly indicate the nature of the intermediate diet when claiming payment.**

1.1.4 ADJOURNED/CONTINUED DIETS

Where a solicitor is claiming for attendance at more than one diet of the same type, including trial diets, or a diet is adjourned or continued, a full narrative as to why this has taken place and indeed whether it was due to any act or omission of the solicitor must accompany the account. The solicitor should show good reason for the Board to pay for more than one attendance and in the event that such information is not provided with the account, any entry in respect of a second or subsequent attendance will be abated.

### 1.1.5 PLEA OF GUILTY AT A TRIAL DIET

The Board and, indeed, other agencies involved in the administration of justice and the profession itself is well aware of the expense incurred and the disruption caused by “last minute” pleas of guilty at the trial diet. The Board in exercising its duties under the Act and regulations and its wider duty to the criminal justice system shall enquire into the circumstances surrounding such a plea where disclosed in the solicitor’s account.

The stated purpose of the intermediate diet in summary procedure and the first diet in solemn proceedings before a sheriff and jury is to reduce the burden on the judicial system by allowing pleas of guilty to be dealt with prior to the date set down for trial, obviating the need for the attendance of witnesses and many other related expenses.

The Board is mindful of the terms of the Criminal Procedure (Scotland) Act 1995, section 196 which permits a court to take into account the stage in the proceedings at which the offender indicates his intention to plead guilty and the ability of the court to discount any sentence on conviction. The Board presumes that a solicitor will have advised his client of the court’s discretion in this matter and will have taken the client’s instructions.

Accordingly, in a situation where the accused tenders a late plea of guilty on the trial date, the Board will require, as a matter of course, to be fully advised as to the circumstances in which this took place. The solicitor shall narrate in the entry in the account claiming fees and

outlays in respect of an attendance at the trial diet the reason why a plea of guilty was not made at the intermediate diet and what event took place between the two diets such as to justify the late plea. In the event that the Board is not satisfied as to the explanation given, all entries in respect of attendance, travel and any preparation for the trial diet will be subject to abatement as being unnecessary and, therefore, unreasonable.

#### 1.1.6 DISTINCT PROCEEDINGS

Solicitors should be aware of the terms of the Criminal Legal Aid (Scotland) Regulations 1989, regulation 4 which deals with distinct proceedings and, therefore, the circumstances in which work can be done under an existing certificate or, alternatively, a fresh application requires to be made. In particular, solicitors should be aware that under section 4(1)(g) petitions to the *nobile officium* of the High Court of Justiciary (whether arising in the course of any proceedings or otherwise) are claimed as separate and distinct proceedings and a separate application has to be made e.g. any work in relation to a bail petition under this category. Failure to obtain the necessary cover will result in abatements to that work, as an application cannot be granted retrospectively.

**Fees with effect from:  
1.4.92      1.4.91**

**2. ATTENDANCES OTHER THAN  
CONDUCTING TRIAL HEARING  
(NON-ADVOCACY RATES)**

- |   |              |              |
|---|--------------|--------------|
| (a) Each quarter hour (or part thereof) spent by a solicitor in carrying out work other than that prescribed in paragraphs 1 and 3 to 5 hereof, provided that any time is additional to the total time charged for under paragraph 1 above. | <b>10.55</b> | <b>10.05</b> |
| (b) Each quarter hour (or part thereof) spent by a solicitor's clerk in carrying out work other than that prescribed in paragraphs 3 to 5.  | <b>5.25</b>  | <b>5.00</b>  |

**2.1 OTHER COURT WORK**

**2.1.1 HIGH COURT**

When the trial is in the High Court, counsel will be employed and the solicitor will be paid at non-advocacy rates.

**2.1.2 SHERIFF & DISTRICT COURTS**

All other work relating to the court appearance such as travelling (to and from a court in a town or place in which the solicitor does not have a place of business), waiting, meeting client, witnesses or others at the court will be paid at non-advocacy rates and this will be calculated by deducting the time paid at advocacy rates from the total time involved.

If the total time spent on advocacy and non-advocacy work exceeds the minimum advocacy fee (see paragraph 2.2.2 for what is included in the minimum advocacy fee), the Board will conjoin the travelling time, waiting time

and attendance together with any meeting with the client arriving at a total time spent by the solicitor. The Board will look at the court time first, rounding up to first half hour or the next quarter hour block and will thereafter take the balance representing the waiting time and allow that as a block. These calculations apply to each case conducted by the solicitor on the same day avoiding, of course, any duplication.

Solicitors will be aware of the terms of regulation 7(2)(a) which states that the Board in determining the appropriate fees shall take into account time necessarily spent at the court on any day in waiting for the case or the appeal to be heard, only where such time has not been occupied in waiting for or conducting another case.

#### Example

As an example the solicitor may spend the following time (subject to the terms of paragraph 2.1.3):

20 minutes travelling to court (in a town or city in which he does not have a place of business), noted in the account as 9.30am to 9.50am

10 minutes meeting the client, noted in the account as 9.50am to 10.00am

20 minutes waiting, noted in the account as 10.00am to 10.20am

5 minutes conducting the trial, noted in the account as 10.20am to 10.25am

20 minutes travelling to chambers, noted in the account as 10.25am to 10.45am.

**All times that run concurrently should be conjoined so that the total time engaged can be reflected in the fee. Each individual item should not be rounded up to the next half hour or quarter hour block. The conjoined fee is the sum total of the actual time spent.**

The total time involved in the example is 75 minutes and this will be paid at 30 minutes advocacy rate (the minimum time charge for this work) and the remainder or balance of 45 minutes at the non-advocacy rate - as opposed to 5 minutes conducting the trial paid at 30 minutes advocacy rate, and 70 minutes paid at non-advocacy rate, totalling 100 minutes. The basis of the Board's practice in this regard is the terms of schedule 1, paragraph 2(a) which makes it clear that waiting time is only allowable when it is "additional to the total time charged for" under paragraph 1 (advocacy rates). The total time charged for in the above example is 30 minutes (the minimum advocacy rate) not 5 minutes.

**Note: Attendance at a call-over will be treated as non-advocacy work unless a substantive motion has been made to the court in which case the solicitor may claim payment at advocacy rates.**

Court attendances shall be calculated from the time the court sits until the time the court rises excluding any luncheon periods or other period during which the court is adjourned. All sitting and rising times must be clearly recorded in the account.

