



Solemn fees - Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2010 - Frequently Asked Questions

February 2011

The regulations introduced in 2010, which reformed solemn criminal fees for solicitors, created a new 'hybrid' fee structure: rather than specifying an individual fee for each item of work, block fees will be paid for designated stages of the case. The block fees are prescribed in Schedule 1, Part 2 and vary depending on the court and category of proceedings. These amendments apply to all proceedings commenced on or after 5 July 2010 and, if the solicitor involved so chooses, proceedings which commence on or after 1 April 2008. You can read more about the options available in the mailshot we sent to you dated 11th June 2010, which is available in the mailshots section of our website.

To provide solicitors and law accountants with a greater understanding of the Board's accounting requirements under the new payment arrangements, we thought it would be helpful to provide a 'model account'. It is hoped that this will allow solicitors and those involved in the framing of accounts to better understand the interaction between the detailed and block fees. The model account takes into consideration issues that have arisen since the introduction of the reforms. The model account is available on the Legal Profession page of the Board's website and the Criminal Legal Assistance Handbook.

While there is no obligation to adopt this style, the format of the model account is designed to provide sufficient information to assess the account and avoid the need for you to send us files of papers or productions unless we specifically request them. By adopting the format of the model account, we believe that many of the difficulties that can arise during assessment of the account can be eliminated. This will save a significant amount of time for you and for us, and will reduce the need to return accounts for further information and, therefore, receive prompter payment.

A note of the most frequently asked questions arising from the reforms is also available here.

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1. Part 1 Schedule 1 - Detailed Fees

Fee 1(b) Conduct of a hearing

Q. Is this fee aggregated to any waiting and travel time at court?

A. Yes. The historical taxation practice to aggregate consecutive times at court in any case will continue to apply. The only change to this fee is that the minimum advocacy time is reduced from 30 to 15 minutes.

Q. Can this fee be charged when the solicitor is assisting counsel?

A. No. The solicitors' 'non advocacy' rate (Part 1, Fee 6(a) - £12.67 per qtr hr) will continue to apply in those cases.

Fee 4 Precognition Fees

Q. Can travel and time spent taking a statement be charged separately?

A. No. The time spent taking a statement includes the necessary travel time involved in that process. The travel and time spent taking the statement should therefore be aggregated to arrive at the appropriate fee payable. This is consistent with historical taxation practice. For example, 30 minutes travel and 20 minutes taking the statement will attract a fee of £12.00. However, where a second (or subsequent) statement is taken on the same day, a minimum fee of 1 hour is payable for each statement.

Q. What rates apply if the solicitor can justify that (s)he required to personally take a statement(s) in the case?

A. In terms of paragraph 7 of the 'Notes on the operation' (Schedule 1) the time spent taking the statement (including any necessary travel) is chargeable at 'non advocacy' solicitor rates - Part 1 Fee 6(a). However, even where you can justify that you had to take the statements personally, the fees which apply for framing the precognition and each letter or telephone call arranging the statement must be charged in line with the fees prescribed in Part 1 Fee 4(b)(i)-(iii).

Q. If the solicitor/precognition agent personally takes the statement by telephone does this mean that only fee 4(b)(iii) is chargeable - £1.00?

A. No. In those circumstances the fees for taking the statement would apply. Accordingly, the rate chargeable would be £12.67 per quarter hour if a solicitor took the statement or £12.00 per hour for the precognition agent.

Q. Where a precognition agent takes the statement can I charge separately for perusal of statements obtained?

A. Yes. A perusal charge of £12.67 per qtr hr can be claimed. Where the solicitor personally takes the statement a perusal fee cannot be charged, in addition.

Fee 6 Non Advocacy

Q. Travel - when is it payable?

A. The provision for travel remains unchanged. Travel continues to be chargeable separately in addition to any block fee in the following circumstances:-

- to court if it is not in a town or place where the solicitor has a place of business;
- prison or elsewhere if the client is unable to travel on medical grounds;
- meeting with PF or Advocate Depute;
- consultation with counsel or an expert witness;
- locus inspection;
- examination of productions; and
- on cause shown.

Q. Is the solicitor entitled to charge for the period when the court breaks during the lunch period?

A. No. The time during the lunch period is not chargeable unless the solicitor can demonstrate that chargeable work has been undertaken (e.g. meeting with PF or Advocate depute necessary to advance the case).

2. Part 2 - Inclusive (Block) Fees

Q. What work is excluded from the block fees?

A. *The items listed in Paragraph 1(5) are always chargeable on a time and line basis even where the block applies (e.g. travel, waiting, conduct at court, locus inspections etc). These charges are:-*

- *Travel;*
- *Attending locus visits;*
- *Work in connection with taking a witness precognition;*
- *Perusing for the first time, the indictment, witness lists, statements, productions and labels received from the Crown and defence precognitions;*
- *Instructing expert witnesses;*
- *Conducting or attending court when counsel is conducting a hearing;*
- *Time spent waiting - but only where circumstances of Note 4 apply (e.g. court);*
- *Post conviction work other than that described in paragraph 5, Part 2;*
- *Prison block - where cases involves unusually complex issues of fact.*

Block Fee 1 (Petition Fee)

Q. Does the block fee include court time, waiting and travel?

A. *No. Court, waiting and chargeable travel time is allowable over and above the block fee. It is important to emphasise that the rules surrounding these items for attendances at court have not changed.*

Q. Does the block fee include attendances at the police station in murder, attempted murder and culpable homicide cases?

A. *If the work is undertaken under the solemn grant of legal aid (e.g. Section 22(1)(b) of the Act) rather than an earlier grant of advice and assistance, then any work undertaken at a police station visit will be subsumed within paragraph 1 of Part 2. However, if the work is done under advice and assistance then it will be chargeable separately.*

*Remember, only the work from the point that the client is **charged** can be included in the solemn account.*

Block Fee 2 (Bail Appeal)

Q. Is the Edinburgh agent's account included in the block fee?

A. *Yes. However, the court time spent sitting behind counsel, waiting and travel can be charged separately*

Q. Can the Bail Appeal block be charged more than once?

A. *Yes. However, only if there are fresh grounds for a separate and distinct bail appeal. We do not consider a related Crown Bail appeal would attract a separate block bail appeal fee.*

Q. What about Bail Reviews?

A. *These are not separately chargeable as a block but can be claimed on a detailed basis in line with the pre-reform regulations.*

Q. Can the bail appeal inclusive fee be charged where the client is committed for further examination and remanded in custody at the first appearance?

A. *No. The bail appeal fee in these circumstances would be subsumed within the inclusive fee 1(b). However, the solicitor would be entitled to charge for any necessary waiting and attendance at court in respect of the bail appeal hearing.*

Block Fee 3 (Prison Attendances)

Q. Can a fee be claimed where a prison visit is required prior to full committal?

A. *No. Block fee 1 is inclusive of any necessary prison visit prior to the client being fully committed to trial. Travel time can however be charged in addition to the block.*

Q. Can block fee for a prison visit be claimed where the client is remanded in custody on a separate indictment or complaint?

A. *Yes. The block fee for prison visits applies, in any case, where a client is remanded in custody. The prison block only applies after full committal and prior to the client's conviction. For example, in a fraud case, where the client is not a flight risk and has been bailed for the duration of the case but is*

remanded only after being convicted, the prison block would not apply. The post conviction (block 5) would cover the necessary prison attendances which covers “all work” post conviction.

A. No. Only those attendances which are covered by the prison block e.g. after full committal and prior to the client’s conviction can be charged on a detailed basis.

Q. Can I charge travel time and mileage separately from the block fee for prison visits?

A. Yes.

Q. Is waiting at prison chargeable separately?

A. No. Waiting time is subsumed within the prison block fee.

Q. Is the prison block fee chargeable for each attendance?

A. No. The block covers “all attendances” and is therefore chargeable once only.

Q. Can I charge separately if the meeting involves counsel and is therefore a ‘consultation’?

A. No. The prison block fee covers all meetings and/or consultations which take place in prison. However, if the solicitor had a consultation with counsel outwith prison this could be charged for separately.