### 2.1.3 PRORATION OF TRAVELLING TIME

Travelling time must be prorated amongst all cases (private and legal aid) dealt with by the solicitor on that day and clear reference made in an accompaniment to the account to the other cases involved to enable them to be identified by the Board when taxing the account before it.

## 2.2 WAITING TIME

Waiting time is the time necessarily spent by a solicitor in awaiting the calling of a case or during any adjournment where other chargeable work is not being carried out and it is not possible in the circumstances for the solicitor to return to his office or conduct other business. Any period set aside for luncheon is not usually chargeable as waiting time. Any time spent by a solicitor in having lunch is the solicitor's own time and is not chargeable. It is not chargeable where a solicitor spends his morning in the office and is not chargeable simply because the solicitor has spent his morning at court. In respect of the balance of the luncheon period different considerations apply. Where the solicitor is attending his local court it is presumed that the solicitor, unless otherwise engaged in matters relating to the case, is in a position to return to his office. Where a solicitor is justifiably attending court in a jurisdiction other than his own the Board will be prepared to allow waiting time.

### 2.2.1 HIGH COURT

No waiting time is allowed if prior to 10.00am.

### 2.2.2 SHERIFF & DISTRICT COURTS

No waiting time is allowed if prior to 10.00am or such time as the court normally sits.

**As indicated, any waiting time charged must be “additional to the total time charged for advocacy”.** The thrust of paragraph 2(a) is that advocacy and non-advocacy rates are taken together. They are not separate items in the context of the minimum fee. “The total time charged for” in terms of the regulation is the minimum advocacy fee of 30 minutes. So, if a solicitor requires to wait for 10 minutes and then conduct a hearing for 10 minutes, the total 20 minutes is contained within the half hour advocacy fee. The solicitor is not entitled to charge separately for the waiting time. If, on the other hand, the total time exceeds 30 minutes, the Board will conjoin the waiting time and attendance as outlined, in paragraph 2.1.2 above.

**Waiting time must be allocated to the next case calling, not to some other case later on in the day.** Waiting time before an appearance on behalf of a client in custody will be allocated to that case and not to a trial or other hearing later on in the day. If there is no cover for the custody appearance, there is no cover for the waiting time. This equally applies to waiting time for work being carried out on a private fee paying basis, and for waiting time prior to an ABWOR appearance which will fall to be included within the inclusive fee for attendance and all work prior to and including the diet at which there is tendered a plea of guilty, or at which the court is considering the accused’s plea of guilty.

Any gaps in a solicitor's account e.g. "waiting 10.00 - 10.20; 10.30 - 11.00" will be the subject of enquiry by the Board's Accounts Division. If there is no cover for the appearance itself, the waiting time immediately preceding it may be subject to abatement.

### 2.2.3 DISCLOSURE OF INFORMATION AS TO WORK DONE

Solicitors will readily appreciate that it is a matter of some importance that the Board has all the relevant information before it when assessing an account. For assessment purposes, the staff require to know how many clients were seen at prison or court, the number of cases dealt with at court, together with confirmation as to the legal aid cover, or lack of such cover. This will help identify when travelling should be apportioned and whether waiting should be disallowed. This will provide assessment staff with as full a picture as possible of the actual work carried out on that particular day.

#### *Common disposal of several matters*

Indeed details of work carried out for the same client require to be available in the event that it falls to be prorated against separate legal aid accounts. For example, take the situation where a number of matters are continued to the same day for common disposal. Whilst it may well be possible to submit separate claims for appearing once for the one client but on separate matters, payment of solicitors' accounts is subject to the general requirement that a solicitor shall only be allowed such amount of fees as shall be determined to be reasonable remuneration for such work as is actually and reasonably done, due regard being

had to economy. The Board has to look at the total level of remuneration for this work. The Board takes the view that when appearing for a client and addressing the court on broadly the same factual and financial circumstances with a view to a common disposal, that a reasonable overall fee, which may exceed the fee for a single case depending on the level of work involved, must be established. In assessing such a fee, and to encourage the efficient disposal of court business, the Board will take into account the solicitor's efforts in combining a number of cases for a common disposal. All such accounts must be lodged together, referring one to the other, to provide full disclosure to the Board.

## **2.3 TRAVEL TIME AND EXPENSES**

### **2.3.1 HIGH COURT, SHERIFF & DISTRICT COURTS**

No travel time or expenses are chargeable by a solicitor appearing in a court in a town or place where the solicitor has a place of business (regulation 7(2)). This applies to the solicitor's local court where there is no court in the town where the solicitor has his place of business, e.g. Coatbridge and Airdrie. The regulations provide that when work has to be done in a town where the solicitor does not have a place of business, he should instruct a local solicitor for the conduct or preparation of the case if it be more economical to do so, unless it is reasonable in the interests of the client that the nominated solicitor attends personally. In cases where, in the view of the board, the solicitor must attend a court in a town in which he does not have a place of business he will be

paid the actual travelling time together with travel expenses actually and reasonably incurred in attending court. It is to be expected that the solicitor would travel by the most economical mode of travel bearing in mind the overall costs including the travelling time and the need otherwise to incur accommodation costs. Any items claimed as an outlay should be vouched to the satisfaction of the Board and should indicate the mode of travel whether it be by public transport or by private car. In the latter case the mileage should be recorded. Where overnight accommodation is necessary, this too should be vouched together with any subsistence incurred.

### 2.3.2 SOLICITORS' TRAVELLING TIME AND EXPENSES - DISTANT JURISDICTIONS

The Board is aware that solicitors from time to time undertake work in distant jurisdictions. 'Distant jurisdictions' is not capable of precise definition but, in general, is something more than a solicitor taking instructions from an existing client in respect of a case in a neighbouring jurisdiction, subject to instructing local solicitors where necessary. It covers a situation where a solicitor undertakes work in an area quite far removed from his own place of business where, on the face of it, there are a number of solicitors who could equally undertake the proper conduct of the work.

When undertaking such work, solicitors should be aware of the potential for significant increased cost to public funds by virtue of their involvement. The criminal fees regulations only provide for payment for "travel ... actually and

reasonably undertaken or incurred". The Board will require to consider whether it is reasonable to incur such additional expense as will undoubtedly be disclosed in the resultant account in such cases, whether or not such work is necessary, by virtue of the solicitor having accepted the instructions. In forming a view, consideration will be given to the nature of the case, the location of the client and whether the solicitor has had any prior dealings with this client, the distance travelled and the total claim for travelling time and expenses. An account in respect of a summary criminal case, for example, of no obvious complexity may well be the subject of abatement of travelling costs, with expenses substituted reflecting notional costs which might have been incurred by a local solicitor, but the Board's approach is by no means restricted to such cases.

Precognition work and prison visits (see sections below) within that jurisdiction should be undertaken by local agents. Where a solicitor chooses to incur the increased costs of personal attendance or the attendance of another solicitor from outwith the jurisdiction assisting him, the solicitor must be in a position to support a claim in respect of the increased travelling costs.

Local solicitors must be instructed for formal appearances such as pleading diets and intermediate diets where no plea is being made. Where a plea is being made and there is no particular complexity, the solicitor should equally address the question of whether to instruct a local solicitor.

In the conduct of a trial where there is no complexity or any other matter indicating

*delectus personae*, and the nominated solicitor elects not to appear, a local solicitor shall be instructed rather than incurring the costs of another solicitor within the same firm as the nominated solicitor or local to the nominated solicitor. If someone other than the nominated solicitor can deal with the trial or other hearing then a local solicitor is as well suited as any other solicitor and would not require to incur the same level of travelling costs. There is no obvious reason why such costs should be incurred in these circumstances.

### 2.3.3 PRISON VISITS

Multiple attendances with clients in prison are a source of great concern. Such an attendance may, of course, be necessary to take initial instructions when the client is in custody. Further attendance may well be required to take further instructions with regard to bail appeals or some other ancillary matter and, to take further instructions having precognosed Crown or defence witnesses. Otherwise, what may be described as ‘comfort visits’ or entries accompanied by references to “noting additional details and instructions” or “discussing up-to-date position” are not considered sufficient without further detailed explanation. In particular, a charge for a prison visit will not be allowed if the solicitor has had the opportunity of discussing matters with his client at court and did not take it or, alternatively, the solicitor has actually charged for a recent meeting with the client and there has been no apparent progress in the case between that meeting and the subsequent prison visit. Equally, a prison visit will not be allowed if the matter could have been dealt with by

correspondence or by a local agent. If a prison visit is necessary then every attempt should be made to deal with other matters at the same time and all visits should, wherever possible, be carried out by one solicitor from the firm. Failure to carry out such visits with due regard to economy will result in abatements to the account.

Occasionally a client will contact the solicitor by one means or another requesting a visit. This can create difficulties for a solicitor unable to be certain of payment for such an attendance. Where time permits, the solicitor should seek to contact his client by correspondence or through the Social Work Department of the prison to ascertain the reason for such a request. If, on the other hand, a trial is imminent, the solicitor may feel obliged to attend and that, on explanation to the Board, may be a circumstance in which the Board would be prepared to deal with such an item in his account.

*Visiting a number of clients*

Where a number of clients are seen at the same time, travelling and waiting time and travelling expenses shall be apportioned amongst all the clients seen including all private clients or clients in respect of which there is no specific legal aid cover. A solicitor is entitled to charge in quarter hour time blocks in terms of paragraph 2(a) of the Criminal Legal Aid (Scotland) (Fees) 1989, schedule 1 for attendance with a client.

Example

As an example where the solicitor visits three clients (one legal aid, two private) the solicitor may spend the following time:

20 minutes travelling to prison, noted in the account as 1.40pm to 2.00pm

15 minutes waiting time, noted in the account as 2.00pm to 2.15pm

20 minutes meeting the client, noted in the account as 2.15pm to 2.35pm

20 minutes travelling to chambers, noted in the account as 4.20pm to 4.40pm.

The total time involved in travel and waiting is 55 minutes of which  $\frac{1}{3}$  is allocated to this account on the basis that three clients were seen. In this example you would divide 55 minutes by 3 = 17.5 minutes added to the time spent with client (20 minutes) = 37.5 minutes in total chargeable as 45 minutes in the account.

*Visiting one client on a number of separate matters*

Where a solicitor requires to take instructions from the same client in respect of more than one case, the total actual time spent - subject to justification - should be apportioned as shown in the previous example. The effect of this is that the solicitor shall be entitled to round up the actual time spent with the client in respect of each matter to the nearest quarter hour minimum fee. Reference should be made to the other cases and whether there is legal aid cover. The actual time spent in travelling, waiting

and time spent discussing each case must also be clearly stated in the account together with the apportionment calculations. The reference to “justification” simply means that each matter must, quite separately, have justified the solicitor’s attendance at prison on the day. Simply taking the opportunity to review several files is not acceptable.

*Cases involved in common disposal*

In situations where the court is considering several cases for the same client at the one hearing, e.g. deferred sentence, the time engaged should be apportioned equally in each case and not rounded up to the nearest quarter hour. For example, if 40 minutes was spent discussing four cases £7.91 (i.e. 31.65 divided by 4) should be charged in each account and not the minimum of £10.55 for a quarter hour in each case.

*Justification*

In all cases, whether the solicitor is seeing a number of clients or one client in respect of a number of matters, there must be a real purpose to such a meeting sufficient to justify the expenditure of public funds. Progress in one case, leading to the solicitor’s attendance at prison does not justify seeing the client in respect of a number of other cases based on the same circumstances.

It is recommended that solicitors maintain and provide the Board with a weekly list of all prison visits made by the firm to support the entries in accounts.

*Travel to distant prison*

Visits to a prison in a distant jurisdiction should be undertaken by local agents. Solicitors should be aware of the Board practice in this matter and be in a position to indicate the exceptional circumstances in which a personal attendance is considered to be appropriate. Local agents should generally be instructed.

## 2.4 ATTENDANCES WITH CLIENT

Attendances for which charges are claimed must show the name and status (qualified or unqualified) of the person undertaking the work. The duration is to be taken as the time the client is with the person conducting the meeting and this must be clearly recorded in the account. Where no duration is recorded in the account the charge will be reduced to the minimum time charge. If the meeting was not held in the solicitor's office the locus should be noted in the narrative supporting the claim and the charge will be calculated from the time the solicitor leaves the office until he returns assuming no other work or diversion has taken place, and provided it was reasonable for the meeting to take place outwith the solicitor's office.

The Board does not consider home visits to be a reasonable charge on the Fund except in the most exceptional circumstances, e.g. the client is house bound or otherwise incapacitated.

When a number of clients are seen at the same time an apportionment of that time, including any waiting and travelling times, needs to be made for each client's account but falls to be abated on the agent and client, third party paying basis on which legal aid remuneration proceeds unless it can be established that there was a real purpose to the meeting justifying the

expenditure of public funds in each client's account. The calculations are the same as in the examples shown in 2.3.3 above (prison visits).