Q. What constitutes an “unusually complex issue” with regard to paragraph 1(5)(i) (which allows for prison visits to be paid on a detailed basis)?

A. There is no pre-defined criteria. The regulations are sufficiently flexible to allow solicitors to apply depending on the particular facts and circumstances of the case. Where the solicitor considers the case is unusually complex and necessitates prison visits well above the norm an application can be made to the Board to “opt out” of the block regime. For example, the most likely scenario is in a fraud case where there is a significant volume of evidence disclosed over a sustained period.

Q. Where the Board approve an application under paragraph 1(5)(i) can I charge for all prison attendances on a detailed basis?

Block Fee 4 (Preparation Fees)

Q. Can I charge for any preparation where the case is disposed of by way of S76, 1st Diet or Preliminary Hearing?

A. No.

Q. In these circumstances can a preparation fee be charged for a diet of deferred sentence?

A. No.

Q. In what circumstances is the preparation fee block 4(a) chargeable?

A. *The test is that the case must have been brought to trial and one of the following circumstances arise:-*

(i) the indictment, containing a libel against the client, proceeds to trial; or

(ii) on or after the day fixed for trial, the Crown withdraws any libel against the client; or

(iii) where a lesser plea is accepted by the Crown on the day the case has been brought to trial.

Q. Can the preparation fee 4(a) be claimed more than once?

A. *No. The initial trial block (4a) is chargeable only once in any case.*

Q. *Where a fee is appropriate can I charge block fee 4(b) for every subsequent day of trial or deferred sentence?*

A. *No. Block fee (4b) can be claimed a maximum twice in any case. These rules apply even where the case is deserted and re-indicted and all work is dealt with under the one grant of legal aid.*

Block Fee 5 (Post Conviction)

Q. What work is covered by block fee 5?

A. *This covers all “post conviction” work with the exception of those items listed in paragraph 1(5) of the Notes on the operation.*

Q. Can I claim for perusal of reports following the client’s conviction?

A. *No. This is subsumed within the post conviction block.*

Q. *What post conviction work is excluded from the block fee in terms of paragraph 1 (5)(h) of the Notes on the operation?*

A. *The most common scenarios would be work in relation to confiscation proceedings or Section 16 of the Prisoners and Criminal Proceedings (Scotland Act 1993), which continue to be covered under the grant of solemn legal aid. This work is chargeable separately on a detailed basis.*

Block Fee 6 (Miscellaneous)

Q. Can the miscellaneous fees be charged more than once?

A. *Yes. If a devolution minute and section 275 application are necessary then the block is chargeable twice. It is important to remember that where the work is being undertaken in the High Court and these ancillary matters are dealt with at the preliminary hearing stage then the blocks are not chargeable. You should charge for this work on a detailed basis.*

Q. Do these have to be set down for a court hearing to qualify for the block fee?

A. *Yes. We would only consider payment where the substantive minute/application has been lodged at court and a date has been fixed for the hearing.*

Blocks - General

Q. What block fees apply if no indictment is served?

A. *Column C (sheriff court) blocks would apply in all cases other than where proceedings relate to a category specified in Paragraph 1(3)(a) of the ‘Notes on the operation’.*

Q. How do I charge for any block accounts in a case that has been transferred?

A. Where you have completed a block in its entirety, such as Block 1, this should be claimed in full. However, where the work has not been completed it will be apportioned equally between the solicitors who have undertaken work during that block. For example, Block 3 (prison) would be apportioned 50/50 where 2 solicitors were involved or 1/3rd where three solicitors were involved.

3. General

Q. How do I charge in case where the proceedings are reduced from solemn to summary?

*A. All fees **completed** prior to the reduction such as Block 1, Block 2 should be claimed in addition to any chargeable detailed fees not covered by the block fees. Work following the reduction will be chargeable on a detailed basis at summary rates as prescribed in Part 1 of the Table of Fees.*

Q. Viper ID Parade - Can I charge the 1st hour fee for each part of the ID parade?

A. Yes. Time beyond the first hour is chargeable, in addition, at £12.67 per quarter hour.

Q. Can the Viper ID fee be charged where it takes place during block fee 1?

A. Yes.