All meetings with a client should be necessary to advance the case and a full narrative should accompany an entry in the account where it is not immediately obvious from the surrounding circumstances. Equally, a full narrative as to the purpose of the meeting and what has been achieved by it should accompany any claim for a lengthy meeting. A solicitor shall have such meetings with the client as are necessary for the proper conduct of the case, but should avoid and certainly not instigate meetings which do not advance the case in some significant respect.

Solicitors undertaking criminal legal aid work should be particularly careful in a situation where a client insists on regular meetings. Such work may be a proper charge in an agent and client account but shall be abated on an agent and client, third party paying basis unless it can be established that there was a real purpose to the meeting justifying the expenditure of public funds. The solicitor should exercise his professional judgement as to whether a meeting is necessary bearing in mind the management of the case and his knowledge as to the practice of the Board.

#### 2.4.1 FILE NOTES RECORDING DETAILS OF MEETINGS AND TELEPHONE CALLS

A file note is simply the contemporaneous recording of a chargeable item such as a meeting or telephone call and is included within the charge for that item. A file note is not a separately chargeable item (either as a framing charge or as a time charge) in addition to or as part of the claim for the interview or telephone call.

A file note should note the nature and duration of the work and form a record of the business discussed. It must indicate the name and status of the person performing the item of work. Accurate file notes are an essential record of the work carried out and the only basis for the preparation of the account. The Board is entitled to a free accounting. The Board does not require sight of a file as a matter of course but prior to payment of an account the file may be sought and, in the event that the Board becomes aware that there is no contemporaneous file note prepared by the person who carried out the work the Board will not make any payment in respect of such an item, and may seek to recover sums previously paid on the assumption that such a record existed.

## 2.5 PREPARATION FOR TRIAL OR HEARING

Preparation is essentially that which is done in the latter stages of a case by a solicitor to ensure that he can enter the court with all the necessary papers, that any witnesses have been properly cited and he has a firm grasp of the facts of the case. It should be noted that the regulations only provide for remuneration for 'work' actually and reasonably done in the context of schedule 1 to the fees regulations which provide for a detailed time and line account. There is no prescribed fee for preparation, as such. Care should be taken to identify the actual work carried out in respect of any claim for preparation by adding an appropriate narrative to this item in the account. The Board cannot consider an omnibus catch-all time based entry for unspecified work in the context of an account prepared on a time and line basis, setting out with an appropriate charge each separate item of specific work. Preparation has been described as work which

is clerical but dangerous to commit to clerical staff. Preparation does not include the revisiting of statements, in respect of which a perusal or framing charge has already been made, looking up the law or any work in respect of which there is a specific charge, e.g. a meeting, correspondence or telephone call. Also, preparation is not to be confused with posts and incidents which are specifically precluded by regulation 8(1)(c). To avoid duplication, preparation is dealt with in the context of the case and not in respect of preparation in respect of a particular hearing or hearings.

### 2.5.1 GENERAL RULE

A charge for time spent in preparation for a trial or other hearing specified below must be supported by file notes detailing the preparation undertaken and an appropriate narrative in the account to justify the charge. This will enable the claim to be assessed quickly and fairly by the Board and a speedier settlement will follow.

In a case which the Board considers to be of sufficient complexity or difficulty as to justify a separate preparation charge, and the claim is supported by reference to actual work carried out, the Board may allow preparation charges as follows:

Trial	2 hours
Trial adjourned (weeks/months)	0.5 hour
Trial continued (weeks/months)	0.5 hour
Deferred sentence	0.5 hour (*)
Plea in mitigation	1 hour
Proof in mitigation	1 hour

Note: The item (\*) will be regarded as including perusal of all reports obtained.

### 2.5.2 EXCEPTION TO GENERAL RULE

In cases falling within the category of those justifying a preparation charge, if it appears that the case involved significantly less complexity or difficulty than usual, the preparation charge may be restricted or disallowed. Where the case involved significantly more complexity or difficulty than usual, an increased preparation charge may be allowed.

Where a trial is adjourned to the following day, a further preparation fee is not normally allowed, but if the solicitor considers that the nature and complexity or difficulty of the case necessitated additional preparation for the following day's appearance, full reasons should be given in the account narrative.

The revisiting of documents in respect of which a perusal charge has already been made or the reading over of notes taken during the day will not be considered to be an appropriate basis for a further preparation fee in these circumstances.

### 2.6 PERUSAL OF DOCUMENTS

The Board allows a charge for the perusal of productions or other documents. This is chargeable on a time basis in terms of paragraph 2(a) relating to work other than advocacy or work in respect of which a specific fee is allocated. An accurate contemporary record must be kept of the time taken to peruse a document; the date on which the work is carried out; clear reference to the document or production number being perused, the length and nature of the document and the name and status (qualified or unqualified) of the individual carrying out the work. The solicitor must also retain all contemporaneous notes taken during this process and be in a position to

provide all this information to the Board in support of a claim. The Board considers perusal to be the reading, digesting and noting of a document by the solicitor and a claim cannot be made in respect of such work every time the solicitor seeks to return to that document. The Board requires to know the time taken and the nature of the document being perused at any given time in order to assess how long it would reasonably take to read the particular document. The Board is then in a position to form a view as to whether the charge is reasonable and, therefore, carry out its proper function. Lack of essential information will almost certainly lead to a substantial abatement. The Board also has to be satisfied where there are a number of individuals concerned in perusing documents that some sort of structured approach has been adopted whereby a proper allocation of work is laid down to avoid unnecessary duplication of effort and the resultant unnecessary and unwarranted expenditure. From time to time a solicitor seeks to apply a broad formula based on a number of sheets an hour in support of a perusal charge. This is not in accordance with the regulations and is not, under any circumstances, acceptable to the Board.

Exceptions include the perusal of social enquiry reports, community service order reports and psychiatric or other reports ordered by the court where the perusal should not be charged as a separate item but should be included in the general preparation time for the deferred sentence. See 2.5.1 above. Any document produced by a client or witness at a meeting and perused and discussed at that meeting will not attract a separate perusal charge.

## 2.7 ATTENDANCES TAKING PRECOGNITIONS

A precognition is a statement taken with the object of discovering what evidence a witness will give in court. A precognition should clearly yet concisely reflect a summary of such evidence. A precognition taken from the accused should restrict itself to the accused's version regarding the incident or incidents giving rise to the charges before the court. Matters which will be subject to abatement include a lengthy narration of the charges, details of the accused's personal and financial circumstances and entries reflecting discussions between the solicitor and the accused which are more correctly to be considered as file notes. (See section 2.4.1.)

### 2.7.1 HIGH COURT, SHERIFF AND DISTRICT COURTS

The time involved in taking a precognition will be chargeable according to the status (qualified or unqualified) of the person undertaking the work, and the status should be clearly noted in the account. The taking of precognitions forms a significant part in any criminal account. Accordingly great care should be taken to ensure that all work is reasonably done and all outlays reasonably incurred due regard being had to economy.

The Board is aware that most precognitions are taken by unqualified persons and is of the view that this is entirely appropriate given the terms of the standard of taxation. In the event that it is considered necessary to expend qualified time in taking a precognition the reason should be clearly stated in the narrative accompanying the account. The Board will objectively assess the

claim and may abate the entry to unqualified time if it considers it appropriate to do so.

The duration is to be taken as the time the witness is with the person taking the precognition and this must be clearly recorded in the account rounded up to the nearest quarter hour. Where a number of witnesses are seen at the same time it is the total actual time spent which should be rounded up to the nearest quarter hour. Where work is conducted outwith the office the charge will be calculated from the time the person taking the precognition or precognitions leaves the office until he returns, assuming no other work or diversion has taken place. Where a number of witnesses are seen at the same time in connection with different clients, the total actual time spent including travelling and waiting time should be apportioned to the respective clients' accounts.

Every attempt should be made to ascertain the nature of the witness's evidence before incurring significant travel costs and regard must be had at all times to the nature of the evidence of such a witness. If a solicitor is in a position to take a precognition over the telephone, where the witness lives some distance away, this should be done. A firm arrangement must be made with the witness before incurring travel expenses and, wherever possible, arrangements should be made for precognitions to be taken by local solicitors or precognition agents rather than incurring substantial travelling expenses and time charges on a lengthy journey. Where a number of witnesses require to be precognosced, arrangements should be made at this stage to group those living in the same

area together with a view to precognosing them at the same time.

If a solicitor elects to undertake such work in such a way as incurs greater expense than a full narrative explaining the basis for such a decision should accompany the account. Any claim for the time taken for travel or expenses in taking a precognition will be assessed objectively. If there are any factors, explaining why such a claim is higher than one would normally expect, again, a detailed explanation should accompany the account.

In situations where matters discussed at a meeting with a witness simply corroborates the precognition given by another witness it is considered unnecessary to frame a full corroborative precognition. The time involved in meeting the witness is chargeable. Where a statement of a corroborative nature is taken indirectly from some other witness and not directly from the witness concerned, the time spent by the solicitor obtaining the statement would be allowed but not the framing charge. The solicitor should make it clear in his account of expenses that the statement has been obtained from a person other than the actual witness.

#### **2.7.2 PRECOGNOSCING CROWN POLICE WITNESSES IN SUMMARY MATTERS**

Special arrangements are in force to supply copies of the statements made by the police officers involved in the case to defence solicitors upon request. All solicitors representing accused in summary matters should request these copies and should only proceed to

precognosce police officers following a reply from the police advising that such statements will not be available or where the evidence in the statement supplied is materially different from the evidence obtained from the client or defence witness. It is understood that police statements may suddenly become available and as a rule of thumb the Board's view is that the solicitor, even after receipt of such a letter, should wait until four weeks before the intermediate diet before proceeding to incur the expense of precognoscing police witnesses. Where appropriate the letter from the police and all statements and precognitions must be submitted with the account.

### 2.7.3 MULTIPLE ACCUSED CASES

Solicitors should be aware of the cost implications of taking separate precognitions in multiple accused cases. In cases involving significant numbers of prosecution witnesses where there is no apparent conflict of interest, solicitors should liaise wherever possible with colleagues to jointly precognosce witnesses, sharing the precognition and copying costs. This applies equally in summary cases where police precognitions have not been made available. Having identified witnesses giving evidence of a purely formal or non contentious nature or, indeed, evidence not relating to the particular client at all, the solicitor can concentrate his efforts on the relevant precognitions. Any claim for subsequent reprecognition of an individual witness whose evidence is found to be material and central to the individual client's defence shall be assessed by the Board on a case by case basis according to circumstances.

## 2.8 DURATION OF TELEPHONE CALLS

The basis of charge for a telephone call depends on the duration of the call, not on the nature and importance of the matter discussed. A call exceeding 10 minutes is chargeable in full at the non-advocacy time rate. The duration of the call must be clearly recorded in the account. Where this is not done, the charge will be reduced to that for a call not exceeding 4 minutes. The need for a lengthy telephone call will be assessed objectively on the basis of the narrative accompanying the item.

## 2.9 ATTENDANCE AT THE LOCUS

Any charge for an attendance at the locus should be justified in the account narrative. A locus inspection should only be carried out where there is good reason for incurring such expense. Such a visit should not be carried out simply as a matter of course. The reason for such an inspection may not be obvious to the person assessing the account and the best practice would be to explain, in all cases, the need for such an inspection and the timing of the inspection. The Board expects a solicitor to address the need for such a visit before incurring the expense and if the solicitor requires to travel some distance to view the locus then every attempt should be made to combine such a visit with other work.

## 2.10 ATTENDANCE OF SOLICITOR AT DEFENCE POST MORTEM

On the face of it there is no obvious reason why a solicitor should require to attend a post mortem. The former practice as understood by the Board was to pass a detailed letter of instruction and copy of the Crown report to the defence pathologist. There may be a reason for such a charge but a case for payment would

have to be put up by the solicitor according to circumstances.

**Fees with effect from:**  
**1.4.92      1.4.91**

**3. DETAILED CHARGES  
(MISCELLANEOUS - HIGHER RATE)**

(a) Each citation of a witness including execution thereof	<b>6.00</b>	<b>5.70</b>
(b) Framing and drawing precognitions and other necessary papers, subject to paragraph 4 below, - per sheet (or part thereof)	<b>6.00</b>	<b>5.70</b>
(c) Instructing messengers-at-arms and sheriff officers including examining execution and settling fee	<b>6.00</b>	<b>5.70</b>
(d) Lengthy telephone calls (of over 4 and up to 10 minutes duration)	<b>6.00</b>	<b>5.70</b>
(e) Letters, including instructions to counsel - per page (or part thereof), subject to paragraph 4 below.	<b>6.00</b>	<b>5.70</b>

**3.1 DURATION OF TELEPHONE CALLS**

The basis of charge for a telephone call depends on the duration of the call, not on the nature and importance of the matter discussed. A call exceeding 4 minutes but not exceeding 10 minutes is chargeable on a fixed fee basis only. The duration of the call must be clearly recorded in the account. Where this is not done, the charge will be reduced to that for a call not exceeding 4 minutes.

**3.2 FRAMING PRECOGNITIONS**

Precognitions claimed in an account should show the name and status (qualified or unqualified) of the person taking the details and the date on which those details were obtained.

### 3.3 CORRESPONDENCE

#### 3.3.1 FORMAL/NON-FORMAL LETTERS INCLUDING FAX

The difference between formal and non-formal letters is, to a great extent, dependent on the content. A letter that requires little thought, legal expertise or specialised knowledge such as reminders, letters enclosing cheques, letters enclosing papers, letters requesting some routine step such as a list of witnesses from the Crown would normally be chargeable at the formal rate. On the other hand a letter which imparts advice or otherwise advances the case would be chargeable at the full rate.

#### 3.3.2 LETTERS "TO CALL"

As a general rule, a letter simply asking a client to call is not a chargeable item, but on the other hand, a letter which also reports a change in circumstances or advances the case or expresses a view not previously canvassed and incidentally suggests a meeting to discuss the matter would be allowed by the Board. In particular a letter to a witness explaining the nature of the proposed meeting and asking him to call is chargeable.

#### 3.3.3 SIMILAR LETTERS

Where letters similar in content are sent to a number of persons (e.g. letters to a number of witnesses requesting them to attend for the purpose of giving statements) the Board will allow the first letter at the full rate and the remainder at the formal rate.

#### 3.3.4 LETTERS RECORDING MATTERS DISCUSSED AT A MEETING

A letter sent to a client following a meeting confirming that the solicitor is going to act on the client's behalf or that he has taken or intends to take the course of action discussed and agreed at the meeting is essentially duplication of the advice given to the client at the meeting and the solicitor cannot in effect charge twice for the same matter. A charge will only be allowed where the letter, whilst confirmatory in some aspects also adds to views previously expressed or to information previously given, which views could not have been expressed at the meeting.

As an exception to the general rule outlined above the Board will allow a charge for a purely confirmatory letter where the solicitor satisfies the Board that in his opinion the letter was necessary because, e.g.

- (1) the client was in a distraught state of mind
- (2) the subject matter was too complex for memory
- (3) the client did not accept the advice given
- (4) to put on record a time limit, date of hearing, penalty imposed etc.

**Fees with effect from:  
1.4.92      1.4.91**

**4. DETAILED CHARGES  
(MISCELLANEOUS - LOWER RATE)**

(a) Attendances at court offices for performance of formal work including each necessary lodging in or each uplifting from court or each necessary enquiry for documents due to be lodged	<b>2.40</b>	<b>2.30</b>
(b) Short letters of a formal nature, intimations and letters confirming telephone calls	<b>2.40</b>	<b>2.30</b>
(c) Framing formal papers, including inventories and title pages - per sheet (or part thereof)	<b>2.40</b>	<b>2.30</b>
(d) Revising papers drawn by counsel or where revisal ordered by court - per 5 sheets (or part thereof)	<b>2.40</b>	<b>2.30</b>
(e) Short telephone calls (of up to 4 minutes duration)	<b>2.40</b>	<b>2.30</b>

**4.1 DURATION OF TELEPHONE CALLS**

A call not exceeding 4 minutes is chargeable on a fixed fee basis only.

**4.2 CORRESPONDENCE**

**4.2.1 LETTERS REQUESTING A LIST OF WITNESSES**

Where a list of witnesses is requested from the Procurator Fiscal, the Board will allow a charge at the formal letter rate.

**Fees with effect from:**  
**1.4.97            1.4.92**

**5. COPYING CHARGES**

*Where an exceptional amount of copying proves necessary, a fee shall be paid for each sheet. The copy charges which came into force on 1 April 1997 at the rate of 8p per copy apply when the work was undertaken and not when the proceedings were concluded.*

**0.08                    0.35**

The table of fees makes provision to charge a fee for each sheet copied where an exceptional amount of copying proves necessary. By definition “exceptional” means the production of more than 20 output copy sheets (whether 20 of 1 sheet, 5 of 4 sheets or whatever) when a document is copied. A document has not been defined but may be considered to be a single item comprising a paper or collection of papers containing written material.

Each incident of copying a document determines whether a copying fee is chargeable. If a fee is chargeable, each output copy sheet attracts the fee. If the same document is copied on two or more occasions, it is not permitted to aggregate the output copies from these copyings to bring the exceptional copying rule into play. Similarly the aggregation of output copy sheets whether copied at the same time or on different occasions is not permitted.

In the event of the likelihood of significant copying charges being incurred in respect of, say, copying Crown productions, careful consideration should be given to the respective costs of the options available. Although a solicitor is entitled to charge a fee in respect of photocopying, the standard of taxation relating to both solicitors’ fees and outlays is that the work must be actually and reasonably done with due regard to economy. Enquiry must be made when faced with the prospect of bulk copying as to the cost of this work being carried out by a commercial firm specialising in this task. In any event, in such a situation, it is likely that the solicitor will require to

seek the sanction of the Board to incur unusual or exceptional expenditure (see section 7.3.5) in which case the Board will certainly require competitive costs to ensure the most economic use of resources.

Where Crown productions are being provided by the Crown or procurator fiscal in a multiple accused case, solicitors should consider obtaining one copy of such productions and making the necessary arrangements for further copying if this would appear to be more economical than paying the prescribed fees laid down by the particular agency.

A copy of productions to be made available to the client is not considered to be a proper charge. In a normal case, one copy should be available for the solicitor and one for counsel, if appropriate.

#### Interpretation

In this table -

“court” means the High Court, the sheriff court or the district court as the case may be

a “sheet” shall consist of 250 words or numbers

a “page” shall consist of 125 words or numbers

“exceptional” means the production of more than 20 output copy sheets (whether 20 of 1 sheet, 5 of 4 sheets or whatever) when a document has been copied.

## **6. GENERAL RULES ON SUBMISSION OF ACCOUNTS**

### **ACCOUNT - PROPER FORM**

All accounts should be lodged on a detailed time and line basis indicating work carried out in chronological order. Each entry should be dated, accompanied by appropriate narrative and supporting documentation and with the fee to be charged for each item of work inserted. All entries contained in accounts shall be supported by entries on the file or by appropriate vouchers. The name and status of the person carrying out the work should be stated. The account should be in the form recommended by the Board from time to time.

## 6.1 PREPARATION OF ACCOUNT OF EXPENSES

The solicitor is not entitled to make any charge for the preparation or submission of his legal aid account. The Board is entitled to free accounting by a solicitor.

## 6.2 SUBMISSION OF ACCOUNT OF EXPENSES

Accounts prepared in respect of fees and outlays allowable to solicitors shall be submitted to the Board not later than 6 months after the date of completion of the proceedings in respect of which that legal aid was granted. The Board may accept accounts submitted in respect of fees and outlays outwith the period referred to above if it considers that there is “special reason” for late submission.

Examples of possible “special reasons” are:

- (i) lengthy incapacity or death of the nominated solicitor
- (ii) fire or other accidental damage to the solicitor’s premises
- (iii) the work in the proceedings in the court of first instance becomes a matter of appeal and the solicitor cannot release his file for accounting purposes
- (iv) where proceedings deserted *pro loco et tempore* and fresh proceedings brought within 6 months of the desertion the account for the original proceedings to be submitted within 6 months after conclusion of the fresh proceedings. Where no fresh proceedings account to be submitted within 12 months of desertion.

The Board would be unlikely to accept as a “special reason” (a) ignorance of the regulations (b) forgetfulness (c) lack of staff etc.

## 6.3 SUBMISSION OF ACCOUNTS WHERE SENTENCE IS DEFERRED

The Board has adopted a policy where sentence has been deferred, of not accepting accounts where sentence has been deferred for a period of less than six months in all or until the case has finished, whichever is the earliest.

## 6.4 SUBMISSION OF ACCOUNTS WHERE A WARRANT IS ISSUED

The Board will only accept accounts where it is clear that the accused is unlikely to be apprehended within a reasonable time. Sufficient time should be made to allow for the possibility of the client returning for

further assistance and prevent the need for supplementary accounts being submitted and additional requests from solicitors for the return of relevant files so they can continue to act. We do not want to give a rigid deadline for these cases but we would judge that allowing a period of two to three months before submitting the account would be sufficient.

#### **6.5 SUBMISSION OF ACCOUNTS UNDER THE FOLLOW-UP DUTY SCHEME**

The Board will only accept accounts under the follow-up duty scheme when the case has finished.

### **7. OUTLAYS ALLOWABLE TO A SOLICITOR**

A solicitor shall be allowed the following outlays, due regard being had to economy:

expenses actually and reasonably incurred by a solicitor or his clerk in travelling to and from the court at which the accused person appears or the trial or appeal takes place (not being a court in a town or place where the solicitor has a place of business) and to and from the prison and any place visited for the purpose of preparing and conducting the defence or appeal,

fees paid to witnesses who are not on the Crown list, which fees shall not exceed the sums payable from time to time by the Crown to witnesses of the same categories (current rates detailed in Appendix 1 to these guidelines),

any out of pocket expenses actually and reasonably incurred, provided that without prejudice to any other claims for outlays there shall not be allowed to a solicitor outlays representing posts and incidentals.

Full details and documentation should be submitted in support of any outlays claimed.

Where a witness is classed as a professional or an expert, the fees submitted must include dates and a full breakdown of the work and time involved.

#### **7.1 SANCTION FOR EMPLOYMENT OF COUNSEL**

The prior approval of the Board is required where the proceedings are in the High Court and are not proceedings relating to a prosecution or conviction for murder, for the employment of senior counsel alone, of senior counsel with junior counsel, or of more than one junior. The prior

approval of the Board is required, where the proceedings are in the sheriff court or the district court, for the employment of counsel.

The Board may grant approval retrospectively where it considers that the employment would have been approved by it and that there was “special reason” why prior approval was not requested. The Board cannot consider retrospective sanction where sanction has previously been requested and refused.

Reference to counsel in the High Court includes solicitors having a right of audience by virtue of section 25A of the Solicitors (Scotland) Act 1980. Solicitor advocates are not “counsel” in the district and sheriff courts and cannot be sanctioned in respect of work carried out in these courts either to conduct a trial or hearing or to provide an opinion.

Where sanction has been granted for the employment of counsel or counsel is available automatically in terms of the Act and regulations, the prior authority of the Board is not required for a consultation. The need to have a consultation and the length of a consultation is subject to the normal scrutiny of the accounts division. A meeting with counsel which does not involve the client or an expert witness is not a consultation.

### **Unsanctioned counsel**

In terms of the Legal Aid (Scotland ) Act 1986, section 32, no solicitor or counsel other than the solicitor or counsel providing legal aid shall advise or act for an assisted person in connection with the proceedings. In the event that a trial or hearing is conducted by unsanctioned counsel, there is no basis for remunerating counsel. Equally, there is no basis in terms of the Act or regulations for remunerating the solicitor concerned for accompanying counsel, preparation, travelling expenses, waiting time or any other claim in respect of the trial or hearing which the solicitor has not conducted.

## **7.2 SANCTION FOR EMPLOYMENT OF AN EXPERT WITNESS**

The prior approval of the Board is required for the employment of any expert witness in criminal cases. Where sanction is granted for an expert, the amount authorised is a ceiling limit and it is subject to justification at the accounts stage and to the rates laid down by the Crown. In cases where it appears likely that the ceiling will be exceeded requests to exceed this ceiling should be accompanied by an estimate of the probable cost.

The Board may grant approval retrospectively where it considers that the employment would have been approved by it and that there was “special

reason” why prior approval was not requested. While it is necessary to obtain prior approval from the Board for the employment of expert witness in almost all types of case some dubiety may exist as to whether certain witnesses do require to be regarded as “experts” or not. Generally speaking a witness may be deemed to be an expert where he is consulted to give an opinion on a matter having professional skills or qualifications which makes such an opinion valuable, and who is not a person who would have been involved as a witness in the case other than as a result of his specifically being requested to give such an opinion by one or other of the parties. Witnesses who would fall into this category include psychiatrists instructed for a report, analysts instructed on, for example, blood/alcohol content, ballistics experts, and video analysis experts.

A person who is unquestionably skilled and expert in his field may be cited and give evidence, but will not require to be sanctioned provided that his evidence is of a factual nature. For example, a medical practitioner may be cited to give evidence on the course of treatment administered by him where the witness’s contact with the client has arisen in an ordinary doctor/patient relationship (in other words, the evidence is factual, albeit the facts are of a medical nature).

### 7.3 WITNESSES WHO ARE NOT “EXPERTS”

The following may be distinguished as individuals who are not “experts” for the purposes of legal aid and whose employment does not require to be sanctioned by the Board.

#### 7.3.1 GPs AND HOSPITAL DOCTORS

A client’s family doctor is not classed as an expert, albeit he has specialised medical knowledge which is not available to the layman. Such a witness would be giving evidence on the client’s symptoms and speak to the treatment given. There is no need for any special authority to employ a general practitioner. The evidence of hospital doctors below the status of consultant may also be required to speak to injuries observed by them and treatment given, and again these can be classed as witnesses to fact for which no special authorisation is required.

### 7.3.2 MEDICAL CONSULTANTS

Whether a medical consultant counts as an expert witness from the legal aid point of view depends on whether or not he is speaking to treatment he has given to the assisted person or whether he has been consulted specially for the purposes of an opinion in connection with a court action.

In the first situation, the specialist is not acting as an expert witness but giving evidence as fact albeit of a specialised nature, and such opinion as he may be offering is no more than the professional opinion he would form in the normal course of giving treatment to a patient. He can therefore be regarded as a witness as to fact.

However, one can imagine the same assisted person having to be referred to a specialist by his solicitor to obtain an opinion on, say, the degree of disability suffered and the likelihood of its persistence. The specialist would not have been involved with the assisted person's case had it not been for the court action and he therefore is an expert witness.

### 7.3.3 PHOTOGRAPHERS

Photographers employed to take photographs of a locus, while no doubt expert as photographers, are not to be classed as expert witnesses, but as their expenses can be surprisingly high, it is wise to obtain an estimate in advance and clear it with the Accounts Division.

### 7.3.4 EXPERTS OUTWITH SCOTLAND

From time to time the Board is requested to sanction the employment of a medical or other expert witness located elsewhere in the UK (other than Scotland) or abroad.

It must be noted that in any case where such a request for sanction is made the Board would wish confirmation that the solicitor making the application has made inquiries into the likely cost of employing the expert concerned, what these costs are, and the availability of such an expert in Scotland. Having regard to the interest of economy, the Board would expect a suitably qualified expert in Scotland to be used, if available, and if inquiries indicate that there is such an expert and an expert outwith Scotland is preferred then an explanation for the employment of that expert should be provided.

### 7.3.5 WORK OF AN UNUSUAL NATURE OR LIKELY TO INVOLVE UNUSUALLY LARGE EXPENDITURE

The prior approval of the Board is required for work of an unusual nature or likely to involve unusually large expenditure. The regulation is not, in general, concerned with the nature of the case itself and there is no need for prior Board approval just because the solicitor is acting in a serious fraud or drugs case, etc. Prior approval is not required in that sort of situation and the charges for fees, outlays and counsel will be assessed or taxed in the normal way. The regulation is concerned with the work that is done in the conduct of the case, for example, the nominated solicitor may decide, in the exercise of his professional judgement, that statements must be taken from witnesses who live outwith the locality in which he has a place of business. The Board would normally expect a local solicitor or precognition agent to be instructed to take these statements for which no prior approval would be needed. However, if the nominated solicitor considers that he must go and take the statements himself, he should apply for prior approval if the work is likely to involve unusually large expenditure.

Some examples of where prior approval should be sought are: inspecting a distant locus; taking precognitions or attending at client's home in some distant town or place; instructing counsel to consult with an expert in some distant town; keeping a watching brief on some other case; having shorthand notes extended; copying large volumes of papers; instructing an interpreter or translator; conducting the precognition of a witness on oath. This is not, of course, by any means an exhaustive list but may assist in indicating the sort of situations in which the Board expects a solicitor to seek its prior approval.

Where such sanction is requested, the solicitor should indicate the need for the work in the context of the case, the actual work to be done and the way in which it will be carried out, together with appropriate costings and estimates. It is not enough simply to state the broad nature of the work together with an arbitrary figure e.g. "precognosing 50 witnesses in England: £10,000".

The requirement of obtaining the Board's prior approval for work of an unusual nature or likely to involve unusually large expenditure will not apply where there is a requirement to obtain Board approval for the employment of counsel or expert witnesses. The employment of an expert will normally be subject to specific

limits of expenditure or be subject to a specific means of calculating the costs to be incurred.

It should be noted that, by contrast with the provisions of approval of the employment of counsel and expert witnesses, there is no provision for retrospective approval being sought for work of an unusual nature of likely to involve unusually large expenditure. If upon examination of the solicitor's account of expenses it is considered that prior approval should have been obtained, but was not sought, the charge concerned will require to be abated.

**APPENDIX 1**  
**EXPERT WITNESSES**  
**(Require Sanction)**

	<b>Fee from</b>	
	<b>1.12.91</b>	<b>1.4.92</b>
Engaged not more than 1 hour	57.00	60.10
Engaged more than 1 hour, but not more than 4 hours	116.90	123.30
Engaged more than 4 hours, but not more than 6 hours	175.30	185.00
Engaged more than 6 hours	233.80	246.70

Necessary travelling time from residence or place of business shall be included in computing the fee payable.

Where a *locum tenens* is engaged or arranged, the rules relating to payment of a locum shall be those related to professional witnesses (below).

**PROFESSIONAL WITNESSES,**  
**INTERPRETERS**

	<b>Fee from</b>
	<b>1.4.96</b>
<b>FEE FOR PROFESSIONAL WITNESS</b>	
Engaged not more than 2 hours	53.20
Engaged more than 2 hours but not exceeding 4 hours	79.70
Engaged more than 4 hours but not exceeding 6 hours	119.50
Engaged more than 6 hours	159.30

**Fee from  
1.4.96**

Where a doctor or pharmacist who has arranged a locum receives late notice that his citation has been cancelled in such circumstances that it is not possible to cancel the locum and where a doctor or pharmacist is required to pay a fee to the locum, consideration may be given to payment of a locum fee within the above limits that being:

Not exceeding 4 hours 79.70

Exceeding 4 hours 159.30

Necessary travelling time from residence or place of business shall be included in computing the fee payable

**Fee from  
1.9.91**

Overnight subsistence rate for professional witnesses 54.55

*Mileage rates payable for expert/professional witnesses*

1500 cc 35.70p per mile

1500 cc - 2000 cc 42p per mile

2000 cc plus 46p per mile



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